

LEGAL POLITICAL POLICY IN RESOLVING THE PAPUA CONFLICT

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Abstract. The Central Government's policy for Papua has been periodically carried out since the integration of Papua until the enactment of Law No. 21 of 2001 concerning Special Autonomy for the Papua Province. However, since the 20th anniversary of the implementation of Law Number 2 of 2021, the second amendment to Law Number 21 of 2001 concerning Special Autonomy for the Papua Province, has so far not had a significant impact on development in Papua. The purpose of the research in this paper is to find out and analyze how legal political policies are to resolve conflicts. The research method that will be used in this study is a qualitative method, namely describing the facts with primary secondary and tertiary legal materials. This is caused by the various roots of the Papuan conflict that have not been resolved until now. Various policies under the Papua Special Autonomy Law and regulations in the form of Presidential Instructions, Presidential Regulations, Perdasi, Perdasus and sectoral regulations were issued using the Welfare Approach and the Security Approach model. However, it still does not have an impact, especially for the Indigenous Papuans (OAP) and does not reduce violent conflicts in the Land of Papua. The purpose of this study is to find out and analyze how legal political policies are in resolving the Papuan conflict. The research method that will be used in this study is a qualitative method with a normative type of research. The theory used in this study is the Theory of the Rule of Law, Theory of L.M. Friedman and the Theory of Justice. The result of the research is that the various policies of the Central Government for Papua in resolving the Papuan conflict have not been able to resolve the conflict in Papua. So one of the legal political policies that must be carried out is Peaceful Dialogue through negotiations. The product of the negotiations between the parties is a Memorandum of Understanding (MoU) as an agreement to end the conflict completely in the Land of Papua.

Keywords: Political Law, Policy, Conflict, Peaceful Dialogue

INTRODUCTION

The Central Government's policy for Papua was periodically carried out in 1998 when Suharto's leadership ended in Indonesia, which marked the start of a new approach to dealing with problems in Papua (Mietzner, 2006). The security approach, which during the New Order era became the main way of resolving conflicts by the government (Serrano & Kazda, 2020), was changed to an approach that prioritized the welfare of the Papuan people (Rakia et al., 2021). This change in approach was marked by the abolition of the status of the Military Operations Area (DOM) in Papua and the continuous implementation of the Special Autonomy (Otsus Papua) policy and the acceleration of development in Papua (Koibur, 2021). Prioritizing the humanist method that prioritizes improving welfare brings great hope for an immediate end to the Papuan conflict and improving the lives of Papuans (Budiatri et al., 2018).

Special autonomy has been a consistent policy choice used by the government in the reform era since the implementation of a new approach to Papua (Smith, 2020). The choice of special autonomy for Papua began to be a discourse since President Habibie started the reform era in 1999 (Zamjani, 2022), but it was only two years later that it was determined to be a legal political policy (Crawley & Hagen-Zanker, 2019), namely with the issuance of the Papua Special Autonomy Law during the reign of President Megawati Soekarno Putri (Abdurahman & Dewansyah, 2019).

Special autonomy has become a legal political policy which is the main regulation in solving problems in Papua (Elisabeth, 2021).

Now, with the same model, the Central Government is carrying out various policies to resolve the Papuan conflict under the legal umbrella of Law No. 2 of 2021 (Ungirwalu et al., 2021), the second amendment to Law No. 21 of 2001 concerning the Special Autonomy of the Papua Province (Rahadatul'Aisy et al., 2021). The central government's policies through the regulations issued in their implementation do not have a significant impact in reducing conflict in Papua (Halkis, 2020) and do not even have a significant impact on the Orang Asli Papua (OAP). The mandate of the Special Autonomy Law has not been able to answer the root problems in Papua and West Papua. Government policies in the administration of centralized governance and development fail to realize a sense of justice, people's welfare, law enforcement and respect for human rights in Papua in a specific context. The policy of the Papua Special Autonomy Law is intended to support the acceleration of development in various fields in Papua, such as; the field of education, health, economy, culture and social, politics and law by giving wider authority to the province and the people of Papua in regulating and managing themselves within the framework of the Unitary State of the Republic of Indonesia (NKRI). Although there have been many changes since the implementation of special autonomy in Papua until now, they have not resolved the root causes of the

conflict in Papua. The impact is not fully felt by the Papuan people, especially the Papuan Indigenous People (OAP) in improving the welfare and justice for the indigenous Papuans.

