

The Legal Status of Customary Villages within the Framework of Special Autonomy in Papua A Perspective on Legal Politics

Frans Reumi¹, Kadir Katjong², Tom Alfa Samuel Reumy³
¹²³ Fakultas Hukum, Universitas Cenderawasih, Indonesia

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Corresponding Author:
Author Name*: Frans Reumi
Email*:
fransreumi@yahoo.com

Abstract: The purpose of this article is to explore the normative perspective of legal politics in applying the principle of decentralization, which grants authority to regions to regulate and manage their governance. This principle is manifested in regional autonomy and special autonomy for certain regions, such as Aceh, Papua, and West Papua, with constitutional foundations in Articles 1, 18, 18A, 18B (1) and (2), and 28I (3) of the 1945 Constitution of the Republic of Indonesia. These articles provide the legal basis for recognizing special regions and areas governed by laws, as stipulated in Article 399 of Law Number 23 of 2014, and Articles 94 to 111 of Law Number 6 of 2014. Regarding special autonomy in Papua, both philosophical and juridical aspects are addressed by Law Number 2 of 2021, which amends Law Number 21 of 2001 on Special Autonomy for Papua Province. This is supported by Government Regulations Number 106 and 107 of 2021, and further enforced by regional regulations, such as Papua Province Regional Regulation Number 3 of 2022 and Jayapura Regency Regional Regulation Number 1 of 2022 concerning Customary Villages. These regulations provide the legal framework for the nine customary law communities in the Tabi/Mamta area of Jayapura Regency. From a sociological perspective, these customary villages function within a traditional leadership system, led by senior figures known as Ondofolo (Ondoafi), reflecting the embedded customary institutional framework..

Keywords: Legal Status, Customary Villages, Special Autonomy of Papua

INTRODUCTION

In accordance with the constitutional provisions stated in Article 18, paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) after amendment, it is affirmed in paragraph (1) that "The Unitary State of the Republic of Indonesia is divided into provinces and the provinces are further divided into regencies and cities, each province, regency, and city has its own local government, which is regulated by law." Meanwhile, paragraph (2) states that "The provincial, regency, and city governments shall govern and manage their own government affairs according to the principles of autonomy and delegation of authority." Furthermore, Article 1, paragraph (2) and paragraph (3) state that "Indonesia is a state based on the rule of law." In this context, the constitution allows provincial and regency/city governments to implement the principle of regional autonomy in accordance with the political and legal system adopted in Article 18 of the UUD NRI 1945, as long as it does not hinder the continuity of national governance and is not in conflict with applicable laws and regulations. The implementation of Article 18 of the UUD NRI 1945 is based on Article 1, paragraph (3) which emphasizes that "Indonesia is a state based on the rule of law." The government is obliged to respect the autonomy of indigenous governments, such as traditional village governments (kampung adat) which are synonymous with customary villages. However, in reality, through government policies, in accordance with the principle of decentralization as stated in Article 18, Article 18A, paragraph (1) and paragraph (2), Article 18B, paragraph (1) and paragraph (2), and Article 28I, paragraph (3) of the UUD NRI 1945, as derived in the



organic laws enacted below it, have deviated from what the constitution mandates. Therefore, in the social, national, and state life, the constitution explicitly regulates the implementation of the principle of decentralization alongside the principle of medebewind.

The use of these principles constitutionally does not mean revoking or nullifying the principles of government that exist in customary law communities; on the contrary, it serves as a foundation for the administration of state government, including the administration of regional government at the provincial, regency/municipal, district, and village levels within the territory of the Unitary State of the Republic of Indonesia (NKRI). Thus, the implementation of regional autonomy essentially means the administration of government that is based on and respects the basic principles of customary law governance as manifested in the existence of traditional villages in customary law communities with multicultural cultures.

In the administration of government from the central government to the lowest level of village government and traditional villages, also known as "kampung" or "kampung adat" by another name, the constitution mandates the use of the principle of "musyawarah-mufakat" or deliberation and consensus. This principle is not something new, but has long been ingrained in the administration of village government or by another name, as stated in Law Number 5 of 1979 concerning Villages before the amendment, after the amendment of Law Number 6 of 2014 concerning Villages (Village Law), and Government Regulation Number 11 of 2019 concerning the second amendment to Government Regulation Number 43 of 2014 jo. Government Regulation Number 47 of 2015, Article 1 number 1 which states that "village" and "traditional village" or by another name, is a "legal community unit that has territorial boundaries authorized to regulate and manage local government affairs based on community initiatives, ancestral rights, and/or traditional rights recognized and respected in the national government system of the Unitary State of the Republic of Indonesia." Meanwhile, in Article 1 letter l of Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua (Papua Autonomy Law) before the second amendment, it is stated that "Kampung" or by another name is "a legal community unit that has authority to regulate and manage the interests of the local community based on local customs and traditions recognized in the national government system and located in the regency/municipality." Technically, both laws provide flexibility in the naming of any institutional unit at the village or traditional village level according to local needs and the naming conventions in the respective areas. Furthermore, the provisions in Article 6 paragraph (1) of Law Number 6 of 2014 concerning Villages (Village Law) state that "a village consists of a village and a traditional village," while paragraph (2) states that "...as referred to in paragraph (1), Village or Traditional Village is adjusted to the naming conventions in the respective local area," in accordance with the mandate of Article 1 letter l of the Papua Autonomy Law mentioned above. For the naming of "Kampung Adat," it is in accordance with the mandate of the Village Law and the Papua Autonomy Law. Thus, referring to the definition of Village and/or Traditional Village is synonymous with Kampung and Kampung Adat, which places customary law communities as legal subjects in the administration of Kampung and Kampung Adat in accordance with the mandates of the aforementioned laws. Village or traditional village referred to by another name, Kampung Adat, before the establishment of the Unitary State of the Republic of Indonesia (NKRI) is empirical evidence of the existence of Village or Traditional Village with the same naming convention as Kampung and Kampung Adat.

