

# Special Autonomy Regulations in Papua Province for the Realization of Community Welfare

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**Keywords:** Special Autonomy, Papua Province, Community Welfare.

**Abstract:** The mandate of 1945 Constitution of the Republic of Indonesia which was formulated in Law Number 32 of 2004 about Regional Government regarding the implementation of autonomous regional governments and special autonomy regions is not easy to realize. This is based on the conditions of an area such as geographical conditions, natural wealth, level of soil fertility, total population, quality of population, and number of intellectuals. We can take Bali as an example. Bali is an area that has many tourism places such as Jimbaran Beach, Besakih Temple, Uluwatu Temple, Tanah Lot, Kuta Beach and others. The customs, religion and culture of Bali are like a routine for Balinese. As a region that has various types of specificity, Bali actually wants its area to get recognition as an area with special autonomy. However, this specificity has not been granted by the Government of the Republic of Indonesia. The province of Papua, which is located on the eastern edge of Indonesia, is the widest province with a wealthiness of natural resources. However, in reality, various policies in centralized governance and development there, have not fully fulfilled the sense of justice, people's welfare, the realization of law enforcement and respect for human rights in Papua Province, especially for the Papuan. This condition resulted in disparities in almost all sectors of life, especially in education, health, economy, culture and social politics. Therefore, the government tried to overcome these problems by giving special autonomy to the Papua Province. In 2001 the government passed Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua in order to implement equal welfare for the people there. Considering the tendency of more and more regions to wish to become special autonomous regions or special regions, scientific review with discussion of issues on how the basis, criteria and guidelines in granting special autonomy to an area in Indonesia is very necessary. Normative legal research methods are used to answer this problem. The approaches used are statute approach, historical approach, and comparative approach. After the legal material is collected, it is analyzed qualitatively juridically. This research shows that in addition to being regulated in Article 18B of the 1945 Constitution of the Republic of Indonesia, it can also be found in Law Number 32 of 2004 concerning Regional Government.

## 1 INTRODUCTION

The founders of the Indonesian have noble goals and ideals in protecting the entire nation and homeland of Indonesia, advancing public welfare, educating the lives of the nation and participating in carrying out world order based on independence, peace, and social justice. In realizing these goals and ideals, a pattern of government is needed as a system and instrument for the state to implement it.

Indonesia is an archipelago. This geographical condition affect the lives of people who live there to create different cultures and customs. This diversity sometimes become a problem for the state in carrying out a centralized government, so it is necessary

to form a government in the regions as an extension of the central government in realizing the ideals of Indonesia which is a welfare for all Indonesian people. The formation of government in the regions is balanced with the authority (power) in managing the household itself in accordance with the needs of each region.

The long journey of regional autonomy based on regulation in Indonesia began in the Dutch colonial period. Decentralisatie Wet in 1903 and the 1922 Bestuurs Hervormings Wet were the regulations applied at that time. During the New Order period, several regulations concerning regional autonomy such as Law Number 1 of 1945 on Regulation about the Position of Regional National Committees, Law Num-

ber 22 of 1948 on Stipulation of Basic Rules Regarding Self-Governing in the regions that Regulating and Managing their Own Household, Law Number 1 of 1957 on the Principles of Regional Government, Law Number 18 of 1965 on the Principles of Regional Government. During the New Order era, Law Number 5 of 1974 on the Principles of Regional Government was born.

During the Reformation, various concepts of regional autonomy began to keep up with the times. Regulations that have been created include Law Number 22 of 1999 on Regional Government, Law Number 25 of 1999 on Financial Balance between the Central and Regional Governments, Law No. 32 of 2004 on Regional Government, Law No. 33 of 2004 on Financial Balance between Central Government and Regional Government, Perpu No. 3 of 2005 on Amendments to Law No. 32 of 2004 on Regional Government, Law No. 12 of 2008 on the second amendment to Law No. 32 of 2004 on Regional Government, Law No. 23 of 2014 on Regional Government, and Law No. 9 of 2015 on the Second Amendment to Law No. 23 of 2014 on Regional Government.

The series of changes in regulations on regional autonomy aim to enable the relevant region to regulate and manage its own household affairs. This is intended to further improve the effectiveness of governance in the framework of service to the community and the implementation of development that is oriented towards improving the welfare of the community by paying attention to the interests and aspirations that grow in the community.

