



Briefing: Special autonomy – big on funds, short on human rights and democracy

In 2001 the Indonesian government passed a special autonomy law relating to the governance of West Papua. After 20 years the funding arrangements contained in the law and its regulations are to be evaluated and revised. The general nature and detailed elements of this evaluation are significant for many reasons. Among the most important is that development projects in West Papua have become the preferred way of governing the territory. Special autonomy and its funding were supposed to reverse the marginalisation suffered by West Papuans, following lengthy periods of emergency military rule and transmigration throughout the New Order period. However, stopping marginalisation requires empowering West Papuans through improving democracy and human rights, but institutions established under special autonomy are seen as neither representative nor legitimate by West Papuans.

In this briefing we describe how the law has failed to achieve its objectives in two ways. First, despite promising to 'protect' West Papuan culture, and to economically empower indigenous West Papuans, many important aspects of the law have been only partly implemented or ignored altogether. Second, instead of implementing the law, the authorities have resorted to governing through a programme of development projects from abundant funds. While some see existing efforts as having failed because they are not based on principles of 'inclusive' development, alternatives of creating new provinces and districts, supposedly to ensure equitable participation, have often led to the enrichment and empowerment of the security forces in remote areas, leading to further conflict.

What has happened?

The 2001 law was passed in the context of decentralisation legislation in Indonesia after the fall of the New Order in 1998. In West Papua the law had special significance for two reasons. First, it was passed towards the end of a period of liberalisation in the province known as the Papuan Spring under President Abdurrahman Wahid. The law promised to empower marginalised West Papuans, redress past abuses and legalise local political parties. While some West Papuans were prepared to believe promises that the law would be justly implemented, shortly before the law's formal passing, the West Papuan political leader Theys Eluay was murdered by Kopassus, a part of the military's special forces. This cast a shadow over the law and served as a reminder of the continued power

and impunity of the security forces. This was further brought home by the security forces moves to shut down the Papuan Spring in 2003.

Second, the law has been implemented without regard for genuine democratic arrangements, with local institutions subject to interference¹ and heavily vetted to weed out pro-independence candidates by the national government. The focus instead has been put on development projects. While the law claims to be aimed at improving the position of ‘marginalised’ West Papuans through development projects, they have instead often led to the mismanagement of funds. Resources for infrastructure and a ‘general allocation grant’ (DAU, *Dana Alokasi Umum*), amounts to two percent of the national budget whilst at the same time there is widespread profiting, by the security forces, from West Papua’s abundant natural resources on the pretext of counter-insurgency operations, and transmigration. Pent up frustration at the government’s failure to improve the position of indigenous West Papuans, and address institutional racism, led in 2019 to the West Papua Uprising, the most serious and open challenge to the legitimacy of Jakarta’s rule since the fall of Suharto.

During 2020, civil society organisations and political activists organised to oppose the evaluation of the special autonomy law and its funding arrangements. In July they drew up a Papuan People’s Petition, (PRP, *Petisi Rakyat Papua*) initially supported by 16 groups. By May 2021 PRP-affiliated groups, now numbering 110, stated that they had received more than 700,000 petition signatories.² The PRP sought to counter the claims of Jakarta that special autonomy had been successful in empowering and including West Papuans in the affairs of their land. It objected to the increasing militarisation of West Papua,³ and demanded that the Government of Indonesia immediately desist from “trying to reduce the main issues of the West Papuan people to a discussion of special autonomy funds.”⁴ They, and other groups, objected to the exclusion of West Papuans from debate around special autonomy. For example, evaluation of the existing law must go through the Papuan People’s Assembly (MRP, *Majelis Rakyat Papua*) and the Papuan People’s Representative Council, (DPRP, *Dewan Perwakilan Rakyat Papua*). The government claims that these institutions are representative, but some argue, pro-independence groups are excluded.⁵ West Papuan civil society

¹ For example, in recent months two regional secretaries (*sekretaris daerah*), were inaugurated for Papua province on the same day, one by Jakarta and the other by Papua’s provincial government. See ‘Dualisme Pelantikan Sekretaris Daerah Papua’ papua.go.id.

² Petisi Rakyat Papua, ‘*Nasib Otonomi Khusus Rakyat Papua Diputuskan dalam “Musyawarah Rakyat Papua”*’, 6 May 2021.

