

# Dilemma of Equal before the Law Principle and Social Impact of the Law No. 21 Year 2001 on Special Autonomy of Papua for Papua Province

Najamuddin Gani

PhD Student, Postgraduate Hasanuddin University

Jl. Perintis Kemerdekaan KM. 10 Tamalanrea, Makassar, South Sulawesi 90245

## Abstract

Equality before the law as stipulated in the Indonesian Constitution 1945 is a beacon to be followed in the organization of the State. The establishment of laws and regulations including the Law No. 21 of 2001 on Special Autonomy for Papua Province should also embrace the principle of the equality before the law. From a historical perspective, the Law established when the country experienced a multidimensional crisis in the reform era. It marked the change of political and governmental paradigm in Papua, which is a Special Autonomous Region. The philosophy and the estuary of the Law are focused on protection, alignments, and the empowerment of indigenous Papuans. Besides it has brought benefits, implementation of the Papua Special Autonomy Law has had an impact on the political and social disintegration. Papuan population has been fragmented over the issue of Papuan and non-Papuan.

**Keywords:** equal before the law, Social Impact: Special Autonomy for Papua.

## 1. Introduction

On 10 and July 11, 1945, Indonesian Independence Preparation Investigation Agency (BPUPKI) held a special meeting to discuss the vast territory of Indonesia was desired. Some figures put forward his views among others; such as Muhammad Yamin. He suggested:

"Look gentlemen in the world map that it was image of the Indonesian archipelago. It was obvious that once a single unit. Therefore, in this session I would give my vote to understand that the independence of Indonesia should include Malaya and Papua it alone."<sup>1</sup>

In the case of Papua, Kahar Muzakkar has the same view with Muhammad Yamin but it has a different perspective. According to him, "Papuans entry into Indonesia, although a little different than our nation. They can indeed be more black than any other population, but their land is the source of wealth and such a legacy should not be thrown away."<sup>2</sup>

The view to the two figures in the BPUPKI meeting as mentioned above provide an initial overview that Papua (formerly Irian Barat and later renamed Irian Jaya) has full of political overtone since the inception of the Unitary Republic of Indonesia (NKRI). The political dynamics continued until the Old Order and New Order. Finally entered the reform era, Papua experienced a fundamental political change by getting grant to the status of special autonomy) from the government.

As outlined in the Law No. 21 of 2001, the Papua Special Autonomy is a legal product in the history of law in Indonesia. It tops in loading the phrase "within the framework of the Unitary State of the Republic of Indonesia". The phrase can be seen from the considering, the substances (article-by-article), up to its explanatory of the Law. The word "unity" here gives meaning and would like to emphasize that Indonesia is a country which is an integral territory, ideology, political, economic, social, cultural, defense and security.

Historically, Papua special autonomy policy is the biological results of the reform demands of the Papua version. It means, when the era reform took place, the Papuas demanded independent and separated from the homeland as its issue. It was quite different with majority demands of Indonesia people such as disbanded New Order, Suharto resigned as president, unplug the dual function of Indonesia armies (ABRI) and others. The arguments promoted by Papuan resistance movement is influenced by 4 (four) issues: First, historians streamlining the integration of Papua into the Republic of Indonesia. Second, violations of human rights (HAM) as a result of military operations. Third, racial differences (Melanesia). Fourth, injustice in the management and distribution of the results of the management of natural resources (SDA).

As a result of it, the government responded and issued a political attitude that began with MPR Decree No. IV/ MPR/1999 on the Basic Guidelines of State (GBHN). In Chapter IV paragraph g of point (2), stated:

<sup>1</sup> P.J. Drooglever, *The Act of Free Choice of Papuans and Its Self-Determination*, Kanisius, Yogyakarta, 2010, p. 128. The Drooglever's book was translated by Johannes Riberu. The original title is EEN VAN Vrije DAAD. De Papoea's van westelijk New-Guinea ed de Grenzen van het zelbeschikingsrecht, Instituut voor Nederlandse Geschiedenis, Boom, Amsterdam, 2005.