In addition, the approach in implementing public policy in resolving conflict problems in Papua tends to be top-down, meaning a one-sided approach from top to bottom. In the implementation process the role of the government is very large, in this approach the assumption that occurs is that decision makers are key actors in the success of implementation, while other parties involved in the implementation process are considered to be obstacles, so that decision makers underestimate strategic initiatives that come from the bureaucratic level, low and other policy subsystems. So a bottom-up public policy approach is needed, where this approach comes from the bottom (the community). The bottom-up approach is based on the type of public policy that encourages people to work on the implementation of their policies themselves or still involves government officials but only at a low level. The underlying assumption of this approach is that implementation takes place in a decentralized decision-making environment. This model provides a mechanism for moving from the lowest levels of the bureaucracy to the highest levels of decision making in the public and private sectors. So that the aspirations of the community are well accommodated by the authorized officials in making decisions related to solving problems in Papua.

Based on the results of research from the Indonesian Institute of Sciences (LIPI) in

2008, there are four root problems in Papua that must be resolved, namely; First; The problem of marginalization and the effects of discrimination against indigenous Papuans due to economic development, political conflict and mass migration to Papua since 1970, Second; failure of development, especially in the fields of education, health and people's economic empowerment. Third; the existence of historical contradictions and the construction of political identity between Papua and Jakarta. Fourth; accountability for past state violence against Indonesian citizens in Papua (Widjojo et al., 2010). Conflict issues that occur in Papua cannot be separated from the four root problems described above so that they must be resolved thoroughly and completely, not partially. One way to root out Papua's problems is through dialogue. Dialogue is one way to solve problems in Papua.

Another problem is that there is no integrated planning that is in accordance with the geographical conditions and the distribution of the Papuan population, the cultural values of the Papuan people and budget transparency. Every individual who sits and works in local government does not yet fully have the ability to run the bureaucracy. The local government has not managed to properly manage the special autonomy funds which should really benefit the Papuan people, especially the indigenous Papuans. The management of these funds must be based on the principles of order, effectiveness, efficiency, economy, transparency, accountability, fairness, propriety and pro-society. However, on the contrary, the use of the special autonomy funds is not well targeted

and what may happen is the corrupt practice of the special autonomy funds by local elites in Papua.

Political law policy is one of the relevant policies to resolve the conflict in Papua. One of the concepts in the legal politics policy to resolve the Papuan conflict is a peaceful dialogue between the Central Government and the Papuan people. Politics Legal politics in its implementation is fundamental to determine the direction, form and content of the law to be formed and what will be used as criteria in resolving conflicts in Papua. With a collaborative planning, which is a decision-making process in which various stakeholders, who see problems from various angles, sit together to explore differences constructively, then look for appropriate solutions to resolve problems in Papua. With the description above, the authors are interested in researching with the title; "political law policy to resolve the Papuan conflict".

The purpose of the research in this paper is to find out and analyze how legal political policies are to resolve conflicts (Ali, 2019).

METHODS

The research method that will be used in this study is a qualitative method, namely describing the facts with primary secondary and tertiary legal materials. In addition, according to Zainnudin Ali in his book entitled *Legal Research Methods*, he said that research methods in legal science are all activities based on scientific disciplines to collect, classify, analyze, and

interpret legal facts and relationships in the legal field and in other relevant fields. for the life of law, and based on the knowledge gained, scientific principles and scientific methods can be developed to respond to these facts and relationships.

RESULTS AND DISCUSSION

Indonesia as a state of law, places the law as the *ultimum remedium* in upholding the rule of law in Indonesia. This is as mandated in the 1945 Constitution (UUD) Article 1 (3) which reads; "The state of Indonesia is a state of law". In the concept of the rule of law, it is idealized that what should be the commander in the dynamics of state life is law, not politics or economics. State of law or *rechtsstaat* According to Aristotle, a good state is a state that is ordered by the constitution and has legal sovereignty, therefore the important thing is to educate people to be good citizens, because from a just attitude the happiness of the lives of its citizens will be guaranteed. According to Scheltema, the elements of *rechstaat* are a) legal certainty; b) equality; c) democracy; d) government that serves the public interest. (Aziz & Zuhro, 2018). However, the constitutional mandate in enforcing the law in its implementation has not been as expected. In the context of Papua, law enforcement is the embodiment of the rule of law in Indonesia. So one of the elements of the birth of the Special Autonomy Law for Papua is to uphold the rule of law in the Land of Papua. The granting of the Papua Special Autonomy Law is one of the legal political policies given by the Central Government to resolve

problems in Papua. However, the implementation of the Special Autonomy Law did not have a significant impact in resolving the conflict in Papua. In law enforcement, conflict resolution in Papua has been accommodated in the Papua Special Autonomy Law Article 45 Paragraph (1) and Paragraph (2), which reads:

(1) The Government, Provincial Government and Residents of the Papua Province are obligated to uphold, promote, protect and respect Human Rights in the Papua Province. (2) In order to carry out the matters as referred to in paragraph (1), the Government establishes representatives of the National Human Rights Commission, the Human Rights Court and the Truth and Reconciliation Commission in the Papua Province in accordance with the laws and regulations.