³ B. Mawel, ‘*Petisi Rakyat Papua menilai perpanjangan kucuran dana otsus cenderung fasis*’ 27 January 2021. jubi.co.id

⁴ Petisi Rakyat Papua, petisirakyatpapua.org/tentang

⁵ Haryanto, Lay, C. Purwoko ‘Asymmetrical Decentralization, Representation, and Legitimacy in Indonesia A Case Study of the Majelis Rakyat Papua’ *Asian Survey*. Vol. 58, Number 2, p. 366.

groups, including the PRP, are concerned that revisions will be passed by elites from Jakarta and rubber stamped by local institutions.⁶

West Papuans civil society groups organised opposition, in the form of street protests, to this controlled process of evaluation by politicians in Jakarta, which the authorities then shut down. In September 2020 in Nabire, for example, a protest attracted thousands of people with the authorities arresting dozens as they did during the 2019 West Papua Uprising. Four days later a similar protest took place in Jayapura. Hundreds of student protestors were forcibly dispersed using excessive force, with security forces firing shots inside the grounds of a university.⁷ During a similar protest in Jayapura the following month, student protestor Matias Suuh was shot and 13 other students were arrested.⁸ In April 2021, a large protest was planned in Deiyai, in the central highlands region. A very large number of police and military, disproportionate to the size of the crowd, prevented the protest from taking place. The security forces cited concerns that a bloody incident might occur had the protest gone ahead. In August 2019 six were shot dead during [West Papua Uprising](#) protests in Deiyai.

The Indonesian government's response, to expressions of concern about crackdowns on legitimate expressions of public assembly, voiced in a joint letter by UN Special Rapporteurs, was that crackdowns on demonstrations against special autonomy are being done to avoid the spread of Covid-19. However the Government has also justified crackdowns accusing demonstrators of 'separatism'.⁹ The authorities are therefore both using the pandemic as a pretext to suppress protests and expediting special autonomy-related legislation whilst neutralising significant opposition. The involvement of the security forces in enforcing Covid-related public health protocols has additionally been controversial.¹⁰

⁶ A. Nurbaiti, 'Papuan groups voice opposition to special autonomy status' Jakarta Post, 7 July 2020.

⁷ B. Doherty, 'Protests flare in Papua as students demand independence referendum' <https://www.theguardian.com/world/2020/sep/29/protests-flare-in-papua-as-students-demand-independence-referendum>, 29 September 2020.

⁸ B. Mawel. '[Aksi Tolak Otsus; Satu Mahasiswa Tertembak Dan 13 Ditangkap - I Papua](#)' 20 October 2020, Jubi.co.id.

⁹ See joint letter from Clement Nyaletsossi Voule, Special Rapporteur on the rights to freedom of peaceful assembly and of association; Irene Khan, Special Rapporteur on the promotion and protection of the right of freedom of opinion and expression; and José Francisco Cali Tzay, Special Rapporteur on the rights of indigenous peoples, to the Indonesian Permanent Mission to the United Nations, February 22 2021; and the response of Ambassador Grata E. Werdaningtyas on 9th April 2021.

¹⁰ Instruksi Presiden 6, 2020 tentang peningkatan disiplin dan penegakan hukum protokol kesehatan dalam pencegahan Corona Virus Disease 2019, 2, 4b, c. When directed by civilian authorities the military can "help to counter the outcome of natural disasters, displacement, and provide humanitarian assistance". See Undang-Undang 34/2004 tentang Tentara Nasional Indonesia, 2b, 12. But in the law on disaster mitigation, epidemics and disease outbreaks such as Covid-19 are defined as 'non-natural disasters'. See Undang-Undang 24 2007 tentang Penanggulangan Bencana, 1,2-3; Peraturan Presiden 17 2018 tentang Penanggulangan Bencana dalam keadaan tertentu, 1,2.

Special Autonomy: what is it and what are its implications?

