

PERSPECTIVE

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The Second Amendment to Papua's Special Autonomy Law and the Recentralization of Power to Jakarta

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A military officer bids farewell to his child before boarding a transport ship for Papua as part of a routine deployment of 450 Indonesian troops at the port in Krueng Geukueh, Aceh, on 29 July 2021. Photo: Azwar Ipank, AFP.

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EXECUTIVE SUMMARY

- A second amendment comprising 20 revisions to Papua's Special Autonomy Law was passed by the Indonesian Parliament on 15 July 2021, and signed by President Jokowi into law a week later.
- This was done without consultation with representatives of the Papuan people, contrary to the requirement under that same law. The People's Representative Council (DPRP) and the Papuan People's Assembly (MRP) subsequently sued the central government and national parliament (DPR) in the Constitutional Court.
- The most significant revisions concerned the issues of special autonomy funds, the proliferation (*pemekaran*) of local government, and the abolition of local political parties. While the central government has argued that the changes were needed to ensure accountability and improve delivery of public goods and services, the Papuans are clearly unhappy with the shrinking power of representative institutions for indigenous Papuans such as the DPRP and the MRP, as well as the recentralization of fiscal power and control over administrative regions. The Papuans fear that the expansion of local administrative structures could lead to an influx of non-Papuan bureaucrats due to the shortage of skilled manpower in Papua.
- There is a risk of more civil unrest and possibly violence in Papua when the government proceeds to implement the revisions to the Special Autonomy Law. A civil society organization claimed to have garnered 714,000 signatures and the support of 112 Papuan groups in opposition to the amendment.

INTRODUCTION

The second amendment to Papua's Special Autonomy Law was passed by the Indonesian Parliament on 15 July 2021 and signed into law by President Joko Widodo a week later.¹ The deliberation process took only seven months, a relatively short period for the creation of a law in Indonesia.² The second amendment changes several provisions of Law no. 21/2001, which was the basis for granting special autonomy in Papua. The first amendment was passed in 2008 (Law no. 38), and was for the formation of Papua Barat province.

The revised law was met with various reactions in Papua.³ Papuan People's Assembly (MRP) and the Papuan People's Representative Council (DPRP),⁴ voiced their objection and argued that the Papuan people, represented by the MRP and DPRP should have been consulted first. Many of the provisions of Law no. 21/2001 had in fact not yet been implemented.⁵

In addition, article 77 of Law No. 21/2001 states that any revision to the law must be conducted in consultation with the Papuan people represented by the Papuan People's Assembly (MRP) and the provincial parliament (DPRP). This had been ignored by the parliament (DPR) and the national government. The two organizations have subsequently filed a lawsuit with the Constitutional Court and are demanding that the revision be stopped.⁶

Opposition to the revision also came from Papuan civil society groups. An organization calling itself *Petisi Rakyat Papua* (Papua People's Petition or PRP) claims that it has collected 714,000 signatures opposing the special autonomy law,⁷ and that it has the support of 112 Papuan civil society organizations.⁸ The PRP expressly demands self-determination for West Papua.

The revising of the law without consultation with Papuan representatives was also condemned by several international CSOs.⁹ They highlight that the move has finally strengthened the central government. In addition, they also condemn the arrests, detention and torture of protesters opposing this law.¹⁰

Academics and experts in Indonesia also warn of dire consequences if revisions were carried out without consultation and in-depth discussions with the legitimate representatives of the Papuan people. Conflicts in the already fragile region were bound to increase.¹¹

Despite the opposition, Jakarta insisted on passing the law unilaterally, proposing two articles concerning Special Autonomy funds and local government proliferation (*pemekaran*). The House of Representatives proposed the revision of 16 articles and the addition of two new articles. In total, 20 amendments were made to the 79 articles of Law no. 21/2001.

This *Perspective* discusses the changes to Papua's Special Autonomy Law and their consequences. The amendment reflects the recentralization efforts by Jakarta, and transfers to it more power over budget and regional proliferation processes.

IMPORTANT PROVISIONS IN THE SPECIAL AUTONOMY LAW

After the collapse of the New Order, Papua was in turmoil. In 1999, 100 Papuan leaders met with President BJ Habibie and demanded the right to self-determination. Similar demands were repeated in 2000 at the Papuan People's Congress that rejected the results of the 1969 Act of Free Choice. Jakarta responded by granting special autonomy to Papua in 2001. Under the Special Autonomy Law, the provincial government has autonomy in all matters except defense, international relations, fiscal and monetary policy, religion, law and justice.