<sup>2</sup> Ibid.

"...in order to develop local autonomy in the Unitary State of the Republic of Indonesia and to resolve some local issues fairly and holistically, it should be taken the following steps:

- (a) Maintaining the integrity of the nation within the Unitary State of the Republic of Indonesia by respecting equality and diversity of social and cultural life of the people of Irian Jaya through the establishment of the autonomous region governed by law;
- (b) Resolving some cases of human rights violations in Irian Jaya through a fair trial process and dignified .....

To examine the provisions as stipulated above, there are two fundamental aspects that need to be observed; (1) the background of granting autonomy to the province of Irian Jaya (Papua) is to prevent the disintegration of the nation, and (2) recognition of human rights violation and the willingness of the government to enforce the law for those who should be responsible for such human rights violations.

The substance of the MPR Decree No.IV / MPR / 1999, reaffirmed in the MPR No.IV / MPR / 2000 on the Recommendation Policy to Implement Regional Autonomy addressed to the government and parliament which states that the Law on Special Autonomy for the Special Territory of Aceh and Irian Jaya, as mandated by MPR Decree No. IV / MPR / 1999 in order to be issued no later than May 1, 2001 with considering of the aspirations of people in the regions.

Following up both MPR Decrees, on 21 November 2001 the Draft Law on Special Autonomy for Papua Province was passed by the President and recorded in the State Gazette No. 4151 under the name of Law No. 21 of 2001 on Special Autonomy for Papua Province (hereinafter called the Law on Special Autonomy). The Law consists of 23 Chapters and 79 Articles. The substance of the Special Autonomy Law is largely the arrangement regarding the specific aspects of characteristics of Papua Province. Based on its specificity, then implementation of principle of decentralization in the establishing of special autonomy in Papua has differences with the implementation of the principle of decentralization in many other provinces in Indonesia.

If in the New Order, the government tends to handle resistance movements repressively, but in this reform era, it tends to be more comprehensive. To respond the political dynamics in Papua, some step solutions are offered such as welfare approach, dialogue, and avoiding any violation of human rights. The special autonomy for Papua is a modest step or a middle way to put Papua Province equally with the other regions in Indonesia on one side or allowing and/or approving Papua's independence on the otherside.

There are four (4) basic things that become the content of the Law No. 21, 2001; Firstly, the setting of authority between the Government and the Provincial Government of Papua is done with specificity. Secondly, recognition and respect for the fundamental rights and empowerment of indigenous Papuans strategically and fundamentally. Thirdly, the division of powers, duties, and responsibilities are clearly and firmly between the legislature, executive and judiciary as well as the Papuan People's Assembly as a cultural representation of indigenous Papuans. Finally, the assertion of Papua as an integral and inseparable part of the Republic of Indonesia.

## 2. Political and Governmental Dilemma

Equality before the law as stipulated in the Indonesian Constitution 1945 until now has not shown significant progress. Various approaches taken by the Government has not been able to address law enforcement issues that lead to the fulfillment of a sense of justice. Everyone is treated equally without discrimination. Various laws made by the Government should be a trickle of soul and spirit of Pancasila as the nation's philosophy and the Indonesian Constitution 1945 as the State Constitution. In other words, Pancasila and the Indonesian Constitution 1945 should be referred philosophical and constitutional in managing and organizing every aspect of national life in political, economic, legal, social and cultural.

According to Syarif Hidayat,<sup>1</sup> there are 3 (three) concept of decentralization ff viewed from the perspective of the interests of the central government and local governments. They are political education, leadership training and creating political stability. In terms of the local government, decentralization dimension is embodied to realize political equality, local accountability and local responsiveness. The political equality will mean more opportunities for people to participate in various political activities at the local level. The local accountability means will improve the rights of his community. The local responsiveness means that the local governments can address and improve the acceleration of social and economic development in the region.

