



## **A Legal-Historical Study of Legal Institutions and Special Autonomy Policy in Papua**

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**Abstract:** This study examines how the historical trajectory of Otsus and the evolution of its legal-institutional framework—particularly the roles of the Governor, the Regional People's Representative Council of Papua and Regency/City Councils (DPRP/DPRK), and the Papuan People's Assembly (Majelis Rakyat Papua/MRP)—have shaped the direction of legal politics concerning meaningful participation, affirmative representation for OAP, special fiscal arrangements, and the agenda of historical clarification and human rights protection. This research employs normative (doctrinal) legal methods with a legal-historical specification. It utilizes statutory, historical, and conceptual approaches, complemented where relevant by a limited case approach. Primary legal materials include Law No. 21 of 2001 and its subsequent amendments, particularly Law No. 2 of 2021, as well as key implementing regulations. Secondary materials consist of recent scholarly literature on Papua's special autonomy framework. The analysis is conducted through regulatory inventory, historical periodization, before-and-after mapping of key legal norms, institutional analysis, and vertical and horizontal legal synchronization. The findings indicate that: (i) Otsus incorporates explicit mandates concerning OAP recognition, human rights protection, public participation, and the institutional role of the MRP; however, implementation and evaluation have often prioritized fiscal transfers and development programs without adequately addressing deficits of political legitimacy and unresolved human rights concerns; (ii) initiatives aimed at strengthening governance through village-oriented development and the provision of basic public services have not fully resolved accountability challenges; and (iii) several revisions introduced under the second phase of Special Autonomy (Otsus II) are perceived to diminish the significance of local-cultural representation in strategic decision-making processes and to weaken mechanisms for meaningful participation. This article contributes a legal-historical analytical framework that bridges critiques of existing law (*ius constitutum*) with reform-oriented perspectives (*ius constituendum*),



thereby supporting more substantive participation, a strengthened role for the MRP, and a more credible accountability framework within Papua's special autonomy governance.

**Keywords:** Indigenous Papuans; Legal History; Legal Institutions; Papua Special Autonomy; Public Participation.

## Introduction

Papua is an island located in eastern Indonesia and shares a direct border with Papua New Guinea. Following the enactment of regional expansion policies, Papua is currently divided into six provinces, namely Papua, West Papua, South Papua, Central Papua, Highland Papua, and Southwest Papua.<sup>1</sup> Previously, the region consisted only of Papua and West Papua Provinces. The island is inhabited by more than 250 ethnic groups, each possessing distinct cultural traditions and social characteristics shaped by geographical and ecological conditions.<sup>2</sup> These communities are organized into customary territories that serve as important socio-cultural units.<sup>3</sup> Seven major customary regions are recognized in Papua, namely Mamta, Saireri, Domberai, Bomberai, Anim Ha, La Pago, and Mee Pago. Each customary territory possesses unique cultural values, customary laws, and patterns of natural resource utilization that require development policies to be adapted to local socio-cultural realities.<sup>4</sup>

Papua is also endowed with abundant natural resources, including gold, nickel, oil, natural gas, forests, and diverse biological resources. The economic potential of these resources has attracted large-scale migration from other parts of Indonesia. Since the New Order era, transmigration programs have brought hundreds of thousands of migrants to Papua, significantly transforming the demographic composition of the region. Consequently, many areas that were previously dominated by Indigenous Papuan communities have become increasingly heterogeneous. While migration has contributed to economic development, it has also generated various social and political tensions, particularly concerning access to natural resources, economic opportunities, and the perceived marginalization of Indigenous Papuans within their ancestral lands.

In response to these challenges, the Indonesian government enacted Law Number 21 of 2001 concerning Special Autonomy for Papua Province. The law was designed

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<sup>1</sup> Ismail Ali and Ismail Suardi Wekke, *Dinamika Dan Keberagaman Adat, Tradisi, Kepercayaan Dan Agama Suku Pelaut di Papua Barat Indonesia* (Penerbit Adab, 2021).

<sup>2</sup> Baitur Rohman et al., "Hybrid Legalities in Muslim Minority Societies: Examining Fapale in West Papua through Maqāṣid al-Sharīa," *Justicia Islamica* 23, no. 2 (May 2026): 381–416, <https://doi.org/10.21154/justicia.v23i2.12108>.

<sup>3</sup> Suharyo Suharyo Suharyo, "Perlindungan Hukum Pertanahan Adat di Papua Dalam Negara Kesejahteraan," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 3 (2019): 461.

<sup>4</sup> Enos H. Rumansara, "Memahami Kebudayaan Lokal Papua: Suatu Pendekatan Pembangunan Yang Manusiawi Di Tanah Papua," *Jurnal Ekologi Birokrasi* 1, no. 1 (2015): 47–58.

as a political and legal instrument to address long-standing grievances while promoting welfare, justice, and inclusive development.<sup>5</sup> It recognizes that the Papuan people possess the same constitutional rights to development, education, healthcare, infrastructure, and economic prosperity as other Indonesian citizens. More importantly, the law seeks to affirm the collective rights and identity of Indigenous Papuans (Orang Asli Papua/OAP). Article 1 paragraph (22) of the Special Autonomy Law defines Indigenous Papuans as individuals belonging to Melanesian ethnic groups originating from Papua or persons accepted as Indigenous Papuans by Papuan customary communities.<sup>6</sup> This provision reflects the state's recognition of the distinct cultural and social identity of Indigenous Papuans within Indonesia's constitutional framework.