Papua's Special Autonomy Law (Law no.21/2001) contains several provisions that acknowledge the political rights of indigenous Papuans. It also aims to improve welfare and human rights situations and act as a peace mechanism. Among the most important provisions is the formation of the Papuan People's Assembly (MRP), as representative of indigenous Papuans. Its members are appointed by the governors and its composition reflects the balance between women, traditional leaders and religious clerics. The law also requires that governors and deputy governors be indigenous Papuans.

Most Papuan provincial parliamentary members are elected while the rest are appointed. The appointed members are indigenous Papuans and account for 25% of elected members.¹² The law acknowledges the right of Papuans to form local political parties by prioritizing the membership of indigenous Papuans.

Provincial governments have the right to create special bylaws (*Peraturan Daerah Khusus* or *Perdasus*) and establish a customary judicial institution (*Peradilan Adat*). The law also authorizes the establishment of a Truth and Reconciliation Commission (TRC), and requires that the appointment of the heads of the regional police and of state prosecutors (*kejaksaan*) by the central government must have the approval of the governors.¹³

Parts of the law that attract the most attention are those concerning finance. Papua governments¹⁴ receive special autonomy funds (*Dana Otonomi Khusus*) amounting to 2% of the total national General Purpose Fund (DAU). They are also entitled to 80% of revenues from mining, forest and fishery products and 70% of revenues from oil and gas products. These provisions are in effect until 2026, after which the provincial government is to receive only 50% of these revenues.

Some provisions of the law have not been implemented because either necessary regulations have not been issued by the central government or special bylaws made by local governments have not been ratified by it.¹⁵

The Truth and Reconciliation Commission (TRC), as mandated by Article 46 paragraph 3 of this law, is a prime victim of the absence of a central government regulation. The article states that the TRC is to be formed through presidential decree. So far, no such decree has been issued.

Ratification of local bylaws has also become a problem. Hindrance to the formation of local political parties has been the best example of this. On 9 September 2016, the Papua Provincial Government and the Papuan People's Representative Council passed a Special

Regional Regulation (*Perdasus*) on local political parties and on the political recruitment of indigenous Papuans. However, the Ministry of Home Affairs has never ratified that regulation.

Dissatisfaction with the law does not only come from the Papuan side. The central government also has its own complaints. Finance Minister Sri Mulyani, for example, told parliament that the remaining budget for special autonomy funds and additional infrastructure funds per year in the provinces of Papua and West Papua was very large.¹⁶ She stated that this was due to poor governance and poor fund usage by local governments.

Sri Mulyani's opinion was supported by the Supreme Audit Agency (BPK) which stated that the Special Autonomy funds were not managed properly, thus potentially causing irregularities. The BPK assessment was very general and did not mention specific cases.¹⁷ Meanwhile, the Center for Financial Transaction Reports and Analysis (PPATK) more explicitly stated that there were allegations of misappropriation of Special Autonomy funds. This institution points to local government officials, community organizations, and local government partners as the culprits. There were 80 cases involving 53 individuals investigated by PPPATK.¹⁸

Despite suspicions of misappropriation of funds, Indonesia's anti-corruption commission (KPK) has been curiously silent about corruption in Papua. The commission, famous for its sting operations against corrupt regional leaders, has never been known to make arrests in this region.¹⁹

AMENDING THE SPECIAL AUTONOMY LAW

President Jokowi's administration had proposed a limited revision to the Papua Special Autonomy Law, amending only three articles, namely Article 1 on definitions of terms used in this law; Article 34 concerning the Special Autonomy Fund, and Article 76 concerning proliferation of province and regency level administration. The Indonesian Parliament, however, proposed amendments to 19 articles.