In the substance of Papua's special autonomy law, there is a chapter which explicitly states that Papua province has the flag, emblem and anthem themselves (Chapter II, Article 2). The guarantee of human rights protection can be found in Chapter XII Article 45, 46, and 47. In the field of government, it is stated that Papua provincial government consists of the House of Representatives as a legislative body and the provincial government as the executive body (Article 5). In the framework of the implementation of special autonomy, it is established Papuan People's Assembly (MRP), which is the cultural representation of the indigenous Papuans

<sup>1</sup> See Syarif Hidayat, *Reflection of Reality of Local Autonomy and Its Challenge in the Future*, p. 3

(Article 5). The governmental Papua province is headed by a governor and assisted by a Deputy Governor (Article 11). Parliament set the governor and deputy governor candidates after obtaining the consideration and approval of the MRP (Article 20).

Of the various provisions above, there is quite crucial and dilemma issue in the area of MRP existence, as followings:

- 1) The issue of authority. MRP as institution merely is the cultural representation of indigenous Papuans to give consideration and approval. It does not have the function of the Legislative, Executive, and Judiciary in full. It is authorized to respond to the processes of legislation conducted jointly by the Papuan Legislative Council (DPRP) together with the Governor with regard to the basic rights of indigenous Papuans. In terms of it, it relates to the Special Local Government (hereinafter *Perdasus*).<sup>1</sup>
- 2) Hopes and expectations of the community. MRP is often faced with a dilemma between legal norms on the one hand and the expectations of even the demands of society on the other hand. As a state agency that is characterized by the local government of Papua, MRP is obliged to be handed and guided by Pancasila, the 1945 Constitution, the Unitary State of Republic of Indonesia concept, and the principle of archipelagos. On the other hand, MRP often required in order to meet the various expectations of the indigenous Papuans and even opposed to point (1) as stipulated above. The opposition side is demanding independence in the stretcher by some people and organization that has Papuan independence ideology.

Institutional demand for independence as mentioned above, of course, does not get a response from the MRP. The impact that arises then is MRP lost legitimacy. MRP which is the representation of indigenous peoples, religions and women of Papua is often accused and the analogy is like candy (sweets) to create a character of Papuan elite in positional drift administrationally. Responding to the views of the community, MRP tries to make an affirmation effort such as protection, alignments and empowerment of the indigenous Papuans. However, MRP efforts are not perceived by society. Even sometimes, it is considered beyond the authority of the institution due to entering the authority of legislative and / or executive. An example of it is Decree (SK) MRP No. 14 of 2009 which confirms that the Regent / Mayor and Deputy Regent / Mayor should be indigenous Papuans. Once dormant and never used as a reference in local elections in Papua for about 6 years, MRP re-issues a new regulation about the same thing but is no longer using the SK, called Resolution No. 11 of 2015.

SK or resolution of MRP as mentioned above would be triggered by the spirit of the Special Autonomy Law that has been affirmed in advance about the relationship between race / ethnicity with leadership at the provincial level. Article 12 (a) Papua Special Autonomy Law stipulates that "people who can be elected as Governor and Vice Governor are a citizen of the Republic of Indonesia on the condition that the original person Papua". Under the provisions, then the person is not necessarily the indigenous Papuans (migrant / immigrant) cannot be a Governor and Deputy Governor. If the reference to Article 27 (1) UUD 1945; "All citizens are equal before the law and the government and shall abide by the laws and the government with no exception".

According to Ramly Hutabarat,<sup>2</sup> barriers to adoption of the Indonesian Constitution 1945 can be sourced from various parties:

"The constitution of values and ideas is inhibited by environmental legal mechanism that involves several components. The components are components of legislation, law enforcement, organizing power and legal consciousness of the people".

In terms of Papua's view, the barrier as intended by Hutabarat above can be seen in Article 12 (a) Papua Special Autonomy Law), the organizers of power, and legal awareness. Thus, it is clearly that Article 12 (a) Papua Special Autonomy Law is not in accordance with the spirit of Article 27 (1) of the 1945 Constitution which adopts the idea of equality before the law. From the perspective of universal democracy, the right to vote and to be elected like the 2 (two) side of the coin. Where there is a right to vote, there is no right to be elected. Likewise, where there is a right to be elected, there is no right to vote.