The special autonomy law was passed in 2001 after the Papuan Spring had begun, but this atmosphere was quickly soured by conservative elements in the parliament and the military establishment. They considered the law a threat to the integrity of the nation, believing that it could provide a route to West Papuan independence. These same elements then used varying strategies to try and stop this possibility, by restricting political discourse and trying to control institutions created by the special autonomy law. These strategies are still hallmarks of governance and controls on freedom of expression and association in West Papua. The strategies have been supported by formal policies. In 2003 President Megawati Sukarnoputri created the West Papua Province, with the intention of hampering West Papuan unity. In the same year the Constitutional Court ruled this move was illegal but President Susilo Bambang Yudhoyono then overruled the Constitutional Court in 2008, confirming the creation of the new province by using a 'Government Regulation in Lieu of Law', which does not require legislative approval.¹¹ His decree went against legislation passed by the Indonesian Parliament the previous year which set out very specific conditions for the creation of new provinces and districts. New provinces could be created only after villages and settlements had lobbied district, then provincial governments, for their creation.¹² However even this route to approving new districts and provinces is flawed because the institutions, assumed to represent the 'will of the people' at the grassroots, the MRP and the DPRP, are not representative. Candidates cannot express pro-independence views.

Furthermore, parts of the law have not been implemented or are incompletely or ineffectively implemented. This selective implementation can be seen for example, in the government's failure to establish a truth commission for past crimes committed in the territory,¹³ to allow the establishment of political parties¹⁴, or to allow the official use of the West Papuan emblem, the Morning Star, because it is associated with West Papuan nationalism. Bearing this in public often leads to repressive actions by the security forces including treason charges.¹⁵ Besides failing to implement basic ele-

¹¹ N. Hosen 'Emergency powers and the rule of law in Indonesia' in V.V. Ramraj and A.K. Thiruvegam, *Emergency Powers in Asia: Exploring the Limits of Legality* Cambridge University Press, 2010, pp.272-273; Peraturan Pemerintah Pengganti Undang-Undang 1 2008 Perubahan atas Undang-Undang 21 2001 tentang Otonomi Khusus Bagi Provinsi Papua.

¹² Undang-undang 78, 2007 tentang tata cara pembentukan, penghapusan dan penggabungan daerah, 16.

¹³ See Undang-Undang 21 2001 tentang Otonomi Khusus bagi Provinsi Papua, 45, 2.

¹⁴ See Undang-Undang 21 2001, 28. Aceh, with power devolved through special autonomy legislation, had local political parties legalised in 2006. In 2013, the symbol of the governing party, GAM (Gerakan Aceh Merdeka, Free Aceh Movement), Aceh's governing party, was used in the province's flag despite a decree law which banned 'separatist' symbols. See PP 77 2007 tentang lambang daerah; and A. Sumule, 'Evaluasi Otsus Papua 2001-2018. Bab per Bab', 2018.

¹⁵ V. Koman and TAPOL 'The 2019 West Papua Uprising. Protests against Racism and for self-determination.' September 2020, p.12. <https://www.tapol.org/sites/default/files/The%202019%20West%20Papua%20Uprising.pdf>

ments of the law, the government emphasises ‘development’, but as the shutdown of peaceful assemblies in 2019, 2020 and 2021 shows, normal democratic activity is not allowed.

The government has said it plans to revise special autonomy funding arrangements, particularly that given in the DAU. The DAU consists of a block grant of two percent of the national budget, which will increase by 0.25 percent to 2.25 percent. Up to 50 percent of future DAU funds are likely to become dependent on how well Jakarta judges the provincial governments in West Papua have been ‘governing’ and ‘performing’. The national government will therefore assume more authority over funding and development projects. However there are serious problems with the implementation of these development projects and what they will actually achieve. Officially the special autonomy law is supposed to “protect the rights of West Papuans”.¹⁶ But many development projects are implemented in a top-down way, without equitable West Papuan participation. In addition there is no way to evaluate how funds have been improving the position of economically-marginalised West Papuans. It is therefore not clear how ‘performance’ and ‘governance’, which has the objective of improving West Papuan marginalisation, will be assessed.¹⁷

West Papuans continue to be economically marginalised in several ways. Based on assessments of the Indonesian government’s statistics agency, the BPS (*Badan Pusat Statistik*), West Papua’s two provinces are the most economically disadvantaged in Indonesia.¹⁸ Claims that there have been minor improvements in West Papua’s human development index,¹⁹ part of which assesses poverty, rely on provincial-level data which may obscure local differences. Another vehicle which was supposed to economically empower West Papuans in the 2001 law was the creation of local enterprises, owned by West Papuans. However local enterprises account for a very small proportion of provincial income and the ownership of most companies registered in West Papua is overwhelmingly in the hands of non-West Papuans.²⁰ Enterprises small and large are also owned by transmigrants from elsewhere in Indonesia but the national government can blame neither them nor the security forces for poor ‘performance’ or ‘governance’, since they have encouraged transmigration, a legacy of the Suharto era, and failed to reform the

¹⁶ UU 21 2001, 5, 2.