However, the implementation of the mandate of the Special Autonomy Law article 45 paragraph (1) and paragraph (2) has not run until now, especially regarding the establishment of a Human Rights Court in Papua and the Truth and Reconciliation Commission (KKR), which should have been stipulated according to the Presidential Decree, which was canceled by the Presidential Decree. Decision of the Constitutional Court (MK) Number 006/PUU-IV/2006 regarding the review of Law Number 27 of 2004 concerning the Truth and Reconciliation Commission, which states that Law Number 27 of 2004 is contrary to the 1945 Constitution of the Republic of Indonesia so that the Act has no legal force. tie.

However, in this case, development policies have not been optimal in

accelerating the level of welfare, especially Papuan Indigenous People (OAP) in Papua and have not been able to resolve conflicts in Papua. There are several main problems related to policy implementation that are at the root of Papua's development problems. First; whether or not the grand design of Papua's long-term development and increasing the commitment of all Papuan development actors. So far the policy umbrella for Papua is the Papua Special Autonomy Law with its derivatives to accelerate development in the form of government work guidelines in the form of a Presidential Decree or Presidential Instruction. However, the government does not have a master plan that describes in operational detail how the planning, implementation, monitoring, and development targets of Papua will run in the long term. In addition, the government does not have a design that contains the role of development and how collaboration is carried out by each development actor, especially the central and local governments.

The policy to accelerate development in Papua often mandates the preparation of an action plan for Papua's development that refers to the RPJMN and the Provincial Mid-Term Development Plan (RPJMP), but the RPJMN and RPJMP are not grand designs because both have a short time period, only five years according to the time period at one time. reign period only. In fact, cooperation and implementation of development in Papua cannot only be done in a short period of time and needs to be continuous between periods of government. Not only that, the RPJMN or even the National Long-Term Development

Plan (RPJMN) which is a development guide for a period of 20 years also cannot be positioned as a grand design for Papua's development because it contains development programs in Indonesia that are very general and do not discuss operational details in detail. Specifically Papuan development. Meanwhile, the RPJPP and RPJMP also cannot be positioned as grand designs because their substance focuses on the work of regional governments, namely provincial and district/city governments. Whereas the grand design must discuss the collaboration and coordination of all development actors (planners and implementers) in Papua.

The absence of a master development plan in Papua means that policies for accelerating development are drawn up based on the priorities of each head of government through Presidential Regulations (Perpres) or Presidential Instructions (Inpres). Therefore, Presidential Instruction 5/2007, Presidential Regulation 65/2011, Presidential Instruction 9/2017 and Presidential Instruction 9/2020 are translated as a general basis for making programs from technical ministries to the central government as well as regional offices. The current situation shows that there is a void in the grand design of development as a reference policy that regulates strategic development steps in Papua in the long term and binds the commitment of development actors. Whereas Papua is the region with the most backward level of development compared to other provinces in Indonesia, and has conflict characteristics that deserve special

attention in relation to specific, detailed, and well structured development targets and plans. This is important as a basis for coordination and cooperation of institutions, be it government or non-government, in working to develop Papua.

Second; weak coordination between Papuan development actors, especially internal government. Efforts to accelerate have brought consequences for the large budget and the variety of programs implemented in Papua. Central and local governments have different budget and program management responsibilities. It is appropriate, as members of the executive branch, the central and regional governments to synergize and coordinate with each other to carry out development in Papua. However, this did not work as it should. The problem of weak coordination does not only occur in central-regional relations, but also occurs between institutions at the same government level (between K/L or between agencies) because of the sectoral ego of each institution. Coordination problems also take place between agencies within the local government environment in Papua. Weak coordinative work between government agencies like this is certainly very influential on the results of development that are not optimal, it becomes a matter of regret, if the problems that have been recognized for a long time until now have not yet met the end point.