Despite these legal guarantees, Papua continues to experience complex and multidimensional socio-political challenges. These include the marginalization of Indigenous Papuans, unequal development outcomes, allegations of human rights violations, security-related tensions, and persistent debates concerning the historical process of Papua's integration into the Republic of Indonesia.<sup>7</sup> Numerous studies have argued that demographic transformation, uneven distribution of development benefits, and limited political participation have contributed to continuing social and political conflicts in the region. Consequently, Special Autonomy emerged not only as a development policy but also as a mechanism intended to address historical grievances, strengthen local participation, and foster reconciliation between the state and Papuan society.

The implementation of Papua's Special Autonomy has attracted considerable scholarly attention over the past two decades. For instance, Magayang, Hamdi, Rowa, and Ahmad (2023) examined the implementation of the Special Autonomy policy in improving the welfare of Indigenous Papuans and found that, despite substantial fiscal transfers and development programs, significant challenges remain in translating policy objectives into tangible improvements in public welfare.<sup>8</sup> Likewise, Siahay, Salle, Sobirov, and Wong Abdullah (2025) explored governance challenges within Papua's special fiscal regime, highlighting persistent issues of accountability, transparency, and institutional effectiveness in managing Special Autonomy funds.<sup>9</sup> These studies have

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<sup>5</sup> Greenpeace Indonesia, *Otonomi Khusus Dan Kutukan Sumber Daya Alam Papua*, 2022.

<sup>6</sup> Republik Indonesia, "Undang-Undang Nomor 2 Tahun 2021 Tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 Tentang Otonomi Khusus Bagi Provinsi Papua," *Undang-Undang (UU) Nomor 2 Tahun 2021*, no. 1 (2021): 1–40.

<sup>7</sup> Muh Ikram Nur Ilahi et al., "Penyelesaian Konflik Papua Dalam Perspektif Kepemimpinan Strategis," *Jurnal Kolaborasi Resolusi Konflik* 6, no. 2 (2024): 214–223.

<sup>8</sup> Adolf Z. D. Siahay et al., "Autonomy Without Accountability? The Governance Challenges of Papua's Special Fiscal Regime," *International Journal of Economics Development Research (IJEDR)* 6, no. 3 (June 2025): 1635–1647, <https://doi.org/10.37385/ijedr.v6i5.8895>.

<sup>9</sup> Siahay et al.

contributed important insights into the developmental, governance, and fiscal dimensions of Papua's Special Autonomy framework.

Despite these contributions, the existing literature has predominantly focused on welfare outcomes, fiscal governance, conflict management, and political stability. Consequently, relatively limited attention has been given to the historical development of the legal institutions created under the Special Autonomy framework and their influence on the evolving legal politics of Papua. In particular, there remains a lack of comprehensive analysis regarding how institutional changes involving the Governor, the Regional People's Representative Council of Papua and Regency/City Councils (DPRP/DPRK), and the Papuan People's Assembly (MRP) have shaped the realization of Indigenous Papuan rights, affirmative representation, meaningful public participation, accountability mechanisms, and human rights protection. This issue has become increasingly relevant following the enactment of Law Number 2 of 2021, which amended several key provisions of the Special Autonomy Law and sparked debate over the relationship between regional autonomy and central government authority.

For many Indigenous Papuans, Special Autonomy has long been viewed as a strategic instrument for achieving greater welfare, justice, and political recognition. However, more than twenty years after its introduction, questions persist regarding the effectiveness of the legal institutions established under the policy and the extent to which subsequent reforms have advanced or constrained its original objectives. Against this backdrop, the present study adopts a legal-historical approach to examine the evolution of Papua's legal institutions and the development of the Special Autonomy policy. By tracing institutional changes over time, this research seeks to provide a deeper understanding of how legal and political transformations have shaped the implementation of Special Autonomy and its implications for Indigenous representation, participation, accountability, and human rights protection in Papua. Based on the foregoing discussion, this study addresses the following research question: How have the historical development of Papua's legal institutions and the evolution of the Special Autonomy framework shaped the legal politics of Indigenous Papuan representation, public participation, accountability, and human rights protection in Papua?

## Method

This study employs a normative legal research method situated within the framework of legal history to examine the development of legal institutions and policies governing Papua's Special Autonomy. As a doctrinal legal study, the research focuses on legal materials rather than empirical field data, aiming to identify, interpret, and analyze legal norms, principles, and doctrines relevant to the evolution of the Special Autonomy regime. The study adopts a descriptive-qualitative design to reconstruct the historical trajectory of Papua's Special Autonomy and to explain the

transformation of its institutional arrangements over time. Data were collected through a comprehensive library research process involving primary legal materials, including laws and regulations related to Papua's Special Autonomy, as well as secondary legal materials such as books, journal articles, policy reports, and scholarly works discussing decentralization, regional autonomy, and Papuan governance. To strengthen the analysis, the research integrates statutory, historical, and conceptual approaches, enabling a systematic examination of regulatory developments, historical contexts, and theoretical foundations underlying the Special Autonomy framework.