The province of Papua which is geographically located at the eastern end of the Indonesian territory is the widest province with abundant natural resources. However, various policies in centralistic governance and development have not fully fulfilled the sense of justice, people's welfare, law enforcement and human rights in the Papua Province. This condition made a disparity in almost all sectors of life, especially in education, health, economics, culture and social politics. For this issue, the government tried to overcome these problems by providing policies about Special Autonomy in Papua Province. In 2001 the government passed Law Number 21 of 2001 on Special Autonomy for the Province of Papua in order to implement equal welfare for the people there.

Other problems occur in Papua Province usually are related to human rights violations. On December 8, 2014 there were murders of four (4) students in Paniai, the persecution experienced by Blasius Simagay at the 2014 Bade, Yeremias Kaipman's foot shooting in Merauke in 2015, the persecution of Xaverius Tam-

baip and Ronald Ambungun in Merauke in 2016, the persecution of Oktovianus Beteop in Merauke 2017, the murder of Isak Kua and the sexual abuse of a sister from Isak Kua in November 2017 (Papua, 2017).

## 2 PROBLEM FORMULATION

Based on the background description, we can formulate a problem as follows: What is the implementation of Papua Province special autonomy arrangement in realizing the welfare of the Papuan people?.

## 3 REVIEW OF LITERATURE

State and law cannot be separated, as Hans Kelsen asserts that there is "Identification of State and Law" (Kelsen, 2007), then Kelsen said that "As a political organization, the state is a legal order, but not all legal orders are state." (Kelsen, 2007) Indonesia stated in its constitution that "the State of Indonesia is a rule of law." (Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia NRI amendments 3). In Indonesian literature there are several prominent figures who write the notion of rule of law, They are:

1. Mr. Muhammad Yamin defines the rule of law as a state that carries out a government that is not in accordance with the will of those who hold power, but according to written rules made by the people's representative bodies which are legally formed, in accordance with the principle "The laws and not menshall govern" (Yamin, 1952).
2. Soediman Kartohadiprodjo, rule of law as a country where the fate and independence of the people in it are guaranteed as well as possible by law (Kartohadiprodjo, 1953).
3. Wirjono Prodjodikoro, the one who provides an understanding of the rule of law as rulers and governments as state administrators in carrying out state duties bound to the applicable legal regulations (Prodjodikoro, 1973).
4. Joeniarto, the rule of law as a country where the actions of authorities must be limited by applicable law (Joeniarto, 1981).
5. Sri Sumantri said that there were four elements of the rule of law:
  - (a) The Government in carrying out its duties and obligations must be based on law or legislation.
  - (b) There is a guarantee of human rights (citizens).

- (c) There is a division of powers in the country.
- (d) There is supervision from the judicial body (rechter-lijke controle) (Soemantri, 1992).

### 3.1 Regional Autonomy and Autonomous Regions

The 1945 Constitution of the Republic of Indonesia stated that the Republic of Indonesia is a unitary state (Rechstaat), not a state of power (Machstaat). This means that the highest sovereignty or power in the state is not based on the power alone but is based on the law in the sense of the legal mind (Rechtsidee) which contains the noble ideals of the Indonesian people

The 1945 Constitution of the Republic of Indonesia affirms that regional government is organized based on the principle of deliberation or democracy. This means that administratively the implementation of government is carried out by making a decentralization policy which then creates autonomous regional government units. This is labeled as regional governments that regulate and manage their affairs based on the aspirations and interests of the local community (Sukriono, 2013).

Autonomy comes from Greek, *auto* which means self and *nomos* which means law or regulation, autonomy in the original sense is the legal self-sufficiency of social body and its actual independence. So, there are two essential characteristics of autonomy, legal self sufficiency and actual independence. In relation to politics or government, regional autonomy means self-government or the condition of living under one's own laws. So regional autonomy is an area that has a self-government legal self-sufficiency that is regulated and managed by own laws. Therefore, autonomy focuses more on aspirations than conditions. Autonomy contain several meanings as follows:

1. Autonomy is a condition or characteristic for "not" controlled by other parties or external forces.
2. Autonomy is a form of "self-government", it has the right to govern or self-determine
3. The government itself is respected, is recognized and guaranteed, there is no control by other parties towards regional functions (local or internal affair) or against a minority of a nation.
4. The autonomous government has sufficient income to determine its own destiny and fulfill the welfare of (Shiddiq, 2003). For the principle of autonomy and the implementation of decentralization in the relations between the central gov-

ernment and regional governments, M. Yamin (Mahfud, 2012) wrote that "a democratic constitution arrangement requires solving power of government in its own central part and also requires the division of power between main and regions government. The principle of democracy and the decentralization of government power is in opposition to the principle of wanting to gather everything at the center of government."