Civil Equality is the equal civil rights for all members of society. Recognition of this equality means that every citizen is treated equally in the enjoyment of rights and protection. In the case of Papua, the indigenous Papuans and non-Papuans should have the same position without any discrimination based on ethnicity or race. Political equality Political equality is the basis of democracy.

All description as explained above gives an assertion that affirmation in politics and democracy are given to the indigenous people as a form of implementation of the Papua Special Autonomy Law on the one hand have to protect the political rights of the indigenous Papuans, but on the other hand it has an impact on the marginalization of non-Papuans, In other words, the migrant / immigrant has been used as second-class citizens

<sup>1</sup> In Papua Province, there are 2 (two) types of local regulations, namely the Local Regulation which cover the entire population of Papua-called *Perdasi*, and the Local Regulations specifically for the welfare of the Papuans called *Perdasus*.

<sup>2</sup> See Ramly Hutabarat, *Equality Before the Law in Indonesia*, 1985, p. 59.

(second community).<sup>1</sup> Indeed, the legal treatment cannot be biased. David L. Sills<sup>2</sup> mentioned as "impartiality" means not one-sided. He says further that equality before the law is impartial application of the law. Equality is closely connected with political equality. The right to vote in elections is the right of people and it is protected by law. No right lopsided is given to citizens to vote and to be elected.

In terms of such discussion as stipulated above, it would be better to use the United States as one of the leading countries and used as a reference for democracy by many countries. Miriam D. Irish and James W. Prothro<sup>3</sup> stated there are 4 (four) basic rights fundamentally in the United States, as follows:

- 1) The right to safety and security of the person;
- 2) The right to citizenship and its privileges;
- 3) The right to freedom of conscience and expression;
- 4) The right to equality of opportunity.

In addition, the use of the right to vote and to be elected in elections, belonging to the citizenship rights and privileges.

### 3. Economic Dilemma of the Indigenous Papuans

Economic equality is equality in improving the economics of life. It emphasises on equality of opportunity and not equality sharing. For more or less of the results of the efforts of each person depends on using the opportunity to improve their economic life. One of the policies that are very heavy for the command area in Papua is in the field of socio-economic policies. The question is how to encourage and increase the participation of indigenous Papuans to take initiatives on the real sectors such as industry, trade and services. In those sectors are clearly that the indigenous people tend to be consumers and non-Papuan people, especially ethnic Chinese, Bugis - Makassar, Java, and Buton tend to be producers that provide goods and services in various cities to remote Papua.

As usual in the area even in other countries, the law of market tends to be decided by free fight liberalism. Who offer goods and services of high quality and competitive prices will come out as winners. This becomes the main problem of the indigenous Papuans. Several regulations have been issued by the provincial government of Papua to nurture and protect the right to opportunity for native Papuan entrepreneurs.

Work ethic, management ability, and capital, are some basics that underlie and a dilemma for Papuan entrepreneurs. In the area of construction services for example, when the local government entrusts a project to Papuans entrepreneurs, the project often is not in accordance with the project plan or even cannot be resolved. Sometimes the project is being handed to the employers of non-Papuans. In order to avoid untrust from the local governments to conduct empowerment of the indigenous Papuan entrepreneurs, Barnabas Suebu<sup>4</sup> as a Governor at that time used an analogy to show the situation. The analogy was "learn to ride a bike." The risk of ups and downs and sometimes hurt more new advance can ride a bike as well. The simple analogy as stipulated by Suebu provide an overview that if there is no protection, alignments and empowerment to the indigenous people, including businessmen, certainly the indigenous people certainly will be increasingly marginalized in the midst of rapid flow of migration to Papua.