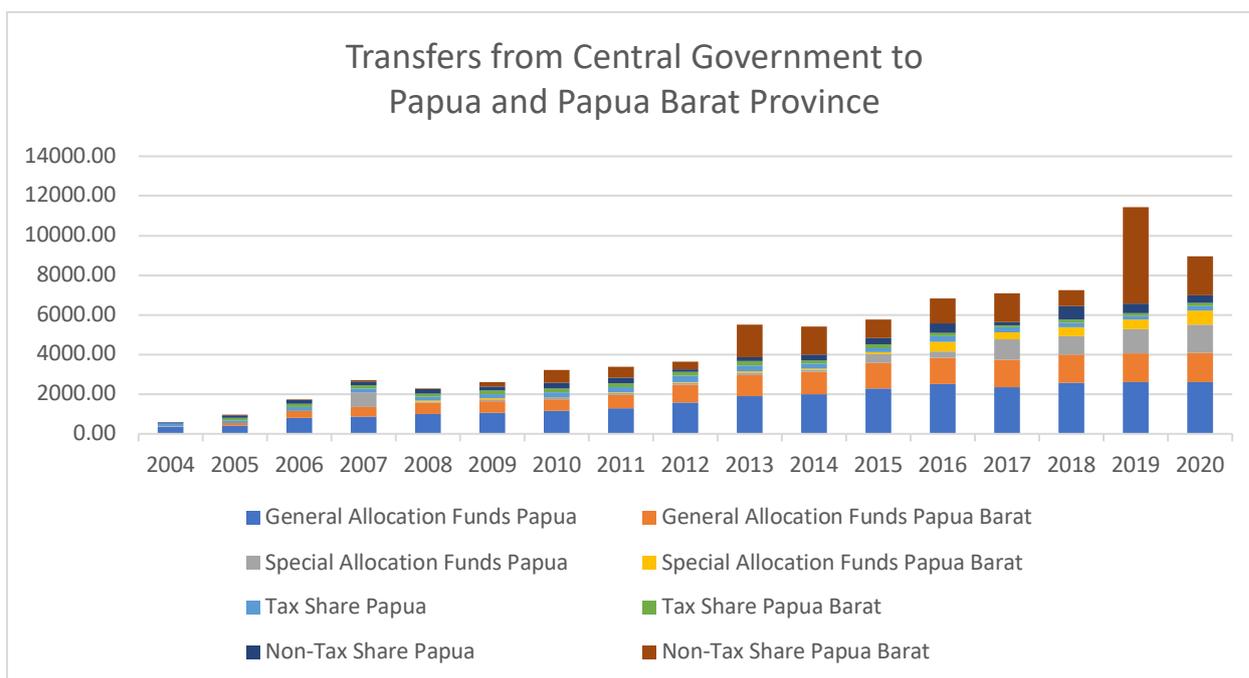
Among the provisions proposed by the parliament was one on abolishing local political parties (Article 28 paragraphs 1 and 2 of Law no. 21/2001). Parliament and the government have agreed to scrap the provision that allows Papuans to form local political parties. This provision has never been implemented although the Papuan government and parliament had passed special bylaws to facilitate that. In 2020, the Indonesian Constitutional Court decided that the establishment of local political parties in Papua was against the Constitution and certain laws concerning national political parties. The court decision provided the legal basis for scrapping the provision. Some observers have, however, long noted that local political parties can offer a way for resolving conflicts in Papua.²⁰

The new law also removes the provision that national political parties must consult the Papuan People's Assembly (MRP) in political selection and recruitment in Papua. This provision further strips the authority of MRP.

The two articles proposed by the government—the extension of special autonomy funds and provincial and district proliferation (*pemekaran*)—deserve to be looked at in greater detail.

Special Autonomy Fund

The special autonomy fund is the most prominent part of this law because of the amount of money poured into Papua. The fund aims to improve the welfare of the Papuan people, especially in the fields of health and education.²¹ It amounts to 2% of the General Allocation Fund (GAF) transferred each year to Papua and Papua Barat provinces. Besides GAF, the two provinces of West Papua also receive other kinds of transfers, such as the Special Allocation Fund (SAF) which is used to speed up infrastructure development, tax shares, and non-tax shares.²² From 2002-2020, Jakarta had transferred approximately IDR 92.7 trillion (US\$6.4 billion) to Papua Province. Another IDR 41.8 trillion (US\$2,9 billion) was transferred to Papua Barat province.



Jakarta claims that the special autonomy fund has succeeded in improving the living conditions of the Papuan people, although data show that poverty and inequality rates are still high. For example, the Human Development Index (HDI) increased quite significantly, from 54.45 in 2010 to 60.84 in 2019 in Papua Province (an increase of 6.4) and from 59.6 in 2010 to 64.7 in 2019 in Papua Barat province (an increase of 4.9). These average increases are way better compared to the national average for the same period, which is 0.53 per year. The number of poor people in Papua has also decreased from 50% in 1999 to 27.74% for Papua and 23.01% for West Papua in 2019.²³

The Special Autonomy Fund also provides local governments with the capability to improve their human resources. Many young Papuans are now able to study at universities outside Papua under scholarship from their local government.²⁴

It should be noted, however, that these statistics do not disclose inequality among people who live in West Papua. HDI may be high in urban areas but it is very low in rural areas, especially in mountainous areas.²⁵ Urban-rural inequality also reflects the difference