The data analysis was conducted through several interconnected stages, including the inventory and classification of relevant legal documents, chronological mapping of regulatory changes, content analysis of key provisions governing institutional structures and governmental authority, and assessment of the vertical and horizontal synchronization among legal norms. The analytical process employed a deductive reasoning model to identify patterns of legal development and to formulate conclusions regarding the direction and characteristics of Papua's Special Autonomy institutions. To ensure the validity and reliability of the findings, the study applied source triangulation by comparing information derived from various legal documents, academic publications, and policy analyses. In addition, legal interpretation and cross-referencing among multiple sources were utilized to verify the consistency of legal arguments and historical narratives, thereby enhancing the credibility, accuracy, and analytical rigor of the research findings.

## Results and Discussion

### A. Historical Significance

Legal history is one aspect of legal science that studies legal institutions in the past and their influence on human life and development then and now.<sup>10</sup> The history of law can be understood by examining how legal institutions developed over human history.<sup>11</sup> So that, by knowing the legal history, past policies, and legal institutions, they can be applied in the context of society at this time. Legal history can serve as a reflection of the legal institutions currently operating and as a basis for developing legal policies in the present and future, informed by the current social context.<sup>12</sup>

The history of law can serve as a basis for assessing whether the positive laws currently in force are relevant to the needs and social facts of a dynamic, ever-evolving

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<sup>10</sup> Iwan Darmawan, Roby Satya Nugraha, and Sobar Sukmana, "Essensi Mazhab Sejarah Dalam Perkembangan Filsafat Hukum," *Pakuan Justice Journal of Law (PAJOUJL)* 3, no. 1 (2022): 1–14.

<sup>11</sup> Thomas Duve, "Legal History as a History of the Translation of Knowledge of Normativity," *Max Planck Institute for Legal History and Legal Theory Research Paper Series*, nos. 2022–16 (2022).

<sup>12</sup> Andreas Thier, "Time, Law, and Legal History—Some Observations and Considerations," *Rechtsgeschichte—Legal History*, 2017, 20–44.

society.<sup>13</sup> This is because basically, the development of society is one step ahead of the development of the law.<sup>14,15</sup> Therefore, by interpreting history through a past legal provision, it becomes clear why a legal rule was formed.<sup>16</sup> Legal history provides the material and experience of past institutions that will be the foundation for future national law. In the context of state law, especially in Indonesia, understanding the periodization of a legal institution is important. This is so that lawmakers (legislators) do not enact unfair regulations and can formulate laws in accordance with today's society's needs. Legal history also serves as a critical foundation for evaluating and interpreting legal problems by examining the historical context of legal institutions. Using a historical perspective, it is possible to identify rules or practices derived from past values and conditions.<sup>17</sup>

## **B. Description of the Periodization of the Special Autonomy Policy for Papua Province**

### **1. Early Enactment (2002-2003)**

The conflict in the Land of Papua has been ongoing for a long time, and its resolution remains abstract. This problem arose from the indigenous Papuan people's demand for independence as a country through the Free Papua Organization's struggle. This began with the Indonesian state's claim to former Dutch colonial areas, including the island of Papua. This claim process became a dispute because Papua was under the Dutch state's authority and was viewed as a separate territory from Indonesia. In 1949, the Integration Conflict was held at the Round Table Conference, but no agreement was reached. Furthermore, this dispute was discussed at the United Nations (UN) Forum in 1950, which concluded that Papua has the right to independence under Article 73E of the UN Charter. However, this determination has not yet been agreed upon by the Netherlands and Indonesia.<sup>18</sup>

Through the Papuan National Committee, on December 1, 1961, the Dutch declared independence over Papua in Jayapura, and officially Papua became the state of *West Papua*, the Mambuk bird symbol as the symbol of the country, the Morning

<sup>13</sup> Gunawang Gunawang et al., *Pengantar Ilmu Hukum* (CV. Edu Akademi, 2026).

<sup>14</sup> Wahyu Abdul Jafar et al., "Mak Di Juk Siang Tradition in Lampung Indigenous Community: A Perspective on Islamic Marriage Law in Building Family Resilience," *De Jure: Jurnal Hukum Dan Syar'iah* 18, no. 1 (May 2026): 150–169, <https://doi.org/10.18860/j-fsh.v18i1.40501>.

<sup>15</sup> T. Romi Marnelly et al., "Customary Law as Living Law in Environmental Forest Governance: A Sociology of Law Perspective on Legal Pluralism," *Jurnal Hukum* 42, no. 2 (May 2026): 333–60, <https://doi.org/10.26532/jh.v42i2.46995>.

<sup>16</sup> Muhammad Fadli, "Pembentukan Undang-Undang Yang Mengikuti Perkembangan Masyarakat," *Jurnal Legislasi Indonesia* 15, no. 1 (2018): 51–61.

<sup>17</sup> M. Sofyan Pulungan, "Menelaah Masa Lalu, Menata Masa Depan: Sejarah Hukum Tanah Ulayat Dan Model Penanganan Konflik Sosialnya," *Undang: Jurnal Hukum* 6, no. 1 (2023): 235–267.

<sup>18</sup> Stepanus Malak and Nugraha Nugraha, *Otonomi Khusus Papua*, in *Jakarta: Ar-Raafi*. (2012).