The mention of Desa Adat is synonymous with Kampung Adat as stated in the "explanation in Article 18 of the 1945 Constitution of the Republic of Indonesia (UUD RI 1945) prior to amendment, which mentions that "In the territory of Indonesia, there are approximately 250 "Zelfbesturende landschappen" and "Volksgemeenschappen", such as villages in Java and Bali, Nagari in Minangkabau, village and marga in Palembang, and including "Kampung and Kampung Adat" in Papua at the same level. Therefore, these regions have their own original institutional form and structure, and can be considered as special regions in

the development of Indonesia's political and legal system, while other regions are categorized as special regions."

The Republic of Indonesia (NKRI) respects the position of special or specific regions in accordance with the mandate of Article 399 of Law Number 23 of 2014 concerning Regional Government (UU Pemda), and all regulations regarding other regions shall recognize the rights of the original origins of districts/cities and villages or traditional villages, which shall be the responsibility of the state (government). Therefore, their existence must be acknowledged and provided with legal certainty for their sustainability within the NKRI regarding the existence of traditional villages or traditional villages, even if referred to by other names, according to the needs of the local indigenous law community. In the development of legal politics, traditional villages still exist empirically, while juridical techniques are still implicit in every provision of laws and regulations, for example in Article 95 to Article 111 of the Village Law.

From the perspective of legal politics, the legal position of traditional villages has undergone several policy changes, but not all needs have been accommodated, as changes in the history of legal politics regarding the regulation of Villages or Traditional Villages, Hamlets and Traditional Hamlets, have been established in several regulations since the old order, the new order, and the reformation era, namely: Law Number 22 of 1948 concerning the Basic Principles of Regional Government, Law Number 1 of 1957 concerning the Basic Principles of Regional Government, Law Number 18 of 1965 concerning the Basic Principles of Regional Government, Law Number 19 of 1965 concerning Desa Praja as a Transition Form to Accelerate the Establishment of Level III Regions throughout the Territory of the Republic of Indonesia, Law Number 5 of 1974 concerning the Basic Principles of Government in Regions, Law Number 5 of 1979 concerning Village Government, Law Number 22 of 1999 concerning Regional Government, and finally Law Number 32 of 2004 concerning Regional Government as amended by Law Number 23 of 2014 concerning Regional Government (UU Otda). Thus, in its development from the description above, it is illustrated that the history of legal politics from Villages to Traditional Villages, or by other names such as Hamlets, has been recognized in Law Number 6 of 2014 (UU Desa) and Government Regulation Number 43 of 2014 concerning the Implementation of the Village Law, jo. Law Number 21 of 2001 before the amendment, Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for Papua Province (UU Otsus Papua). Meanwhile, its implementing regulations are Government Regulation Number 106 of 2021 concerning the Authority and Institutions for the Implementation of Special Autonomy Policy in Papua Province (PP Number 106 of 2021 Otsus Papua) and Government Regulation Number 107 of 2021 concerning Receipt, Management, Supervision, and Planning of Development Acceleration in the Implementation of Special Autonomy in Papua Province (PP Number 107 of 2021 Otsus Papua), in accelerating development for the welfare of the indigenous people of Papua, supported by Provincial Regulation of Papua Number 3 of 2022 concerning "Kampung Adat" jo. Jayapura Regency Regulation Number 8 of 2016 amended by Jayapura Regency Regulation Number 1 of 2022 concerning "Kampung Adat", as the legal basis for implementation for the indigenous law community of Jayapura Regency.

Implicitly, the legal status of indigenous villages is implied in Article 95, which emphasizes the formation of customary village institutions in order to carry out customary functions as an original structure of the village, with the village government as a partner, in preserving and developing customs and traditions, and acknowledging the village community. Article 96 stipulates that the Government, Provincial Government, and Regency/City Government arrange for the integration of indigenous customary communities and designate them as Indigenous Villages. Article 97 focuses on the designation of Indigenous Villages, referring to Article 96, which recognizes the existence of a united indigenous customary community with clear territorial, genealogical, and functional characteristics, in line with the principles of the Unitary State of the Republic of Indonesia (NKRI). Article 98 states that Indigenous

Villages are designated by Regional Regulations of the Regency/City. Article 101 emphasizes in paragraph (1) that the Government, Provincial Government, and Regency/City Government arrange for the arrangement of Indigenous Villages, and paragraph (2) grants authority to the Regency/City Government to arrange for Indigenous Villages through regional regulations (Perda) in accordance with the Village Law.

Furthermore, from a normative aspect, the government implements a legal and political policy of applying special autonomy (decentralization) to regions that are considered to have prolonged social conflicts that may lead to national disintegration within the territory of the Unitary State of the Republic of Indonesia (NKRI). Therefore, the state takes strategic steps in the form of Special Autonomy Laws for certain regions such as Aceh, Papua, and West Papua, through an asymmetric decentralization policy, as a middle ground to achieve the welfare of the community in resolving social conflicts (national disintegration) that seek to secede from NKRI, as referenced in Article 399 of the Regional Autonomy Law.

From the perspective of legal politics, as regulated by the Second Amendment of Law Number 21 of 2001 on Special Autonomy for Papua, article 4 paragraph (2) states that "In addition to the authority... in the framework of implementing Special Autonomy, the Province of Papua is granted special authority based on the Law on Special Autonomy for Papua." The aforementioned special authority is in the form of regulating special regional regulations (Perdasus) and provincial regional regulations (Perdasi) that are derived from authority in the form of district/municipal regulations. As reflected in the explicit policy of the Jayapura Regency Government, in accordance with Article 101 of the Village Law, there are two affirmative local regulations, namely Jayapura Regency Local Regulation Number 13 of 2017 on "Village Government" and Jayapura Regency Local Regulation Number 8 of 2018 on "Customary Village." Both of these local regulations are applicable in the legal jurisdiction of Jayapura Regency, as a tangible manifestation of the implementation of the philosophy of special autonomy for Papua, which prioritizes support, protection, and empowerment of customary villages as a unit of customary law society along with their traditional rights that are preserved, respected, and upheld by all members of the customary law society in Jayapura Regency.