What is said by M. Yamin concludes that regional autonomy and decentralization are part of countries that embrace democracy. Long before Indonesia's independence, M. Hatta (Mahfud, 2012) also said that "According to the basic of public sovereignty, the right of the people to determine their fate is not only at the top of the government, but also at each place, city, village and region. With such circumstances, each section or class of people gets an autonomy (making and carrying out its own regulations) and *zelbestuur* (carrying out the regulations made by the higher Council). Such conditions are very important, because the needs of each place in one country are not the same, but different." Therefore, autonomy must be one of the joints of a democratic government structure. This means that in democracies, local governments are required to obtain autonomous rights. The existence of regional government also improves the freedom of the regional as a characteristic of a democratic state (Mahfud, 2012)).

The term autonomy means independence but not as independent state, so the top government gives freedom or independence to the autonomous region as an accountability. The accountability itself has two elements. First, is an assignment to be carried out. Second, giving trust to the government in the region in the form of authority to think and determine how to complete the task. Thus, it is to encourage or stimulate the region to try to develop their own abilities that can generate auto-activities and enhance their self-esteem at its best (Mahfud, 2012).

Autonomy is a given freedom for a government to take care their own region without neglecting the position of the regional government towards the central government to carry out the functions assigned to them. Therefore, efforts to build a balance must be considered in the context of the power relations between the central and the regions (Mahfud, 2012). This means that regions must be viewed in two positions, as regional organs to implement autonomy and as agents of the central government to conduct central affairs in the regions. Regional autonomy is also defined as the authority of autonomous regions to regulate and manage the interests of local communities according to their own initiative based on the aspira-

tions of the community in accordance with the legislation (Widjaja, 2002).

Regional autonomy is an effort to realize democratization where people's aspirations or interests from each region can be accommodated properly. Regional autonomy allows the local wisdom of each region to walk in harmony with the initiatives and of the people in the region. Framework of democratization and limitation of power is known as the principle of separation of power. The most popular theory about this problem is the idea of separation of state power developed by a French scholar named Montesquieu. According to him, state power must be separated into legislative, executive and judicial functions (Busrizalti, 2013).

Linked to the Montesquieu theory, regional autonomy is a mechanism to regulate the state power that is distributed vertically in a "top-down" relationship. As it is known that the separation of powers and the division of power are both a concept of separation of power. Academically, it can be distinguished into narrow and broad sense. In a broad sense, the concept of separation of powers also includes the notion of power division commonly referred as the "division of power". Separation of power is the concept of horizontal power relations, while the power sharing is vertical. Horizontally, state power can be divided into several branches of power that are linked to the functions of certain state institutions, such as legislative, executive and judicial branches. In the concept of power distribution (distribution of power or division of power) the power of the state is divided vertically in a "top-down" relationship" (Busrizalti, 2013). Regional autonomy in the context of democracy aims to create checks and balances in the political system.

### 3.2 Welfare State

Welfare State as an ideal model of development focused on improving welfare through giving a more important role to the state in providing universal and comprehensive social services to its citizens. So, the focus of the welfare state system is to create a system of social protection that is institutionalized for every citizen as an illustration of the citizens' rights and state obligations (Suharto, 2007).

Welfare state can be described as the influence of human desire of a security, peace, and prosperity. In the 1945 Constitution of the Republic of Indonesia, social welfare becomes a special title of CHAPTER XIV which includes Article 33 on the economic system and Article 34 concerning the state's concern for the weak groups (the poor and neglected children) and the social security system. This means that Indone-

sia is a country that adheres to the welfare state with a model of Participatory Welfare State which in the social work literature is known as Welfare Pluralism. This model emphasizes that the state must continue to take part in handling social problems and the implementation of social security.

### 3.3 Theory of Legislation

Good legislation must have a foundation in its formation, according to Bagir Manan (Manan, 1992) the foundation in the preparation of legislation are: First, the juridical foundation (juridische gelding); Second, the sociological foundation (sociologische gelding); and Third, philosophical foundation. Jazim Hamidi also said that, good legislation must meet the following requirements: Philosophical foundation (filosofische grondslag); sociological foundation (sociologische grondslag), juridical basis (rechtsgrond), political basis, ecological, medical, economic, etc (Hamidi and Sinaga, 2005).