Star as the State Flag, and "Hai Tanah ku Papua as the National Anthem. In response to this declaration, the Indonesian nation founded the Tri People's Command (TRIKORA). Trikora was an Indonesian effort, through military operations, to take Papua back into the Republic of Indonesia. This operation succeeded in persuading the Dutch to withdraw from the Papua region, so the United Nations took responsibility for this problem.<sup>19</sup>

The United Nations (UN) then proposes a solution to the conflict, namely a referendum. In 1969, a referendum, known as the People's Opinion Determination (PEPERA), determined that the Papuan people wanted to join the Republic of Indonesia. However, the implementation of PEPERA has become a new source of conflict because it involves only representatives of ethnic groups in Papua, not individuals. The unification of Papua into the State of Indonesia is considered flawed because it does not comply with the procedures for holding the referendum. Based on the results of this referendum, the Organisasi Papua Merdeka (OPM).<sup>20</sup>

Special Autonomy is recorded in the history of the Indonesian nation, with the enactment of the Papuan Special Autonomy Law, born of the Papuan people's insistence on independence. The Papuan people, represented by 100 people, held a peaceful protest and met with President B.J. Habibie on February 26, 1999, to express their desire for independence through the Second Papua Congress. In addition, various conflicts have arisen in other areas that demand independence, such as Aceh and South Maluku. The urgency arose from 3 factors: the flawed integration of Papua into the Republic of Indonesia, gross human rights violations committed by the military, and development failures across various aspects. In addition, there was turmoil in other areas that demanded independence, such as Aceh and southern Maluku. So, under this condition, the government is obliged to issue a special policy, in the form of Special Autonomy, as a response to community conflicts in Papua and Aceh.<sup>21</sup>

Following the peaceful demonstration organized by the Team of 100 after the resignation of President Soeharto, the Indonesian government responded by enacting Law No. 45 of 1999 on the Expansion of Irian Jaya. This policy was accompanied by the appointment of Dr. Herman Monim as Governor of Irian Jaya and Retired Brigadier General Abraham Octavianus Atururi as Governor of West Irian Jaya. However, the policy triggered widespread protests in Jayapura in October 1999, culminating in the occupation of both the Regional House of Representatives and the Governor's Office. In response to these developments, the People's Consultative Assembly (MPR) issued MPR Decree No. IV/MPR/1999, which endorsed Special Autonomy as a political and legal solution to the conflict in Papua and as a means of

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<sup>19</sup> *Ibid*

<sup>20</sup> *Ibid*

<sup>21</sup> Kate Beddall, *Indonesia: Human Rights and Pro-Independence Actions in Papua, 1999-2000*, vol. 12, no. 2 (Human Rights Watch, 2000).

maintaining national unity. The people of Papua placed considerable hope in the Special Autonomy framework, expecting it to promote welfare, justice, and greater recognition of their rights and aspirations. Chapter IV letter g number 2 reads:

*"... maintain the integration of the nation in the framework of the Unitary State of the Republic of Indonesia while respecting the equality and uniformity of the socio-cultural life of the people of Irian Jaya through the establishment of Special Autonomous Regions regulated by law and resolving cases of human rights violations in Irian Jaya through an honest and dignified court process."*

Then, with the Decree of the People's Consultative Assembly of the Republic of Indonesia No. IV/MPR/2000 concerning policy recommendations in the implementation of Regional Autonomy, stating the importance of implementing special Autonomy through the stipulation of laws on Special Autonomy. Based on the two Decrees of the MPR, Law Number 21 of 2001 concerning Special Autonomy for Papua Province was enacted, coming into effect on November 21, 2001.

## 2. Expansion and Evaluation (2004-2006)

During this period, the special autonomy policy, as outlined in Law Number 21 of 2001 concerning Special Autonomy for Papua Province, entered the evaluation and adjustment stage.<sup>22</sup> This refers to the management of special autonomy funds by the local government in Papua province and by the Central Government regarding the amounts of funds received by provinces and districts in Papua. This evaluation stage was carried out in the third year after the Special Autonomy Law came into effect, around 2004-2006, and focused on the effectiveness of the allocation of funds and special autonomy funds for development in Papua Province.

At this stage, the allocation of special autonomy funds has changed: initially, 60% for the province of Papua and 40% for districts/cities in Papua; now, the opposite: 40% for provinces and 60% for districts/cities.<sup>23</sup> This aims to optimize development in districts and cities. The change in the allocation of funds is based on Special Regional Regulation (Perdatus) Number 2 of 2004 concerning the Distribution of Revenues in the Framework of Special Autonomy for Papua Province. In addition, the Governor of Papua issues a decree each year outlining guidelines for the management of Special Autonomy funds. At this stage of evaluation and adjustment, the goal is to prioritize transparency, accountability, and effectiveness of special autonomy funds.<sup>24</sup>

This period of expansion and evaluation is driven by real actions by the community related to Special Autonomy policies, especially in the implementation and allocation of funds. Massive demonstrations and protests across several areas of Papua marked

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<sup>22</sup> Verdi Payung Tappi et al., "Analisis Dampak Belanja Daerah Terhadap Kemiskinan di Provinsi Papua Melalui Pertumbuhan Ekonomi Dan Pendapatan Per Kapita (Periode 2010-2021)," *Jurnal Ekonomi Dan Bisnis* 18, no. 1 (2026): 110–35.