Third; policy inconsistencies due to vacancies and overlapping laws. The Special Autonomy Law for Papua becomes a special legal political policy that gives great authority to the Regional

Government to manage development in Papua and West Papua. The Special Autonomy Law also provides a special allocation of funds which are the main source for accelerating development in Papua. However, the specifics of the Special Autonomy Law seem to be gradually failing because its implementation then refers to national (general) national regulations (Enembe, 2016). This occurs due to the vacancy of Government Regulations (PP), Special Regional Regulations (Perdasus) and Provincial Regulations (Perdasi) which should be derivative rules and regulate technical matters from what Otsus Papua wants.

Referring to the articles that focus on socio-economic development issues in the Papua Special Autonomy Law, there are seven perdasi/perdasus in Papua Province and 16 perdusus/perdasi in West Papua Province which should have existed to support development in Papua but have not been realized. . Meanwhile, at least four of the Papua Special Autonomy Laws that should be regulated in a PP-level technical regulation have also not been implemented to this day, including on central government facilitation through the provision of guidelines, training and supervision, repressive supervision of perdusus, perdasi, and governor decisions, supervision functional for the implementation of local government and evaluation of the implementation of the Special Autonomy Law in Papua. The void of technical regulations that should describe the special mandate of Otsus Papua is, of course, a big problem. Without this technical rule, what is regulated in the Special Autonomy Law may not be

implemented and/or lose its special dignity. This situation will ultimately hinder development in Papua.

Fourth; The Papua Development Policy still applies a top-down approach, or should be interpreted as a policy made solely by government decisions (especially at the central level) without consideration and does not involve the public and/or levels of government below it. The top-down policy for Papua is closely related to the policies implemented during the New Order era, for example, through the implementation of the five-year development plan (Repelita), Military Operation Areas (DOM), to the Transmigration policy. After the end of the New Order, the top-down policy orientation began to change by applying a bottom-up approach that gave local governments and the public greater space to be involved in making government policies and programs for Papua. For example; Since 2017, the Papuan Special Autonomy Development Plan (Musreimbang) based on customary areas in Papua and West Papua has been held to involve the wider public in the utilization of Papua's Special Autonomy programs and funds. Despite efforts to change, the top-down policy did not stop and continues to this day in Papua.

One of the basic characteristics of top-down policies is the weak involvement of the public and/or government at levels below the policy makers. The low level of public participation, especially the Papuan people in seven (7) customary areas. The top-down policy will result in two (2) things, namely; The policy is not in accordance with the needs and values of the

community, and creates a sense of alienation so that it does not succeed in creating a strong sense of ownership of the policy. This then results in weak support for the policy, and even resistance to the policy.

Fifth; Misuse and poor budget management. The budget is one of the most important elements of a development program because without an adequate budget, it is impossible for the program to be implemented properly. From the aspect of the quantity of the total budget, it is undeniable that the government's budget allocation for the development of Papua is very large. However, the thing that is still a problem is budget management that has not been optimally carried out and has many gaps in the problem. These budgeting issues can be seen from the financial accountability reports which still show many problems in budget management, budget allocations that are not in accordance with the mandate of the policy and misuse of Papua's development budget.

Good and bad financial management by local governments is influenced by many factors, including the quality of human resource capacity (HR) within the regional bureaucracy, supervision of financial management, receipt of central transfers by regions and others. For example; Papua Province is considered less than optimal in managing Prospect funds due to the problem of limited human resource capacity for financial management at the district and village levels. The problem of HR which then intersects with the supervisory function of financial

management also occurs due to the limited number of internal control officers (Inspectorates) of only 19 people to supervise 51 Regional Apparatus Work Units (SKPD). In addition, there are also other problems that often affect the ability of local governments to manage APBD funds, particularly Papua Special Autonomy funds, namely; delay in the Special Autonomy funds from the Central Government.

One of the legal political policy solutions that must be carried out to end the conflict in Papua is through Peaceful Dialogue. The dialogue between the central government and the Papuan people is not expected to be an opportunity for both parties to accuse and argue with each other. Because these things do not help the process of resolving the Papua conflict. Dialogue participants meet not to add new problems or to embarrass each other but on the contrary to seek together ways to solve various problems that have not been resolved. Dialogue should also not be dominated by one party. To prevent things that are not desirable and place the dialogue in its proper position, the Central Government and the Papuan People must reach agreement on a number of principles that underlie the dialogue. Before the dialogue process is carried out, the parties from both the Central Government and the Papuan Community must reach an agreement that:

1. The Papuan conflict must be resolved peacefully and therefore, not through violence.

2. The Papuan conflict must be resolved in its entirety and therefore not partially.

3. The Papuan conflict must be resolved with dignity, namely with mutual respect and respect and therefore no party should feel that they have lost face.