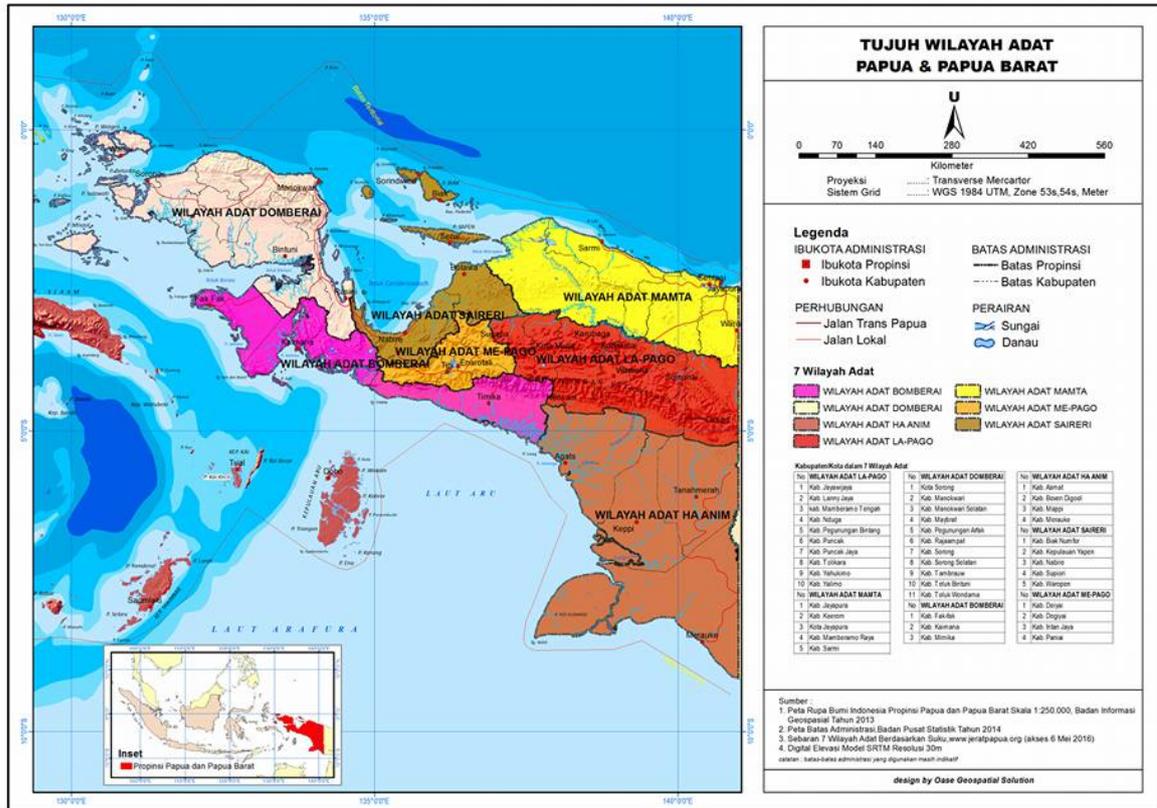
between migrants and indigenous Papuans. Migrants have become the majority in urban areas while rural areas are dominated by indigenous Papuans. This urban-rural gap also occurs among indigenous Papuans. Those who live in urban areas have relatively better welfare indicators than those in rural areas.

Under the new law, the government agrees to extend the special autonomy fund to 2041 and increase it to 2.25% of the general allocation fund per year. However, unlike in the previous period during which the Papuan provinces directly received 2% of the GAF, under the new system, Papua will receive only 1 percent of the GAF while the remaining 1.25% is given based on local government performance. The central government argues that this system will increase the accountability of local governments. However, the provision for giving 1.25% based on performance also means a tightening of central government control over local government in Papua.²⁶

Local Government Proliferation (Pemekaran)

Another hot button issue in the Special Autonomy Law is the proliferation of regional government (*pemekaran*). The issue has divided indigenous Papuans. It plays directly to identity politics among the indigenous Papuans (OAP) who are divided into various tribes, speaking different languages, living in each customary and ancestral lands, and even adopting different faiths. In addition, several tribes are traditional rivals involved in continuous conflicts.