<sup>23</sup> Muridan Satrio Widjojo and Aisah Putri Budiatri, "UU Otonomi Khusus Bagi Papua: Masalah Legitimasi Dan Kemauan Politik," *Journal of Political Research* 9, no. 1 (2012): 22.

<sup>24</sup> Sri Muryantini, "Konflik Otonomi Khusus Papua Dan Dampaknya Terhadap Hubungan Pusat Dan Daerah di Indonesia," *Paradigma* 20, no. 1 (2018).

this. The community expressed dissatisfaction and disappointment with the distribution of funds that excluded indigenous peoples. This concrete action serves as the basis for the local government to evaluate and expand the special autonomy policy.

### 3. Reinforcement and Adjustment (2007-2013)

During the strengthening and adjustment period of 2007-2013, the implementation of evaluation in 2004-2006 was marked. The institutional strengthening of the Special Autonomy Law and policy adjustments mark this. The allocation of special autonomy funds has changed its focus to development programs that include communities in 7 customary territories in Papua. One of the programs currently being carried out is Program Pembangunan Kampung (RESPEK/PROSPEK), as well as human resource development through free education and health. The implementation of this program aims to improve the community's welfare at the village level through the Turun ke Kampung (TURKAM) approach.

Strengthening local institutions involves increasing human resources and performance. Participation of provincial and district governments in receiving operational assistance for the implementation of the duties and functions of the Papuan People's Assembly (MRP). MRP is an institution that represents indigenous peoples, religious leaders, and the role of Papuan women. Furthermore, data and information on regional finance are organized to enhance the transparency and accountability of special autonomy funds, support budget monitoring and execution, and facilitate audit processes.

### 4. Reform and Revision (2014-2020)

The years 2014-2020 were a period of reform and revision of the special autonomy policy, marked by intensive discussions on the revision of Law Number 21 of 2001 concerning Special Autonomy for Papua Province. In addition, there was discussion of changes to fund allocation and the harmonization of development programs. Concrete evidence of this year's shift in authority for expanding Papua province is the transfer of authority from the Papuan People's Assembly (MRP) to the Central Government. Discussions on this revision have occurred since 2014, focusing on issues such as the regulation of indigenous peoples' rights, the budget, and MRP authority. However, this process is considered not open because it does not involve indigenous peoples; the risk is that it will provoke opposition and distrust in the legitimacy of the results of the revision of the Special Autonomy law.

The crucial change that caused turmoil in the community was the authority for regional expansion, originally held by the MRP and later transferred to the central government. In Law number 21 of 2001, regional expansion in Papua province must be approved by the MRP. This is because the Papuan People's Assembly represents indigenous peoples, religious leaders, and Papuan women. However, in the revision of the new Special Autonomy Law, this authority was transferred to the central government.

## 5. Revision of the Law on Special Autonomy and Special Autonomy Volume II (2021-Present)

Based on the plan for the Revision of Law number 21 of 2021 concerning otonomi khusus bagi provinsi papua, Law Number 2 of 2021 was born. This latest law extends the validity period of the special autonomy policy. This change is considered to provide long-term opportunities for the Papua province. The goal is for the Papua Province to be independent in managing and regulating the community's interests in the Papua region. Based on this change, there are more transparent changes, especially in priority programs in education, health, and economic empowerment, which are oriented towards the interests of the indigenous Papuans. Special Autonomy volume 2 reaffirms the authority of the Indigenous Papuans, especially in local government, except in foreign policy, defense, security, monetary policy, religion, and justice.

### C. Values of Legal Institutions

#### 1. Democracy and Community Participation

The hope, as stated in the Special Autonomy policy, is that local governments are authorized over all aspects of government except defense, security, religion, foreign policy, monetary policy, and so on, as stipulated in the Special Autonomy Law, so that it is implemented appropriately, transparently, and amicably.<sup>25</sup> The special autonomy law guarantees the principles of democracy and public participation in decision-making. The goal is to give the community a forum for decision-making on the development and management of Natural Resources.<sup>26</sup> In addition, the community is given the right to participate in the planning, implementation, and evaluation of development programs through the MRP. This is because the MRP is a representation of indigenous peoples, religious leaders, and Papuan women.

#### 2. Recognition of the Rights of Papuan Indigenous Peoples

In Special Autonomy Volume I, the recognition and protection of the rights of the indigenous Papuans includes the strengthening of the political space which is laid as the basic design of policies, among others through the institutionalization of the Papuan People's Assembly (MRP) as a cultural representation oriented towards the protection of the rights of indigenous Papuans based on respect for custom-culture, women's empowerment, and religious harmony.<sup>27</sup> However, in evaluating its implementation, various literature assesses that Special Autonomy Volume I still faces substantive problems, such as Special Autonomy funds that do not directly touch

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<sup>25</sup> Debora Sanur, "Implementasi Kebijakan Otonomi Khusus Di Aceh [Implementation of Special Autonomy Policies in Aceh]," *Jurnal Politika Dinamika Masalah Politik Dalam Negeri Dan Hubungan Internasional* 11, no. 1 (2020): 65–83.

<sup>26</sup> Muhammad Yahya, "Partisipasi Masyarakat Dalam Pembentukan Undang-Undang Daerah Otonomi Baru Papua Perspektif Siyasah Dusturiyah," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 6, no. 2 (2024): 1354–1363.