¹⁷ ‘*Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang otonomi khusus bagi provinsi Papua dan Papua Barat*’. Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak asasi Manusia 2020, p.67.

¹⁸ D. H Jayani, ‘*Papua, Provinsi dengan Tingkat Kemiskinan Tertinggi di Indonesia*’ 10 February 2021. <https://databoks.katadata.co.id/datapublish/2021/02/18/papua-provinsi-dengan-tingkat-kemiskinan-tertinggi-di-indonesia#:~:text=Papua%20menjadi%20provinsi%20dengan%20tingkat,Cenderawasih%20mencapai%2026%2C8%25.&text=Secara%20umum%2C%20tingkat%20kemiskinan%20di,2020%20mencapai%2010%2C19%25>; see also Sumule, Bab per bab, Bab X, 2018.

¹⁹ ‘*Hasil Penyelarasan*’, op.cit. p.39.

²⁰ Sumule op. cit., Bab X.

security forces' business interests allowing police and military to continue to profit from West Papua's resources.

A serious problem with funding is the security forces' control of many on-and-off budget business activities in the mining, plantation and forestry sectors and the flourishing of these activities within newly-created districts and provinces (a policy called *pemekaran*). The security forces have taken over or facilitated the takeover of West Papuan land and unsustainably extracted its resources.²¹ In addition, there are plans to create several new provinces, taking the total up to six.²² While the West Papua Province was created in 2008 by presidential fiat, some still argue that new districts and provinces can increase 'inclusive' development. They argue that more local government will facilitate the equitable participation of indigenous West Papuan communities in the development process,²³ as officially, *pemekaran* is supposed to amplify the popular will of indigenous West Papuans. However in reality West Papua does not fulfil the requirements in law for the creation of new provinces.²⁴ In addition once a new province or district is created, the security forces establish new bases there, increasing militarization, profiting from the exploitation of natural resources which in turn raises tensions and leads to further conflict.²⁵ In Intan Jaya Regency, and other central highlands regencies in the last few years, *pemekaran* has allowed the security forces to benefit on the pretext of countering an armed insurgency.²⁶ The creation of new provinces therefore claims to increase inclusive development but in reality creates situations where the most powerful branch of government in remote areas are often the security forces, which is not conducive to either democracy or reducing West Papuan economic marginalisation.

While supporters claim that *pemekaran* could decentralise authority, the national government took further steps in 2020 to return more control over development projects to Jakarta. In October 2020 President Widodo passed a presidential instruction (Inpres)²⁷ returning the authority over development projects to the national government. The 2020 decree contains a so-called "new framework for Papua", focussed on economic development. The authority to implement the 'framework' lies

²¹ Greenpeace International, 'License to Clear' <https://www.greenpeace.org/international/publication/47071/licence-to-clear/>. April 2021, pp.13, 76, 100.

²² CNN Indonesia 'Papua Ditarget Mekar Jadi 6 Provinsi, Perdebatan Masih Alot' 8 April 2021. <https://www.cnnindonesia.com/nasional/20210408171759-20-627596/papua-ditarget-mekar-jadi-6-provinsi-perdebatan-masih-alot>

²³ 'Hasil Penyelarasan...', op.cit. p.78. The same source states that "security disturbances...are the result of under [be-lum]development in Papua, whether because of wrong intervention or because of uneven distribution of the results of development", p.77.

²⁴ Z. Amali, 'Tak Ada Daerah di Papua yang Memenuhi Syarat Pemekaran Provinsi', 5 March 2020. Tirto.id.

²⁵ TAPOL Briefing 'Entrenched militarism...' December 2020.

²⁶ V. Mambor 'Konflik Intan Jaya (1): Resiko Kekerasan yang lebih meluas di masa mendatang' 26 December 2020. Jubi.com.