4. And there must be a follow-up and concrete action on the agreement that has been reached.

In addition, both parties need to agree that the entire dialogue process will be based on the spirit of universal principles such as. Love (Compassion), Freedom (Freedom), Justice (Justice) and truth (truth). Mutual agreement on these principles will be the basic and main capital in efforts to resolve the Papua conflict through a dignified way, namely peaceful dialogue.

One of the determining factors in the peace dialogue is community participation. The community, the main factor in their involvement, was also given the opportunity to express their aspirations through an official forum, namely dialogue. Community participation that needs to be involved in dialogue consists of two components, namely 1) the participation of indigenous Papuans, 2) the participation of Papuans. Peaceful Dialogue is one solution in solving problems in the Land of Papua. Dialogue between the parties, both the central government and the Papuan people, must be carried out in order to end the conflict in the Land of Papua. The dialogue model currently offered by the Central Government is the Sectoral

Dialogue to be able to resolve the conflict in Papua. Sectoral dialogue involves the two conflicting parties in a forum attended by parties representing both parties who are competent to resolve problems. This Papuan conflict is a conflict of interest and a conflict that has a long history since the integration of Papua into Indonesia until now. If sectoral dialogue is one of the government's goals to resolve the conflict in Papua. So according to the author, sectoral dialogue will not have a significant impact and constructive solution, because sectoral dialogue is only a dialogue of certain sub-sectors, such as the political and legal sectors. Whereas the Papuan conflict has become an international issue and has a long history to date.

On the other hand, the Papuan people want dialogue to be carried out like the Helsinki Agreement through a memorandum of understanding between the Government of Indonesia and the Free Aceh Movement (GAM) which was signed in Helsinki on August 15, 2005. This is due to mutual suspicion and lack of mutual trust. From the central government's perspective, there is a suspicion that if dialogue is carried out, the Papuan people will take advantage of the dialogue opportunity to demand and at the same time discuss Papuan independence. Therefore, before the dialogue, so as not to be suspicious of each other, a written and verbal commitment was made. Thus, according to the author, one of the solutions to resolve the Papua conflict is through agreement negotiations or Peaceful Dialogue.

The commitment of the central government and the Papuan people to end

the conflict in Papua has been expressed through the media and in meetings. Already have the intention and willingness of the parties to resolve the Papua conflict. However, the intention and willingness to resolve the conflict through dialogue has not yet been implemented. The attitude of mutual suspicion and distrust between the parties has led to the absence of dialogue. So, one of the steps that must be taken is to build trust and not be suspicious of each other by making a joint commitment before going to the negotiating table.

The parties must commit first. The commitments that will be taken by the parties include things that should not be discussed in the peace dialogue. The commitment must be agreed and signed by the parties both in writing and verbally before advancing to the negotiating table. The author believes that the central government is committed to ending the Papuan conflict. This author's belief is based on the fact that the central government already has experience in dialogue with separatist parties and/or facilitating dialogue or negotiations for separatist groups and governments in other countries. Learning from these experiences, the government knows not only how important it is to resolve conflicts peacefully but also how to resolve conflicts through dialogue.

His experience in dialogue, both as a participant and as a facilitator has taught the central government about the basic things that need to be possessed and shown by both parties before the dialogue process begins, when the dialogue is carried out and after the dialogue ends. The

central government certainly wants a dialogue that is carried out on trust and various agreements reached in the dialogue for the two parties to the conflict. So to have a dialogue with the Papuan people according to the late Dr. Neles Tebay, The central government wants an attitude that is stated clearly and openly from the Papuan people, especially from the ULMWP. The Central Government looks forward to a commitment in a decision from the ULMWP stating that it will not discuss West Papuan independence in the dialogue. This decision needs to be declared by the leaders of the United Liberation Movement for west Papua (ULMWP) or the Union of the West Papua liberation movement, both orally and in writing and announced through national and international media, so that the central government and international institutions know about it.

CONCLUSIONS

The results of the research above can be concluded that the legal political policy to resolve the Papuan conflict is through Peaceful Dialogue. Because the central government's policy to resolve the conflict in Papua has not had a significant impact. So a new reconstruction is needed in the policy to resolve the Papuan conflict, namely through the Peaceful Dialogue. The product of legal politics in peace dialogue is a Memorandum of Understanding (MoU) through negotiators carried out by the parties. The dialogue is carried out by involving the participation of the community, namely indigenous Papuans

and Papuans in the Land of Papua and the ULMWP. This Papuan conflict is a conflict of interest and a conflict that has a long

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