<sup>27</sup> Revana Giara Effendy, "Analisis Otonomi Khusus Papua Dalam Perspektif Orang Asli Papua," *Binamulia Hukum* 12, no. 2 (2023): 309–322.

indigenous Papuans and are even indicated to be enjoyed by some political elites, as well as the limitations of natural resource management mechanisms that have not been adequately accommodated for indigenous Papuans.<sup>28</sup> From a peace studies perspective, when policies focus solely on "peacekeeping" but fail to consistently realize human security and structural justice, the emerging conditions can be read as "negative peace" in the absence of direct violence. At the same time, the roots of conflict and inequality remain.<sup>29</sup> Special Autonomy Volume II is a key to political institutions with cultural value and encourages indigenous Papuans to participate in Government Politics in Papua. The goal is for political positions and the authority to formulate public policy to be occupied by the Indigenous Papuans.<sup>30</sup> To achieve this goal, the Special Autonomy Law has 3 important institutional pillars: the governor, the House of Representatives, and the Papuan People's Assembly. In its journey, the House of Representatives serves as a legislative institution, with a quarter of its members being Papuan Indigenous People, while the MRP is a Papuan Indigenous Representation composed of indigenous and religious women.<sup>31</sup>

### 3. Historical Straightening

The implementation of Special Autonomy is inseparable from the burden of history, namely, the differences in interpretation of Papua's history of joining the Unitary State of the Republic of Indonesia.<sup>32</sup> Therefore, with Special Autonomy Volume II, efforts are needed to straighten the historical record based on the honesty of all relevant parties, so that the next generation inherits the true history of Papua.<sup>33</sup> The root of the problem in Papua is basically political conflict and lawsuits over the legitimacy of the Indonesian state.<sup>34</sup> At the Papuan People's Congress in 2000, Papua received a recommendation to establish its own state; in fact, the government still positions Papua in economic development. The special autonomy policy contains pillars for addressing Papuan problems, including rectifying historical injustices, addressing human rights violations, and achieving a prosperous Papuan society free of

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<sup>28</sup> Suriadin Suriadin, "Analisis Resolusi Konflik Pasca Disahkan Undang Undang Nomor 2 Tahun 2021 Tentang Otonomi Khusus Jilid II Papua," *Politeia: Jurnal Ilmu Politik* 14, no. 2 (2022): 86–97.

<sup>29</sup> Yolanda Tasya Amalia, Muhamad Fikri Asy'ari, and Naufal Fauzan Raihansyah, "Pendekatan Soft Dan Hard Power Dalam Peacebuilding Sebagai Resolusi Konflik Antara Pemerintah Indonesia Dan Organisasi Papua Merdeka (OPM)," *Mondial: Jurnal Hubungan Internasional* 2, no. 1 (2025): 227–259.

<sup>30</sup> Filep Wamafma, *Filsafat Otonomi Khusus*, ed. Yogyakarta: Maha Karya Pustaka (2022).

<sup>31</sup> *Ibid*

<sup>32</sup> Georgy Mishael, Joko Setiyono, and Soekotjo Hardiwinoto, "Kebijakan Operasi Militer Tentara Nasional Indonesia Terhadap Organisasi Papua Merdeka Dalam Perspektif Hukum Humaniter Internasional," *Diponegoro Law Journal* 5, no. 2 (2016): 1–12.

<sup>33</sup> Theo van den Broek, "Penguasaan dan Melumpuhkan Perlawanan Politik Papua 'Soal HAM diatur dari belakang,'" *Masyarakat Indonesia* 48, no. 1 (2022): 13–29.

<sup>34</sup> Arie Ruhyanto, *Integrasi Sosial Kunci Selesaikan Persoalan Papua Secara Tuntas Dan Bermartabat. The Conversation.*, 2019.

discrimination.<sup>35</sup> In fact, the pillars are designed so that Papua's special Autonomy becomes an economic matter.

#### 4. Protection of Human Rights

The Papua Special Committee of the Regional Representative Council concluded that past gross human rights violations are the root of the problems that still shackle Papua. So that the enforcement of human rights in the economic and socio-cultural fields, and the affirmation of the Papuan Indigenous People, are important. Several studies have considered human rights violations to be the root of the problem for the Papuan people and a grave sin for the Indonesian government.<sup>36</sup> The Special Autonomy Law has affirmed the commitment to the protection of Human Rights, namely that every citizen has the right to be protected before the same law (*Equality before the Law*). The Special Autonomy Law for Papua Province has ensured that special Autonomy does not contradict human rights principles. Although Special Autonomy has stated that human rights violations have been addressed in the past, in practice, various cases continue to occur today.