The territory of Papua is divided into seven customary/cultural areas, namely Mamta (Mamberamo-Tami or now known as the Tabi area), Saereri, Ha Anim, La Pago, Mee Pago (the five are in the Papua region) and Bomberai and Domberai in Papua Barat region. The basis for the division of these customary territories is the ethno-linguistic grouping among these tribes. Within each customary territory, there are dozens of independent tribes. Such complex anthropological conditions make it difficult to establish a common identity for the Papuans. At the same time, this makes it easier to divide the territory into units that have been traditionally controlled by indigenous tribes.



Those who are against proliferation accuse Jakarta of exploiting these divisions. They are suspicious that Jakarta is using a “divide and rule’ tactic.²⁷ The government, however, argues that smaller units of government will ensure better service to the community, and proliferation will create a more effective, responsive, and accountable government.²⁸

Law no. 21/2001 only has one clause regarding local government proliferation in Papua.²⁹ In the new law, there are now five such clauses. In short, the new law will make proliferation easier. While in other parts of Indonesia, local government proliferation was carried out through meticulous administrative preparations that require a long transition, in Papua the process of administrative preparations is omitted.³⁰ Jakarta wants to accelerate the proliferation process due to volatile security situations. Prolonged debates and controversies will destabilize the region, it argues. The same reason is used in eliminating the requirement that proliferation be carried out with the approval of DPRP and MRP.

Local government proliferation needs manpower. Papua has not enough skilled people to run the newly created local government. There is also concern that the educated and the professional class of indigenous Papuans such as medical doctors, teachers, engineers, etc. will eventually take bureaucratic jobs and abandon their professions.³¹ But even that will not meet the needs for manpower of the new administrative regions in Papua. The shortfall may then be filled by bureaucrats from other parts of Indonesia,³² worsening the immigration problem and causing more social conflicts.

CONCLUSION

Jakarta's unilateral second amendment to Papua's Special Autonomy Law shows a desire to recentralize and strengthen the central government's control over this region. This was conducted in two ways. The first is through the special autonomy funds. In the amendment, the proportion of special autonomy funds from the General Allocation Fund was increased to 2.25%. However, the use of these funds will not be fully carried out by the local government. Instead, 1.25% of the funds will be disbursed based on the job performance of the local government, with the central government having control over the sum.

The second is through reducing the power of local legislatures especially the People's Representative Council (DPRP) and the Papuan People's Assembly (MRP). Under the new law, both the DPRP and the MRP no longer have the power to approve regional proliferation.

Whether this recentralization will succeed in accelerating economic development and providing public services to the community remains to be seen. The same goes for whether recentralization will reduce conflict in Papua? This is still a big question mark, and should conflicts increase instead, then economic development and the provision of public services will be detrimentally affected. The original autonomy law was intended as a conflict resolution; the amendment shows that intention diminishing.

¹ The formal name of the law is Law number no. 2/2021 concerning the Second Amendment to Law no. 21/2001 concerning Special Autonomy for the Province of Papua (*Undang-undang No. 2/2021 tentang Perubahan Kedua atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua*).

² Deliberations on amendments to this law were conducted mostly behind closed doors apparently so as not to attract attention. The final draft of this law was issued only at the plenary session of the DPR.

³ See, "Sikap Elite Politik Papua terhadap Revisi UU Otsus Terbelah," (Papuan Political Elites Divided over Revision of Special Autonomy Law)

<https://nasional.kompas.com/read/2021/07/16/09480571/selang-tujuh-bulan-ruu-otsus-papua-akhirnya-disahkan?page=all>

⁴ The mention of MRP and DPRP in this article refers to the same institutions that exist both in the Papua and Papua Barat Provinces.

⁵ Law no. 21/2001 requires establishment of a truth and reconciliation commission as well as a human rights court, for instance. These had not been implemented because the Central Government had not issued any Governmental Regulations (*Peraturan Pemerintah*) in facilitation of this.

⁶ <https://nasional.tempo.co/read/1473833/tak-dilibatkan-pembahasan-revisi-uu-otsus-papua-mrp-gugat-jokowi-dan-dpr-ke-mk>

⁷ <https://www.cnnindonesia.com/nasional/20210716190948-32-668829/714-ribu-orang-dan-112-organisasi-diklaim-tolak-otsus-papua>

⁸ In its website, PRP argues that “Papua versus Indonesia political conflicts, and all problems that comes out of it, cannot be resolved with Special Autonomy volume I, nor will it be resolved by extending Special Autonomy volume II. So, the best way that is safe, peaceful and democratic is to return it (the autonomy) to the people of West Papua so they will be able to determine their own destiny.”