Empirically, customary villages (customary governments) have existed long before the establishment of village governments, and have been living with customary democratic practices among the customary law communities in Jayapura Regency for generations. This customary democratic environment determines the functioning of customary village governance. Customary villages are units of customary law society that have their own autonomy in the sense that they are not granted by the state or higher government, but have grown alongside the dynamics of the customary law communities in Jayapura Regency, in accordance with the historical background of Indonesia's legal politics.

The term "customary village" is implicitly understood as "Desa Adat" and "Lembaga Adat Desa" or known by other names..., and further referred to as "Kampung" according to Article 1 letter 1 of Law Number 21 of 2001 prior to the second amendment in Law Number 2 of 2021, which states that it is "a unit of customary law society that has a defined territory and authority to regulate and manage local government affairs based on the initiative of the local community, ancestral rights, and/or traditional rights recognized and respected within the system of the Unitary State of the Republic of Indonesia" (Article 43 of the Law on Regional Autonomy, jo. Article 1 number 1 of the Village Law). Meanwhile, "Desa Adat" is known as "kampung adat" in the context of customary law communities in Jayapura Regency.

The nine (9) customary law communities in Jayapura Regency have long been a cohesive community with a structured organization, possessing the necessary components to stand independently as customary institutions. These nine (9) customary laws communities have a unified legal system, unified leadership, and unified environmental management based on collective rights to land and water for all their members. The form of kinship law influences the village government system and customary village government in the general community system. The exercise of power and authority in the government system and general

community system of customary institutions is processed through the customary community institution or customary consultation institution (LMA) as a forum for formulating and determining customary government policies or customary village government. The agreement of the customary institution serves as the foundation for the actions of customary chiefs or heads of clans, tribes, and clans in exercising power and authority over members of the customary law community in the province of Papua, which is spread across seven customary territories, each in five customary territories, namely La Pago, Mee Pago, Anim Ha, Saireri, and Tabi/Mamta, while two customary territories, Domberay and Bomberay, are located in West Papua Province.

Within the nine (9) customary law communities in Jayapura, Papua, four typologies of traditional political leadership are also recognized, as referred to by J.R. Mamsoben (1994): 1) the Big Men (respected men) leadership system, 2) the Clan/Tribe leadership system, 3) the King leadership system, and 4) the Mixed leadership system. For the nine (9) customary law communities in Jayapura Regency, the typology of leadership system recognized is the Clan leadership system. The Clan leadership system, according to several sources and ethnographic data from Papua, is institutionally referred to as customary government or customary village government, with specific characteristics as a customary village that grows together with the nine (9) customary law communities in 12 sub-territories of customary land.

The characteristics of traditional villages, based on empirical evidence, are similar to the characteristics of customary law communities as legal subjects: 1) customary land boundaries and territories based on historical origins (geological and territorial customs), 2) leaders based on social structure, 3) homogeneous population of customary law communities, 4) natural resources (customary wealth), 5) customary rules that are followed through generations and customary courts, 6) social relations among members of customary law communities based on kinship law, 7) local or regional language, 8) recognition by other customary law communities or neighboring communities horizontally.

Of these eight characteristics, qualitative criteria are used to determine a traditional village. This is reflected in the policy of the Regent of Jayapura Regency in the form of local regulations (Perda) of Jayapura Regency Number 8 of 2016 concerning "Kampung Adat". Kampung adat (Yo) in the local language of the Sentani customary law community, is a unity of customary law communities that have a tradition and a customary code of conduct passed down through generations, and have a specific territory and the right to manage their own household affairs based on customs and historical origins adhered to in the system of government of the Republic of Indonesia. Meanwhile, the government of a traditional village consists of the Village Head, Secretary, Treasurer, and customary implementers in each field who are assigned with tasks and authorities to carry out development and manage the finances of the traditional village in the process of organizing the government of the traditional village. Therefore, the two concepts of traditional village and the government of traditional village are both legal subjects, differing in the characteristics of customary law communities and the form of the structure of the government of the traditional village.

The legal status of traditional villages in Jayapura Regency, Papua Province, is defined in Article 18 paragraph (1) and paragraph (2), Article 18B paragraph (1) and paragraph (2), Article 28I paragraph (3), Article 32 of the 1945 Constitution of the Republic of Indonesia; Article 1 letter l, Article 43, and Article 50 paragraph (2) of Law on Special Autonomy for the Province of Papua before the second amendment with Law Number 2 of 2021 concerning Special Autonomy for the Province of Papua, along with Government Regulation (PP) Number 106 and PP Number 107, these articles have not been amended; Article 399 of Law on Local Governance, Article 1, Article 94 to 111 of Law on Villages. Papua Special Regional Regulation (Perdasus) Number 20 of 2008 concerning Customary Law Adjudication in Papua; Jayapura Regency Local Regulation Number 13 of 2017 concerning "Village Government" jo. Jayapura Regency Local Regulation Number 8 of 2016 concerning "Kampung Adat", and Jayapura Regency Local

Regulation Number 8 of 2018 concerning "Recognition, Protection, and Empowerment of Customary Law Communities".

The implicit legal recognition of the existence of traditional villages and customary villages, and even customary institutions, is contained in the legal status of the traditional village. The term "traditional village" or "customary village" is synonymous with other names such as "kampung" and "kampung adat", or customary institutions. The implementation of the customary institution, even as an institution of customary law (customary institution), serves as the legal basis for customary law communities in Jayapura Regency. Traditional villages and the 9 customary law communities become the main focus of the Regent's policy on the "Revitalization of Customary Law Communities as Legal Subjects" in the area of the original government of the Traditional Village. The program of traditional villages and customary villages is included in the planning mechanism through the Musrembang of traditional villages and/or customary villages, to ensure that the governance of customary villages coexists with sustainable development processes.