#### D. Criticism of the *Ius Constitutum*

The planning and formation process for the revision of Law No. 2 of 2021 concerning Otonomi Khusus bagi provinsi Papua was criticized for its symbolic, insubstantial participation by indigenous Papuans. Indigenous peoples' involvement in hearings is often just a formality, with little real room to influence the substance of the law. This creates a deep sense of distrust in the legitimacy of the resulting law, because the community feels they are used only as objects, not subjects, in the process of law formulation and formation. The impact is that the laws that are born are considered not to reflect the needs, values, and aspirations of the community, but rather to reflect the political interests of the central and regional elites who do not represent the Papuan people as a whole.<sup>37</sup>

The transfer of authority for regional expansion from the Papuan People's Assembly (MRP) to the central government is not just a technical change, but a rejection of the principle of local Autonomy, which is the basis of the special autonomy policy. The MRP, as a representative institution of indigenous peoples, has lost its strategic role in important decision-making, so the policy of special Autonomy is seen as a tool of centralization that further erodes the political and cultural rights of the

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<sup>35</sup> Richard Chauvel, "Governance and the Cycle of Violence in Papua: The Nduga Crisis," *Asia-Pacific Journal* 17, no. 2 (2019): e5.

<sup>36</sup> *Panitia Khusus Papua DPD RI (Pansus Papua DPD RI), Membangun Papua Dengan Hati: Keadilan Dan Kesejahteraan Di Tanah Papua* (Jakarta: Sekretariat Dewan Perwakilan Daerah Republik Indonesia., n.d.).

<sup>37</sup> Salahudin Tunjung Seta, "Hak Masyarakat Dalam Pembentukan Peraturan Perundang-Undangan," *Jurnal Legislasi Indonesia* 17, no. 2 (2020): 154–166.

Papuan people.<sup>38</sup> This shift suggests that special autonomy policies are more oriented towards central political stability than the empowerment of local communities.

The implementation of special autonomy policies has been criticized for ignoring local wisdom and cultural context in the indigenous Papuan people.<sup>39</sup> The adopted development approach tends to be top-down and does not account for customary, social, and economic differences across various customary areas. As a result, the policies implemented are often considered a form of neo-colonialism, in which local values and needs are set aside in favor of the central economic and political interests. This strengthens indigenous peoples' resistance and continues to fuel dissatisfaction with policies deemed irrelevant, even as they undermine the sustainability of Papuan culture.

Although the Special Autonomy Law affirms the protection and empowerment of Indigenous Papuans (OAPs),<sup>40</sup> marginalization is increasingly systemic. Uneven development, the dominance of transmigrants, and the lack of involvement of OAPs in strategic positions indicate that special autonomy policies fail to ensure social and political justice. This policy is considered only to give the illusion of empowerment, while in practice, OAPs remain marginalized from the development and decision-making processes that determine their future.

The Special Autonomy Law's commitment to resolving cases of past human rights violations is often merely a matter of discourse, without real implementation. Many cases of human rights violations have not been fully resolved, and victims often do not receive restorative justice. This limitation is considered a form of structural injustice that continues to hinder reconciliation and peace in Papua. Weak enforcement of human rights also shows that special autonomy policies are more oriented towards political imagery than substantive justice for Papuan people.

The management of special autonomy funds is often criticized for its lack of transparency and accountability.<sup>41</sup> Although the law emphasizes these principles, the reality on the ground shows that funding allocations are not always on target and are often exploited by elite groups. The benefits of this policy have not been felt equally by indigenous peoples, thus reinforcing the notion that special autonomy policies are more beneficial to certain groups than Papuans at large.

## **E. Ius Constituendum (The Aspired Special Autonomy of Papua) Using the Values of Legal Institutions**

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<sup>38</sup> Yamin Rengen, "Kelembagaan Majelis Rakyat Papua Barat (MRP-PB) Dalam Otonomi Khusus 2017," *Journal of Governance and Public Policy* 4, no. 3 (2017): 505–519.

<sup>39</sup> Effendy, "Analisis Otonomi Khusus Papua Dalam Perspektif Orang Asli Papua."

<sup>40</sup> Yusak Elisa Reba, "Kedudukan, Tugas Dan Wewenang, Hak Dan Kewajiban, Keanggotaan Dprk Yang Diangkat, Dalam Kerangka Otonomi Khusus Papua, Di Kabupaten Kepulauan Yapen," *Jurnal Pengabdian Kolaborasi Dan Inovasi IPTEKS* 3, no. 6 (2025): 1379–1387.

<sup>41</sup> Ahmad Junaedi, "Analisis Akuntabilitas Pengelolaan Dana Otonomi Khusus Papua," *Jurnal Ilmiah Tata Sejuta STLA Mataram* 7, no. 2 (2021): 183–199.

*Ius constitutendum* refers to the law that is expected or aspired to, which is the source of future legal aspirations and reforms.<sup>42</sup> In the context of the Special Autonomy Law for Papua, *the ius constitutendum* emphasizes the need for policies that truly side with indigenous Papuans, reflect the values of indigenous peoples, and ensure justice, diversity, and socio-cultural sustainability in Papua. In line with this reading, the affirmative political study presents Special Autonomy as a policy that emphasizes partiality, the protection of the basic rights of OAPs, and respect for cultural and customary diversity as the basis for development.<sup>43</sup> Thus, the *ius constituendum* in the Papuan Special Autonomy regime can be understood as an orientation for legal reform that ensures that policies are truly on the side of indigenous peoples/OAPs, reflect local socio-cultural values, and maintain the sustainability of development, including respect for the rights of indigenous peoples and the principles of sustainable development.<sup>44</sup>

The expected Special Autonomy is obliged to ensure the real participation of Papuan indigenous peoples in every stage of policy planning, formation, and evaluation. Indigenous peoples must be recognized as the main subjects, not just objects of formality. The legislative process must be open, inclusive, and involve the direct aspirations of indigenous peoples, so that the resulting policies truly reflect local needs and values. The aspired Special Autonomy should strengthen the principle of local Autonomy by giving real authority to the Papuan People's Assembly (MRP) and other representative bodies in making important decisions, including decisions on territorial expansion. This authority must be constitutionally guaranteed so that the Papuan people have ample space to determine their own future, without central political domination.