Migrant / immigrant with a level of tenacity, motivation, knowledge and skills will reinforce the marginalization of indigenous Papuans as stipulated above. It is a fact of life that is not only beautiful in the eye. Moreover, it is concerning human dignity. As fellow citizens of the Indonesian people, it is not worth it if a tribe is poor and suffering on their own land. Ironically, if in the midst of the crush of life, they witnessed euphoria luxuries exhibited by migrants / immigrants.

The Founding Father expresses the lofty ideals of the founding of the Republic of Indonesia (NRI) in the fourth paragraph of the Preamble of the 1945 Constitution. One of which is to promote the general welfare. These ideals contain 2 (two) key words, which say:

- 1) Welfare means that the state is to meet physically, mentally, and spiritually for all the people of Indonesia; and
- 2) The general means that prosperity is to be realized in order to do not intend for a specific ethnic group, religion, certain groups, but for all Indonesian people..

### 4. Social Integration Dilemma

To realize the goal of special autonomy as mentioned above, the government of Papua Province has taken

---

<sup>1</sup> Compare with the United States and Australia that normatively already equate the rights of citizens, but in practice the natives (Indians and Aborigines) are marginalized from the arena of political, economic, and social.

<sup>2</sup> Ramly Hutabarat, *Supra* Note 5. P. 59.

<sup>3</sup> Miriam D. Irish and Prothro James W., *The Politics of Democracy*, New Jersey, 1968, p. 584.

<sup>4</sup> Barnabar Suebu served as Governor of Irian Jaya during the New Order. After several years of vacuum in the administration of Irian Jaya / Papua, entered a period of reform was later re-elected as governor. In the reform period this analogy "to learn to ride a bike" put forward.

various policies, particularly in key areas such as education, health, and infrastructure. In the field of education, although there has not been standardized and integrated, the new admissions system has been used percentages and categorization of values between indigenous Papuans and non-Papuans. This occurs from the level of primary education, secondary, even college. This system mainly occurs in schools or universities. This policy significantly increases the level of educational opportunities for indigenous Papuans.

In the field of health, the indigenous people are rolled health care policy (without pay) through public health insurance programs Papua (Jamkespa). Source of funding this program comes from the special autonomy funds. The Indigenous Papuans has socio-economic strata under non-Papuan society. It was greatly helped by the existence of the Jamkespa policy.

Protection and solidarity towards the indigenous Papuans as mentioned above are also the social aspect and the other public. Acceptance of Civil Servants (PNS) now called the Civil State Apparatus (ASN), for example, the percentage of the indigenous people is always dominant, between 60% to 80%. This happens in various government agencies both at the provincial and district / city. Arguably aspects of recruitment of civil servants are a very loaded issue of non-Papuans Papua. This policy does not stop until the reception level alone but continued to career development and promotion of civil servants. Often if there is an element of impartiality deemed to indigenous people, the protests and demonstrations is something that is inevitable, but with the passage of time validity Autonomy, both indigenous Papuan population and migrants have adapted policies that prioritize the natives are. It contributes positively to social equilibrium in Papua. If the economic aspect as mentioned above, the main actor is the migrants / immigrants, then in politics and government are indigenous Papuans.

In addition to bringing benefits especially for the indigenous people, the implementation of special autonomy also put tremendous social impact. Papuan population increasingly fragmented in issues Papua i and non-Papuans. The issue erupts in almost every aspect of people's lives and joints.

## 5. Conclusion

Dilemma of equality before the law takes place amongst the Indonesian Constitution 1945, the MPR Decree, and the Special Autonomy for Papua, particularly in the area of article 27 of the Constitution. It brings also some impacts such as especially in the area of politic, economy, and integration.

## References

- Mirian D. Irish and Prothro James W., *The Politics of Democracy*, New Jersey, 1968.  
P.J. Drooglever, *The Act of Free Choice of Papuans and Its Self-Determination*, Kanisius, Yogyakarta, 2010.  
Ramly Hutabarat, *Equality Before the Law in Indonesia*, 1985.  
Syarif Hidayat, *Reflection of Reality of Local Autonomy and Its Challenge in the Future*.