The Traditional Village of Jayapura Regency is built based on the characteristics known in the governance of the Keondoafian traditional village (traditional village of Sentani) or the governance of the Iram traditional village (traditional village of Genyem). The Traditional Village grows as a customary organization to accommodate aspirations, interests, or needs of the 9 customary law communities and customary institutions (traditional villages). The theory of customary political trias, which includes customary executive, legislative, and judicial branches, is embedded in the traditional village and is usually held and implemented by a customary leader or chief (ondoafi/iram), or can be distributed to other customary leaders from specific patrilineal clans in the 9 customary law communities with 12 sub-districts in the Tabi/Mamta customary area.

The traditional village is an original autonomous government with a constitutional mandate as stipulated in Article 18, 18A, 18B, and Article 28I paragraph (3) of the 1945 Constitution, which is inherent in the 9 customary law communities of Jayapura Regency. This is regulated through regional regulations (Perda) in the form of Regional Regulation Number 8 of 2016 concerning "Traditional Village", which governs the characteristics, forms, and organizational structure of the Traditional Village, and guides the attitudes and actions in managing the household affairs of the customary law communities autonomously. Similarly, the supporting members of the community still support the existence and sustainability of the traditional village, although there is already a formal village government established by Regional Regulation Number 8 of 2014 concerning "Village" of Jayapura Regency to carry out regional governance in the Tabi/Mamta customary area, which consists of 12 customary areas, 9 customary law communities, 19 districts, 5 urban villages, and 139 villages in 4 development regions.

In a normative juridical sense, recognition and protection of the existence of customary law communities in Papua are governed by Article 4, Article 43, and Article 50 paragraph (2) of the Special Autonomy Law for Papua before the second amendment of the Special Autonomy Law for Papua. Chapter XI, Article 43 paragraphs (1) to (5) provide "Protection of the Rights of Papuan Indigenous Communities". Meanwhile, in an empirical/sociological sense, there are 12 indigenous customary law communities in sub-districts, namely: (1) Kemtuk indigenous customary law community, (2) Mooy indigenous customary law community, (3) Ormu indigenous customary law community, (4) Orya indigenous customary law community, (5) Sentani indigenous customary law community, (6) Souwari indigenous customary law community, (7) Tepera indigenous customary law community, (8) Namblong indigenous customary law community, (9) Yewena indigenous customary law community, (10) Klesi indigenous customary law community, (11) Yokari indigenous customary law community, and (12) Yafsi Kaureh (Orya) indigenous customary law community. Additionally, there are nine other indigenous customary law communities, namely: (1) Sentani Buyakha (development area I districts: Sentani Timur, Ebungfauw, Sentani, Waibu),

(2) Moy, (3) Tepra-Yewena Yosu, (4) Yokari, (5) Imbinumbai, (6) Djouw-Wary (development area II districts: Sentani Barat, Depapre Revenirara, Yokari, Revenirara, Demta), (7) Elseng, (8) Demutru (development area III districts: Kemtuk, Kemtuk, Kemtuk Gresi, Namlong, Nimboran, Nimbokrang), and (9) Oktim (development area IV districts: Yapsi, Kaureh, Unurum Guay, Airu).

Considering the comprehensive explanation above, a normative juridical and empirical juridical approach is chosen to examine the "Legal Status of Customary Villages in the Framework of Special Autonomy in Papua from the Perspective of Legal and Political Science" as an effort to restructure the existence of customary villages from philosophical, sociological, and juridical aspects in the 9 customary law communities within the 12 sub-districts of customary territories.

METHOD

The methods used in legal research consist of dualism in approach, namely normative and empirical/sociological approaches, supported by legal literature sources such as primary, secondary, and tertiary materials. As well as observation and interviews with informants, respondents, and sources, and descriptive analytical analysis of legal materials.

RESULTS AND DISCUSSION

Normatively, the understanding of legal politics, according to Moh. Mahfud, is the national implementation of legal policies by the government, including the development of core legal principles and the renewal of legal materials to align with societal needs. Furthermore, the implementation of existing legal provisions includes reaffirmation of the functions of institutions and the training of law enforcement personnel. This means that legal politics encompasses the process of lawmaking and law enforcement, which can indicate the nature and direction in which the law will be constructed and enforced. On the other hand, Satjipto Rahardjo defines legal politics as the activities of choosing and employing methods in an effort to achieve specific social and legal goals in society. Moreover, Soedarta states that legal politics is the state's policy through authorized state institutions to establish desired regulations that are expected to reflect the aspirations of society in order to achieve the desired goals. These three experts provide an understanding that normatively legal politics, within its limits, is seen as the state's policy in the field of law, including legislation, law formation, legal content, law enforcement, and related matters carried out by the executive, legislative, and judicial branches. Another reference in the theory of legal development by Mochtar Kusumaatmadja considers Indonesian society with its cultural diversity based on the principle of *Bhinneka Tunggal Ika* in Pancasila. The theory of legal development is considered a relevant tool to follow the development of societal diversity according to the time and place conditions. This means that the theory of legal development adjusts to the time and place conditions and contains the substance of law, legal structure, and legal culture as proposed by Lawrence W. Friedman. The theory of legal development reflects the fundamental function of law as a means of societal and legal renewal, and as an essential system needed for development in a diverse society of developing countries like Indonesia. Finally, law serves as a tool to maintain order in society, considering the conservative nature of law in preserving and upholding legal goals. From the holistic and comprehensive perspective of these three theories, they complement and integrate with each other in advancing a diverse society with cultural and legal backgrounds as a social engineering effort to achieve sustainable legal development goals.

If the three theories are reduced in the customary law society of Jayapura Regency, Papua Province, in order to achieve the goals and functions of the law for the general public and especially for the customary law society, along with state and customary institutions, including the traditional village within it. The

traditional village is integrated into customary law and culture in 12 sub-regions and 9 customary law societies in Jayapura Regency. Therefore, as an effort to restructure the traditional village, the legal position of the traditional village within the framework of Special Autonomy for Papua for accelerating development and welfare of the customary law society of Jayapura Regency can be elaborated from philosophical, juridical, and sociological aspects in a more formal manner.