Philosophical foundation here is that the law always contains ideal norms by a society for an ideals state of life. Sociological foundation means every legal norm as outlined in the law must reflect the demands of the community's needs for legal norms that are in accordance with the reality of public legal awareness. Political foundation means that the constitutional referral system must also be described according to the ideals and basic norms contained in the 1945 Constitution of the Republic of Indonesia as a source of basic policies or legal politics to establish the relevant law. Juridical foundation, in the formulation of each law, must be placed on the "Considering" consideration section.

## 4 DISCUSSION

The 1945 Constitution of the Republic of Indonesia affirms that regional government is held based on the principle of deliberation or democracy. This means that administratively the implementation of government is carried out by making a decentralization policy. Therefore, an autonomous regional government unit was born, it is the regional government that regulates and manages its affairs based on the aspirations and interests of the local community (Sukriono, 2013).

The formulation of regional government was in accordance with the mandate of Article 18 of the 1945 Constitution of the Republic of Indonesia, it has produced many other laws and regulations in regional governance, including Law No. 1 of 1945, Law No.

22 of 1948, Law No. 1 of 1957, Presidential Decree Number 6 Year 1959, Law Number 18 of 1965, Law Number 5 of 1974, Law Number 22 of 1999 and Law Number 32 of 2004 (Sunarno, 2012).

In organizing regional autonomy, the regional government has rights as stipulated in Article 21 of Law Number 32 of 2004 on Regional Government, those are:

- a Arrange and manage their own government affairs;
- b Choosing regional leaders;
- c Choosing regional apparatus;
- d Managing regional wealth;
- e Collecting local taxes and regional retribution;
- f Get profit sharing from the management of natural resources and other resources in the area;
- g Get other legitimate sources of income;
- h Obtain other rights stipulated in the legislation.

The regional obligations in the implementation of regional autonomy are regulated in Article 22 of Law Number 32 of 2004 on Regional Government:

- a Protect the community, maintain the unity, harmony and integrity of the Republic of Indonesia;
- b Improve the quality of people's lives;
- c Develop a democratic life;
- d Realize justice and equity;
- e Improve basic education services;
- f Provide health care facilities;
- g Provide appropriate social facilities and public facilities;
- h Develop a social security system;
- i Develop regional planning;
- j Develop productive resources in the area;
- k Preserve the environment;
- l Manage population administration;
- m Preserve socio-cultural values;
- n Establish and establish laws and regulations in accordance with their authority;
- o Other obligations stipulated in the legislation.

The rights and obligations of the region are realized in the form of regional government work plans. They are translated into regional revenues, expenditures and finances that are managed efficiently, effectively, transparently, accountably in the regional financial management system.

Law Number 21 of 2001 Special Autonomy for Papua Province is a rule or policy given by the Central Government as an effort to improve its development in various aspects such as economic, education, health and infrastructure. Philosophically, the Special Autonomy Law is made as a step to equalize Papua with other regions in Indonesia. It is a protection measure for the basic rights of indigenous Papuans whose basic rights are neglected and marginalized since they have joined Republic of Indonesia.

The result of this stipulation of Special Autonomy is a different treatment given by the Government to the Papua Province. This means that there are fundamental things that only apply in the Province of Papua and do not apply in other provinces in Indonesia, along with that there are also things that apply in other areas that are not enforced in Papua Province.

However, the implementation of Special Autonomy also faced some obstacles and disruptions such as, the slow issuance of Government Regulations of the Special Autonomy Law (PP No. 54 of 2004 on the Establishment of the Papuan People's Assembly; the form of *Perdasi* and *Perdasi*: weak consistency over protection and enforcement of Human Rights (HAM); conflicts in the division of West Irian Jaya province, Issuance of Presidential Instruction No. 1 of 2003. In addition, there are limitations and weakness of human resources (HR) of Papua in responding to the bigger authority and responsibility as contained in the Special Autonomy Law.

## 5 CLOSING

The making of regional autonomy policy in the form of Special Autonomy is an effort to develop regional autonomy in the framework of the constitution guaranteed by Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, mainly in government units that are special. Thus, if a synergy is created between normative ideals as contained in the substance of the Special Autonomy Law with the real attitude and consistency of both the central government and the Papuan government and all components of the Papuan community, then undoubtedly Special Autonomy can be a solution and the best alternative policy in realizing all Papuan's desires in Republic of Indonesia.

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