²⁷ Instruksi Presiden 9 2020 tentang percepatan pembangunan kesejahteraan di provinsi Papua dan Papua Barat.

with a unit in which the four senior ‘Coordinating Ministers’,²⁸ the President’s chief of staff, and most notably, the Home Affairs Minister, play key roles. Inpres 9/2020 mapped out a number of ‘major projects’ integrated into a national medium-term development programme, RPJMN (*Rencana Pembangunan Jangka Menengah Nasional*), running from 2020 to 2024.²⁹ In other words, months before new special autonomy funding was to be debated among parliamentarians in Jakarta in January 2021, government ministers were given significant authority to ‘oversee’ and direct a four-year development plan, which could imply that the outcome of a debate in the legislature was a foregone conclusion.³⁰

While this presidential decree broadly follows previous approaches, responding to calls for democracy with yet more development projects, it is not yet well understood how far changes will be made to the existing special autonomy law. In 2014 the Ministry of Home Affairs drafted a new special autonomy law³¹ which is reportedly now being debated in Indonesia’s parliament having been rejected in Commission II of the DPR (*Dewan Perwakilan Rakyat*, People’s House of Representatives) that year.³² The draft is important because it highlights the role of the Ministry of Home Affairs in delivering outcomes for Jakarta in West Papua. For example, the draft tries to remove the Governor’s ability to ‘agree’ to the Chief of Police’s (*Kapolda*) appointment, making it subject to the Governor’s ‘consideration’.³³ The Chief of Police position provides a way for the Ministry to maintain influence in West Papua. This is partly because of the police’s influence on policy (from intelligence gathering, policing civil society and pro-independence groups, and involvement in armed conflict through the ‘mobile brigade’ paramilitary police, Brimob). Also, a previous holder of the *Kapolda* post, Tito Karnavian, was successively promoted to the national chief of police and is now the Home Affairs Minister. Aside from the police, the 2014 Home Affairs draft also attempted to change

²⁸ These are the Coordinating Minister for Politics, Law and Security; the Coordinating Minister for Economy; the Coordinating Minister for Human development and Culture; and the Coordinating Minister for Maritime Affairs and Investment.

²⁹ Inpres 9 2020, D4, 2, a.

³⁰ Statements by ministers indicate that the only significant changes in the renewal will involve the amount of funds, not the “existing structure of state administration and central-local relationship”. See J. Ramdhani, ‘Mahfud Md: Dana Otsus Papua Diperpanjang, Pengawasan Diperketat!’ 31 March 2021. <https://news.detik.com/berita/d-5514922/mahfud-md-dana-otsus-papua-diperpanjang-pengawasan-diperketat> 31 March 2021.

³¹ The draft seemed to be a response to a new draft special autonomy law written by officials in the provincial government of Papua province, ratified in a plenary session of the provincial parliament (DPRP, *Dewan Perwakilan Rakyat Papua*) in January 2014, which would have established a ‘Governor-General’ position and under certain circumstances, would have allowed a referendum on the future of West Papua in Indonesia to be held. See A. Sumule, ‘Kronologi Penyusunan RUU pemerintahan Papua untuk Menggantikan UU Otsus Papua dan Pendaftarannya di DPR RI’.

³² A. Elisabeth, ‘Revisi UU Otonomi Khusus, Bagaimana Posisi Masyarakat Adat Papua?’ 7 May 2020 Mongabay.co.id. The draft law was rejected by the provincial assembly because it hadn’t been subject to any of the normal stages of pre-approval consultation.

³³ Compare *Rancangan Undang-Undang (RUU) tentang pemerintahan Otonomi Khusus*, August 18 2014, 29,1 with *Undang-undang 21 2001*, 48,5.

policies under the 2001 special autonomy law. The Home Affairs Minister had already approved all MRP representatives, but the draft would have enabled the Minister to oversee their inauguration and candidates would also become subject to nomination by an ‘ad hoc committee’³⁴ a mechanism that could see appointments more strictly controlled.