1. The Philosophical Aspects of Customary Villages (legal ideals)

The essence of the aspirations and goals of the Unitary State of the Republic of Indonesia (NKRI) is to build a just, prosperous, and prosperous Indonesian society based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). This means that the establishment of the State represents a common desire of indigenous customary law societies in terms of political and legal organization. The aim is to enable indigenous customary law societies to live together peacefully based on the law. In addition, indigenous customary law societies can also strive for their interests or rights facilitated by the State as its responsibility, so that indigenous customary law societies can develop themselves and achieve prosperity and justice in accordance with the aspirations and goals of the NKRI in a peaceful manner.

Nine (9) customary law communities, 12 customary sub-regions, 19 districts, 5 urban villages, and 139 villages, are located within 4 development regions of Jayapura Regency as God's creation and part of civilized humanity, upholding Human Rights, religious values, democracy, law, and cultural values that exist within the customary law communities of Jayapura Regency, and have the right to enjoy the results of development in a fair manner. The system of government in the Republic of Indonesia, according to the 1945 Constitution, recognizes and respects special or special autonomous regional units as regulated by law. National integration within the framework of the Unitary State of the Republic of Indonesia must be maintained while respecting the equality and diversity of the social and cultural life of the indigenous Papuan communities of the 9 customary law communities, through the establishment of Special Autonomy for the Province of Papua, after the second amendment to Law Number 2 of 2021 concerning Special Autonomy for the Province of Papua (second amendment to the Special Autonomy Law of Papua) with two Government Regulations (PP) as its implementing regulations, namely Government Regulation Number 106 of 2021 concerning the Authority and Institutions for the Implementation of Special Autonomy Policy for the Province of Papua and Government Regulation Number 107 of 2021 concerning Acceptance, Management, Supervision, and Master Plan for Accelerated Development in the Implementation of Special Autonomy for the Province of Papua. These two Government Regulations provide legal references in the fields of customary institution and holistic and comprehensive authority in the implementation of the second amendment to the Special Autonomy Law of Papua in terms of legal politics, development law, and legal subsystems.

In order to realize the second amendment of the Special Autonomy Law of Papua in accordance with Government Regulation Number 106 on Authority and Institutionalization, as well as Government Regulation Number 107 on the Receipt, Management, Supervision, and Master Plan for Accelerated Development, a number of affirmative policies are needed in accordance with the special authority of the Papua Province regarding the universal and specific values of indigenous customary communities as derivatives in the second amendment of the Special Autonomy Law of Papua, which underlie legal and political policies in the form of special regional regulations (Perdasus) of Papua Province and/or Regional Regulations (Perda) of districts/cities regarding Customary Villages. Prior to the second amendment of the Special Autonomy Law of Papua, the Regent of Jayapura has implemented affirmative policies in the legal and political dimensions, in line with the vision of the Regent for Jayapura Baru. For its implementation,

the Regent of Jayapura has issued affirmative policies to protect and promote the 9 indigenous customary communities in the 12 sub-regions of Jayapura district based on institutional, administrative, and funding aspects in the customary villages, by granting extensive autonomy to the villages and/or customary villages in order to encourage the government of Jayapura district with several policies, namely: 1) Regional Regulation Number 8 of 2016 on "Customary Villages"; 2) Regional Regulation Number 8 of 2018 on "Indigenous Customary Communities"; 3) Regent's Decree Number 188.4/266 on the Establishment of the Task Force Team for Indigenous Customary Communities, for their self-reliance, progress, and welfare, in accordance with the mandate of Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia; Article 399 of Law Number 23 of 2014; Article 1 letter l and letter r, and Article 43, Article 50 paragraph (2), and Article 51 which have not changed in the second amendment of Law Number 2 of 2021 on Law Number 21 of 2001; Article 94, Article 95 up to Article 111 of Law Number 6 of 2014, in conjunction with the second amendment of the Special Autonomy Law of Papua through Government Regulation Number 106 and Government Regulation Number 107, and Regional Regulation Number 20 of 2008 on "Customary Justice in Papua."

The legal status of indigenous villages can be clearly understood as recognition, protection, and self-regulation in managing the potential of indigenous human resources and natural resources for the welfare of 9 indigenous communities in 12 sub-regions of Jayapura Regency within the 4 development regions will be enhanced. In line with the vision of Jayapura Baru, the Jayapura Regency Government is providing services for 9 indigenous communities in 12 sub-regions of indigenous communities for their welfare. The ultimate goal to be achieved is for the 9 indigenous communities with 12 indigenous community areas to be able to enjoy the available funds for village and indigenous village development safely, comfortably, reliably, and orderly.

In relation to the above description, the implementation of government and the implementation of indigenous village development must respect the values of cultural wisdom and customary norms that exist and are constitutionally recognized in the 9 indigenous communities in the 12 sub-regions of the local indigenous community. However, it must also adhere to the shared values of nationhood and nationality. In the 1945 Constitution of the Republic of Indonesia, the state recognizes and respects the unity of indigenous communities and their traditional rights as long as they are still alive and in line with the development of indigenous communities. This philosophical value serves as the foundation for building a diverse indigenous community in Indonesia that respects the cultural values and customary norms of each indigenous community or ethnic group, including the indigenous communities of Papua in Jayapura Regency.

2. The Juridical-Normative Aspect of Customary Village in Indonesia (Law)

It is necessary for the authority for legislation to exist. This means that every regulation must be made by a competent body or official. Otherwise, the regulation is legally void, considered to have never existed, and all its consequences are legally null and void. The Juridical Basis for the formation of the draft local regulation of Jayapura Regency regarding Adat Village can be distinguished into two aspects, namely formal juridical basis and material juridical basis. The formal juridical basis here relates to the aspect of authority, while the material juridical basis relates to the substance and content of the material to be regulated. The aspects of formal and material juridical basis are related to the authority based on:

- 1) The provisions of Article 1 paragraph (3), Article 18 paragraph (1) and paragraph (2), Article 18B paragraph (1) and paragraph (2), Article 28I paragraph (3) of the 1945 Indonesian Constitution which



stipulate that Regional Governments have the authority to establish Regional Regulations and other regulations to implement Autonomy and Devolution of Authority.