Special autonomy policies must be rooted in local wisdom and the Papuan cultural context. The development approach must be bottom-up, taking into account customary, social, and economic differences in various customary areas. The policies implemented must respect local values, avoiding provoking resistance or undermining the sustainability of Papuan culture. The aspired Special Autonomy must ensure social sustainability and social justice for the Indigenous Papuans (OAP). Development must be equitable, and OAPs must have full involvement in strategic positions and in decision-making processes that determine their future. This policy should ensure that OAPs are truly the primary subjects of the development process, not merely marginalized objects.

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<sup>42</sup> Puteri Hikmawati, "Pengaturan Kekerasan Berbasis Gender Online: Perspektif Ius Constitutum Dan Ius Constituendum (The Legal Policy of Online Gender Based Violence Regulation: Ius Constitutum and Ius Constituendum Perspective)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 12, no. 1 (2021): 59–79.

<sup>43</sup> Muhamad Sofian, "Otonomi Khusus Papua Dari Perspektif Politik Afirmasi Orang Asli Papua Di Pemerintahan," *Jurnal Pemerintahan Dan Politik* 10, no. 3 (2025): 522–540.

<sup>44</sup> *Op.Cit.* Effendy, "Analisis Otonomi Khusus Papua Dalam Perspektif Orang Asli Papua."

Special autonomy policies must ensure substantive human rights protection, not just discourse. Past human rights violations must be fully resolved, and victims must receive restorative justice. This policy must be oriented towards substantive justice rather than political imagery, to promote reconciliation and peace in Papua. Special autonomy policies must ensure substantive human rights protection, not just discourse. Past human rights violations must be thoroughly investigated, and victims must obtain restorative justice. This policy must be oriented towards substantive justice, not political imagery, to encourage reconciliation and peace in Papua.

### **Conclusion**

This study concludes that the evolution of Papua's Special Autonomy reflects a dynamic interaction between the ideals of asymmetric decentralization and the realities of state governance. Historically, the Special Autonomy framework was designed to address long-standing political, social, and historical grievances by recognizing the rights of Indigenous Papuans (OAP), promoting participatory governance, and strengthening human rights protections. However, the findings demonstrate that the implementation of Special Autonomy has been marked by a persistent tension between local empowerment and central governmental control. Although institutional reforms have introduced mechanisms for indigenous representation and regional participation, the practical operation of these institutions has often reduced meaningful participation to a symbolic level, particularly through the limited influence of representative bodies such as the Papuan People's Assembly (MRP) in strategic policymaking. Consequently, the effectiveness of Special Autonomy cannot be assessed solely through economic development indicators but must also consider the extent to which it achieves historical reconciliation, political recognition, cultural preservation, and substantive participation for Indigenous Papuans. The study therefore contributes to the literature by providing a historical and normative analysis of the institutional development of Papua's Special Autonomy while distinguishing between the existing legal framework (*ius constitutum*) and the future direction of legal reform (*ius constituendum*).

Despite these contributions, the study is limited by its normative legal approach, which relies primarily on legal documents and scholarly literature and therefore does not empirically examine policy implementation at the community level. Future research should complement this legal-historical perspective through empirical investigations of meaningful public participation, institutional performance, and governance practices following the enactment of Law No. 2 of 2021 across provinces, districts, and customary territories in Papua. Comparative studies on indigenous participation models, evaluations of the impact of institutional restructuring on OAP representation and public service delivery, as well as policy audits of natural resource governance and Special Autonomy funding mechanisms, would provide valuable insights into the effectiveness of current reforms. Such studies are expected to

strengthen the evidence base for future policy development and support the realization of a Special Autonomy framework that is more responsive to indigenous aspirations, socio-cultural sustainability, and equitable governance.

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### **Author Contributions Statement**

Diana Gloria Wamafma contributed to the conceptualization of the study, data collection, formal analysis, investigation, and preparation of the original manuscript draft. Juanda Nawawi contributed to research design, methodological development, supervision, and critical review of the manuscript. Nurlinah contributed to data validation, literature review, data interpretation, and manuscript editing. Hashim Balas contributed to theoretical framework development, comparative analysis, and critical revision of the manuscript for important intellectual content. Saleem Asouli contributed to project supervision, validation of findings, academic review, and final approval of the manuscript. All authors participated in the discussion of the results, reviewed the manuscript critically, and approved the final version for publication.

### **AI Usage Statement**

The use of artificial intelligence (AI) tools in this study was in a supporting capacity. AI tools were used for language editing, grammar checking, and improvements in clarity and readability. In this study, AI was not used to generate core ideas or conduct substantive analyses.

### **Conflict of Interest**

The authors declare that there are no conflicts of interest regarding the publication of this article. The authors have no financial, professional, or personal relationships that could have influenced the work reported in this study. All authors

have approved the final version of the manuscript and agree to its submission for publication.

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