The MRP is itself partly a result of ‘asymmetric decentralisation’, which appeared in the special autonomy law of 2001 and has been used elsewhere outside Indonesia.³⁵ Some see asymmetric decentralisation as preventing power from being concentrated in the hands of one group, incorporating marginalised actors, and giving people “enough access to politics.”³⁶ But it may equally invigorate pro-independence movements, a claim partly borne out by the MRP’s low levels of legitimacy in the eyes of many West Papuans, frustrated by its control and lack of representation.³⁷

These tactics guarantee control but have also led to discontent among West Papuans. In 2005 street demonstrations against special autonomy were organised to protest the failure to implement the ‘protection’ of West Papuan culture, promised in the special autonomy law.³⁸ In 2010 street protests were again held to ‘return’ special autonomy to the provincial parliaments, including the MRP, and the government reacted by fast-tracking development projects. In 2019 many years of frustrations over institutional racism against West Papuans, failures to represent West Papuan people and human rights abuses, spilled over into street demonstrations. The authorities then clamped down on this upsurge after six weeks when they were forcibly stopped. The PRP has vowed to continue to take to the streets and to hold a “people’s debate” (*musyawarah rakyat*) which they claim will be the only legitimate form of representation of the West Papuan people in deciding the status of special autonomy.³⁹

Special autonomy has had a long and troubled history. Some West Papuans held hope in 2001 that it could lead to genuine change after the New Order government but were quickly frustrated in these hopes. A pattern soon set in of political and civil society activists organising street protests

³⁴ *RUU 2014 op.cit.*, 59, 2.

³⁵ Asymmetrical decentralization is a way to set power relations between national and regional governments. It is used both to accommodate ethnic minorities in formal governing institutions (in this case the DPRP and the MRP) and to “mitigate separatist tendencies” and “to contain intrastate conflict”. See Haryanto, Lay and Purwoko, *op. cit.* p.367.

³⁶ ‘Hasil Penyelasaran...’, p.30.

³⁷ Haryanto, Lay, C. Purwoko *op.cit.*

³⁸ On that occasion, according to one source, local officials made promises to implement “200” local regulations (*per-dasi* and *perdasus*) to fulfil this objective within two years; 16 years later the promise remains unfulfilled. See A. Pabika, ‘Selama Otsus Berlaku, Trada Jaminan Hidup untuk Masyarakat Adat Papua’. 7 August 2020. suarapapua.com.

³⁹ ‘Nasib Otonomi Khusus Papua diputuskan dalam “Musyawarah Rakyat Papua”’, 6 May 2021.

<https://petisirakyatpapua.org/2021/05/06/nasib-otonomi-khusus-papua-diputuskan-dalam-musyawarah-rakyat-papua/>

against special autonomy followed by the national government promises to economically improve the lives of West Papuans. However, these promises deliberately did not include improving democracy and human rights and this pattern is set to continue into 2021 and beyond. Local political institutions, established under special autonomy, need less interference and more power to fulfil their mandates properly. Restrictions on freedom of assembly and expression need to be lifted and international observers admitted. The fundamental issue at stake over the coming years is the ability of West Papuan people to decide their own future rather than the efforts of the Indonesian government to promote the artificialities of development.

Recommendations

To the Government of Indonesia:

1. Respect the mandate of MRP to evaluate Otsus as set out under the special autonomy law and to respect the wishes of the grassroots movement organised under the PRP.
2. The government should recognise that providing large amounts of funds for development projects cannot on its own decrease the marginalisation of West Papuans, and often leads to opposite outcomes. Instead, it should recognise that this can be achieved by respecting West Papuans' rights to govern themselves in the ways that they choose, including ways which accommodate different perspectives about the past and future of West Papua. A constructive step in this direction would be to implement provisions of the 2001 special autonomy law by addressing and resolving human rights abuses, legalising the creation of political parties whatever their political orientation, and desisting from controlling admission into the provincial legislatures of groupings that the government does not agree with.
3. As we have previously noted, the security forces have profited from West Papua's natural resources in ways which do not respect West Papuans' right to land and resources. There is little obvious political will shown by civilian politicians in Jakarta or Jayapura to check the power of the police and military. Doing so is fundamental to breaking a pattern of resource misuse and violent conflict. We recommend that the Indonesian government make concerted efforts and enlist support from sympathetic members of civil society to hold the security forces accountable for their actions in West Papua and recognise democracy in Indonesia cannot exist without these conditions.

May 25, 2021

info@tapol.org