- 2) The provisions of Law Number 23 of 2014 concerning Regional Governments in Article 236 paragraph (1) to paragraph (4), and Article 237 paragraph (1) to paragraph (4) and Article 399.
- 3) The provisions of Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua, in Article 1 letter l, Article 4 paragraph (4) and paragraph (5) and Article 43, jo. Article 50 paragraph (2), before the second amendment, after the second amendment of Law Number 2 of 2021 on Law Number 21 of 2001, with Government Regulation (PP) Number 106 and PP Number 107 as the implementing regulations for Special Autonomy in Papua. These articles have not undergone any changes.
- 4) The provisions of Law Number 6 of 2014 concerning Villages, in Article 1 number 1, and Article 94 to Article 111.
- 5) Government Regulation Number 43 of 2014 concerning the Implementation of Village Law.
- 6) Special Regional Regulation (Perdasus) of Papua Province Number 20 of 2008 concerning Customary Justice in Papua.
- 7) Regional Regulation of Jayapura Regency Number 13 of 2017 concerning "Village Governance".
- 8) Regional Regulation of Jayapura Regency Number 8 of 2016 concerning "Customary Villages".
- 9) Regional Regulation of Jayapura Regency Number 8 of 2018 concerning "Recognition, Protection, and Empowerment of Indigenous People's Rights".
- 10) Decree of the Regent of Jayapura Number 188.4/266 concerning the Formation of the Task Force for Indigenous Peoples (GTMA).

In recognition of the indigenous village's rights, protection, and regulation de jure, it is evident in the policies of the Regent of Jayapura regency mentioned above, which places the indigenous village as a societal institution and partner in the administration of the village, district, and regency of Jayapura within the framework of the 4 regions of development, as the empowerment of the 9 customary law communities as subjects of sustainable development.

3. Empirical Aspects of Customary Villages (sociological)

A new awareness has emerged among the customary law communities in the Papua Province, specifically in the five customary regions: 1) Lapago, 2) Meepago, 3) Ha Anim, 4) Saireri, 5) Tabi/Mamta. The indigenous population of Jayapura regency, which consists of nine tribes in twelve sub-regions of customary law communities in the Tabi or Mamta customary region, has recognized the characteristics of their traditional governance system known as keondoafian or Iram, or by other names. Each of these tribes is embedded within the twelve customary regions of Jayapura regency. One of the indigenous communities in Jayapura regency, classified as part of the Melanesian ethnic group in Indonesia, boasts diverse cultures, historical origins, customs, and distinct languages. Meanwhile, the enforcement of the special policy on the Indigenous Village Regulation (Perda Kampung Adat) in Jayapura regency is based on fundamental values that encompass protection, empowerment, support, and recognition of ethics and morals, basic rights of the nine tribes in the twelve customary regions of Jayapura regency as indigenous Papuans, human rights, rule of law, democracy, pluralism, as well as equality in position, rights, and responsibilities as citizens within the customary governance system (customary statehood), commonly referred to as autonomous indigenous governance.

As mentioned above, ethnographically speaking, the development of 9 indigenous tribes in 12 regions of customary law communities within 4 development districts of Jayapura regency, with their traditional social governance structure known as traditional leadership system (adat), as classified by Dr. J.R Mansoben into four typologies of traditional leadership in Irian Jaya (Papua), often referred to as "customary or traditional governance system" spread across cultural ecological basis with traditional



autonomy (native autonomy) in 12 regions of indigenous communities. The basis of Traditional Autonomy is indigenous communities (customary law communities) that have authority and sovereignty characterized by: 1) genealogical territorial origin, 2) territorial extent and boundaries, 3) indigenous communities, 4) social structure with charismatic leaders, 5) ideal and procedural customary norms or rules, 6) customary justice, 7) natural resources, 8) local language, and 9) recognition from neighboring indigenous communities, which are classified into 7 customary law regions and traditional governance systems as follows:

- 1) The Big Man or Dignified Man Leadership System, with its customary government covering the La Pago customary territory (Jayawijaya regency) and the Me Pago customary territory (Paniai, Puncak, Puncak Jaya regencies...), as well as the Ha Anim customary territory (Merauke/Boven Digoel regencies).
- 2) The King Leadership System, in its customary government, covering the Bomberai customary territory (Fak Fak/Kaimana regencies...) and the Doberay customary territory (Sorong/Manokwari regencies...), and (Raja Ampat Islands regency).
- 3) The Chief of Tribe or Clan Leadership System, in its customary government, covering the Tabi/Mamta customary territory (Jayapura City, Jayapura regency, Sarimi, Keerom, and Mamberamo Raya regencies).
- 4) The Mixed Leadership System, in its customary government in the Cenderawasih Bay, covering the Saireri customary territory in Waropen, Yapen, Wondama, Biak Numfor (Mananwir), Supiori and Nabire Pantai regencies.

From a sociological perspective, the 12 sub-regions of customary territories and 9 customary law communities in Jayapura Regency have responded to the process of forming Regional Regulations (Perda) regarding Indigenous Villages, which can be identified as follows: (1) Kentuk Indigenous Community, (2) Mooy Indigenous Community, (3) Ormu Indigenous Community, (4) Orya Indigenous Community, and (5) Sentani Indigenous Community, (6) Souwari Indigenous Community, (7) Tepera Indigenous Community, (8) Namblong Indigenous Community, (9) Yewena Indigenous Community, (10) Klesi Indigenous Community, (11) Yokari Indigenous Community, and (12) Yafsi Kaureh (Orya) Indigenous Community. Therefore, ideologically, to peacefully and constitutionally advocate for the recognition of basic rights of the indigenous people of Papua, as well as the demands of the 9 tribes in the 12 regions of customary communities in resolving issues related to the governance of villages, particularly "customary villages", as original autonomous governance within the indigenous communities of Jayapura Regency, recognizing the traditional governance system of Keondoafian (ondofolo, Iram) or by other names.

From a sociological perspective, the potential of Kampung Adat is evident in 9 indigenous legal communities and 12 sub-areas with their respective characteristics are as below:

- 1) The appointment of the Head of Adat Village by the Head of Adat Authority through a deliberation mechanism (Dmutu, Touna Yarasey) is determined and confirmed by the five components of Adat, namely Ondofolo, Ondowapi, Iram, and others. The management of Adat Village is carried out by Ondofolo, Ondowapi, Iram, who remain as the head of the Village Government Authority, while the government affairs are carried out by the Original Village Government Structure Officials in accordance with their respective work responsibilities, adjusted to the functional structure of formal government.
- 2) The appointment of the Head of Adat Village by the Head of Adat Authority through a deliberation mechanism (Dmutru, Touna Yarasey) by the five components of Adat, namely Ondofolo, Ondowapona, Andowapi, Iram, Deuguena, Tubwe, Done, Marar Ma Taun. The administration is carried out by two Head of Affairs, namely the Head of Administration Affairs and the Head of Adat Affairs.



- 3) The Head of Administration Affairs is someone who is appointed through a deliberation mechanism (D'mutru, Toun Yarasey) by the five components of Adat to carry out or manage the administrative tasks of the adat village government.
- 4) The Adat Affairs include Abhu Afa, Nesking Wouw, Tekay, Wero, Wangkrang, Kembudase, Euna Yaro, Pra Yaro, Ijuni, according to the terms used in the respective community, to organize, operationalize, and control the existing traditional values system.

As for customary governance and the typology of leadership, Head of Klen, point 3 above, it is found in the Northeastern region of Papua, specifically in Jayapura Regency, for example among the Sentani people (inside and around Lake Sentani), Tobati people (in Yos Sudarso Bay formerly known as Humboldt Bay), Genyem or Nimbokran people (in the Grime River plain located west of Lake Sentani). The characteristics indicate that leadership is inherited based on lineage and religion, manifested in the control of land, water, and community livelihood resources, as well as the role of religious ceremony leaders. For instance, the leadership of Ondoafi among the Sentani people is legitimized by the lineage of the village founders and the eldest male child. Thus, the principle of primogeniture patrilineal applies, where each male child of Ondoafi has the right to assume the position or office if the incumbent fails to perform their duties due to old age, illness, or death.

The responsibilities of Ondoafi or by other names... encompass all aspects of village life, such as religion, economy, social welfare, security, and justice. For example, the leadership of Ondoafi and/or Iram has an organizational structure that can be outlined below. A new awareness has emerged among the customary law communities and 12 sub-regions of customary law in Jayapura Regency, to peacefully and constitutionally advocate for the recognition of basic rights, as well as demands for resolution of issues related to the violations and protection of human rights of the indigenous people of Papua among the customary law communities in Jayapura Regency. As mentioned above, ethnographically, the development of customary law communities in Papua is structured within the traditional leadership system based on traditional autonomy of customary law communities, classified as:

- 1) The Big Man or Respected Man Leadership System, with its customary government covering the La Pago customary territory (Jayawijaya Regency, Central Mamberamo Regency, Tonikara Regency, Yahokimo Regency, Nduga Regency, Pegunungan Bintang Regency) and the Mee Pago customary territory (Mimika Regency, Paniai Regency, Deyai Regency, Dogoyai Regency, Intan Jaya Regency, Dogoyai Regency, Puncak Regency, Puncak Jaya Regency, Nabire Regency), as well as the Ha Anim customary territory (Merauke Regency, Boven Digoel Regency, Mappi Regency, Asmat Regency).
- 2) The King Leadership System, in its customary government covering the Bomberai customary territory (Fak-Fak Regency, Kaimana Regency,) and the Domberay customary territory (Sorong Regency, Manokwari Regency, Manokwari City, South Manokwari Regency, Wondama Regency, Maybrat Regency, Tanbrauw Regency, Pegunungan Arfak Regency, South Sorong Regency, and Raja Ampat Islands Regency).
- 3) The Tribe Chief or Clan Chief Leadership System, in its customary government covering the Tabi/Mamta customary territory (Jayapura City, Jayapura Regency, Sarmi Regency, Keerom Regency, and Mamberamo Raya Regency).
- 4) The Mixed Leadership System, in its customary government covering the Saireri customary territory (Cenderawasih Bay) of Waropen Regency, Yapen Islands, Biak Numfor Regency, and Supiori Regency,).

Out of the four traditional leadership typologies mentioned above, one of them includes a social structure within the indigenous village, commonly referred to as customary governance, which is characterized by:



- 1) The traditional governance law with the typology of Big Man leadership, which is translated in Indonesian as "Pria Berwibawa," is known among the indigenous tribes residing in the inland areas (central highlands) ranging from the Bird's Head Peninsula in Western Papua to the border areas of Papua Province with neighboring Papua New Guinea (PNG) in the East. The term "Pria Berwibawa" is referred to by different names among each ethnic group, but carries the same meaning. For example, the Maybrat people refer to the Big Man as Bobot, meaning very strong or the Eastern cloth taker in Sorong Regency; the Mee people refer to it as Tonowi, meaning wealthy, generous, honest, skilled in diplomacy and speech in Paniai Regency; the Muyu or Mandobo people refer to it as Kayepak, meaning possessing skills such as knowledge of nature, skilled in diplomacy, able to hold pig feasts and generous, in Asmat Regency it is called Tesmaypit, meaning brave (Merauke Regency, Boven Digoel Regency, and Asmat Regency); the Dani people refer to it as Kain, meaning bravery in leading Heider wars in Jayawijaya Regency (Wamena). The characteristics of the Big Man (Pria Berwibawa) are characterized by their authority based on personal abilities. To become a Pria Berwibawa, one must achieve a position as a microcosm of society and gain the attention of everyone in that society. Therefore, a person's position as a leader can only be achieved through individual achievements. Thus, this position is considered an achievement. Additionally, another fundamental characteristic is that there are no representatives or assistants, only one leader without any representatives or assistants. The expected qualifications of a Pria Berwibawa are wealth (through exchange or barter), bravery, eloquence in speech, and generosity (providing food assistance, possessions). These characteristics are differentiated into two types based on their power over entrepreneurial abilities, as seen in the aforementioned ethnic groups.
- 2) The customary governance law with a typology of leadership types of Raja exists in areas that are transitional, ranging from the coastal areas of western Kepala Burung in Irian Island to the western coast of Mimika Barat in the southern coast of Irian Jaya. For example, in the Raja Ampat Islands (Maya tribe) in Fak-Fak Regency. Its characteristics, according to tradition, are inherited by the eldest son and the ruling leader. The scope of their authority is broader compared to the Ondoafi leadership model, whose authority is limited to only one village with a small population, and originates from the same ancestor called Lenege, with the same language as well. This second leadership model is the result of acculturation between the cultures of Irian on one hand, and the cultures of Maluku on the other hand. For instance, the influence of Sultan Tidore and Temate on the customary governance structure with the bestowal of customary titles such as Rat Hadat (council of customary law), Fun or Kalana (King), Jojau (vice king), Dumlaha (ceremonial leader), Ukum (law implementer), Mirino (tribute collector), and Bala (people) around the Raja Ampat Islands. The leadership in Raja Ampat Islands is called Fun or Kalana, and it exists in Sorong Regency, while in the Onim Peninsula it is called Rat (in Fak-Fak Regency). It has an organizational structure with the king as the leader and his assistants as mentioned above.
- 3) The customary governance system with typology of leadership called "Kepala Suku" or Chief of Tribe, exists in the Northeastern region of Irian Jaya, specifically in Jayapura Regency. For example, among the Sentani people (inside and around Lake Sentani), the Tobati people (in Yos Sudarso Bay, formerly Humboldt), and the Genyem or Nimbokran people (in the Grime River plains located to the west of Lake Sentani). The characteristics indicate that leadership is inherited based on lineage and religion. This is manifested in the control of land, water, and community resources, as well as serving as the leader of the religious community. For instance, the leadership of Ondoafi among the Sentani people is traditionally sanctioned based on the lineage of the village founder and the eldest son. Thus, the principle of patrilineal primogeniture applies, where each eldest son of Ondoafi has the right to assume the position or role if the incumbent is unable to fulfill

their duties due to old age, illness, or death. The responsibilities of Ondoafi encompass all aspects of village life, including religion, economy, social welfare, security, and justice. The leadership of Ondoafi follows a structured organizational hierarchy.

- 4) The customary government law with a mixed leadership typology is known by the indigenous law communities or tribes in the Cenderawasih Bay region. For example, the people of Biak in the Biak-Numfor islands and Doreri Bay in Manokwari; the people of Waropen on the eastern coast of Cenderawasih Bay and Wandamen on the coast of Teluk Cenderawasih. The characteristics are based on lineage and the founder of the village. Thus, the nature of leadership is inherited from past leaders. However, after the process of acculturation, the criteria for inheriting leadership are not solely based on lineage, but also on ability. This is due to the situation and conditions at that time, such as economic crises, disease outbreaks, and wars for capturing slaves that have affected the region, resulting in a need for capable leaders. For example, the Biak people who become leaders are called Mananwir or Kepala Keret/Adat, and their deputy is the war commander called Mambri, which is not based on age but on capability for males. The Waropen people who become village leaders (Keret/da) or clan leaders (nu) are headed by a customary leader called "Sera", which means leader, chief, or ruler. If someone is a Sera from the Senior Clan, they are called Serabawa, which means true leader (great leader), because they come from the oldest male among siblings from the oldest clan (keret).

CONCLUSION

From a normative perspective, the legal position of customary villages is in line with the legal policy framework for the implementation of special autonomy in Papua, both philosophically and juridically, as mandated by Article 1, Article 18 paragraph (1), paragraph (2), paragraph (5), paragraph (6); Article 18A paragraph (1) and paragraph (2); Article 18B paragraph (1) and paragraph (2), and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia; Article 339 of Law Number 23 of 2014 concerning Regional Government; and Article 4, Article 43, and Article 50 paragraph (2) of Law Number 21 of 2001 before the second amendment in Article 1 number 1, Article 6 paragraph (2), and Article 95 to Article 111 of Law Number 6 of 2014 concerning Villages, as well as Regional Regulation Number 8 of 2016 concerning Customary Villages in Jayapura Regency as the legal basis. The customary villages in Jayapura Regency reflect the indigenous governance in customary law within the nine (9) customary law communities, namely: 1) Sentani Buyakha (development area I districts: Sentani Timur, Ebungfauw, Sentani, Waibu), 2) Moy, 3) Tepra-Yewena Yosu, 4) Yokari, 5) Imbinumbai, 6) Djouw-Wary (development area II districts: Sentani Barat, Depapre Revenirara, Yokari, Revenirara, Demta), 7) Elseng, 8) Demutru (development area III districts: Kemtuk, Kemtuk, Kemtuk Gresi, Namlong, Nimboran, Nimbokrang), and 9) Oktim (development area IV districts: Yapsi, Kaureh, Unurum Guay, Airu), as customary institutions.

Meanwhile, from an empirical sociological foundation, the implementation of "Kampung Adat Kabataan Kabupaten Jayapura" is based on the nine (9) customary law communities in 12 sub-regions of customary communities, namely: 1) Kemtuk customary community, 2) Mooy customary community, 3) Ormu customary community, 4) Orya customary community, and 5) Sentani customary community, 6) Souwari customary community, 7) Tepera customary community, 8) Namblong customary community, 9) Yewena customary community, 10) Klesi customary community, 11) Yokari customary community, and 12) Yafsi Kaureh (Orya) customary community, within the four (4) designated development areas as stipulated by the regional regulation Number 8 of 2016, with its implementing regulations in the form of regent regulation.

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