⁹ See, for example, Tapol’s and Civicus’ statement regarding this matter,

<https://www.tapol.org/news/unilateral-renewal-special-autonomy-and-arbitrary-arrest-protectors-west-papua>

¹⁰ On 14 July 2021, the police detained 23 students and activists in Jayapura, Papua Province. Four protesters were injured. Protests also erupted on 15 July in Kaimana and Manokwari, West Papua Province. As many as 50 protesters were detained when demonstrating in front of the national parliament (DPR-RI) on 15 July, at the same time as the plenary meeting was taking place to ratify this law.

¹¹ https://www.kompas.id/baca/polhuk/2021/07/21/implementasi-uu-otsus-papua-bisa-memicu-konflik?status=sukses_login&status_login=login&isVerified=false

¹² For example, the current parliament in Papua Province has 69 members, of which 55 members were elected in the election and 14 (25% of the 55 members) were appointed to represent indigenous Papuans. These appointed members are determined by the governor through Special Regional Bylaws (*Peraturan Daerah Khusus*).

¹³ In Indonesia, the authority to appoint regional police chiefs and prosecutors rests with the central government.

¹⁴ In 2003, the government of Papua province was split with the formation of the province of Papua Barat. The Law no. 21/2001 was then amended into law no. 35/2008 to accommodate the creation of the new province. So now, the Papuan government covers the provinces of Papua and Papua Barat.

¹⁵ The head of the MRP, Timotius Murib, said that of the 24 powers mandated by the Special Autonomy Law to Papuans, only four have been implemented.

<https://www.republika.id/posts/17739/mrp-gugat-revisi-uu-otsus>

¹⁶ The average remaining Special Autonomy funds for Papua Province was IDR 528.6 billion (US\$36.8 million) per year and for Papua Barat Province, this had amounted to IDR 257.2 billion (US\$ 17.9 million) per year for the last seven years (2013-2019). Meanwhile, over the same period, the remaining additional infrastructure fund (Dana Tambahan Infrastruktur or DTI) for Papua Province was IDR 389 billion (US\$ 27.1 million) per year and for Papua Barat, it was IDR 109.1 billion (US\$7.6 million) per year.

<https://www.cnnindonesia.com/ekonomi/20210126153421-532-598589/sisa-dana-otsus-di-papua-rp5286-m-per-tahun-sejak-2013>

¹⁷ BPK assessment can be found here:

https://www.bpk.go.id/assets/files/storage/2021/01/file_storage_1611741659.pdf

¹⁸ <https://nasional.kompas.com/read/2021/06/22/09360031/ppatk-laporkan-80-transaksi-mencurigakan-terkait-apbd-dan-dana-otsus-papua?page=all>

¹⁹ In February 2019, KPK officers conducting an investigation into allegations of bribes offered by the Papuan governor to Papuan parliamentary members, were arrested by Papuan officials and beaten up. <https://www.cnnindonesia.com/nasional/20190208075242-12-367372/adu-kuat-kpk-dan-lukas-enembe-cs-di-tanah-papua>

²⁰ See, IPAC, *Renewing, Revising, Rejecting Special Autonomy in Papua*, Report No. 64, 30 July 2020. There is scholarly debate about whether decentralization and democratization in areas hit by secessionism will mitigate or fuel separatism. It seems that democratization (with local parties) and decentralization, which ultimately assigns government responsibility to separatist leaders, will mitigate separatism. For the debate on Aceh and Papua, see Marcus Meitzner, “Local Elections and Autonomy in Papua and Aceh: Mitigating or Fueling Secessionism?” *Indonesia*, No. 84 (Oct., 2007), pp. 1-39.

²¹ According to the law, 30% of special autonomy funds must be allocated to education and 15% to health.

²² In addition to the 2% General Allocation Fund, the two provinces in Papua also receive funds from tax revenue sharing; non-oil and gas profit sharing; oil and gas profit sharing of 70% of the proceeds; and additional special autonomy funds for infrastructure development.

²³ The percentage of poor people in Indonesia in 2019 was 9.22% of the total population. In 1999, the number of poor people was 23.43%. In two decades, Indonesia succeeded in reducing overall poverty by 14.21%. The poverty rate in Papua is three times higher than the national one.

²⁴ Most of these students are studying under scholarship provided by their regency and living in housing provided by their local government. Ironically, just like the Dutch-educated Indonesian nationalists in the early 20th century, Papuan nationalism is growing under the Indonesian educational system.

²⁵ Bobby Anderson, *Papua's Insecurity: State Failure in Indonesia Periphery*, Washington, D.C.: East West Center, Policy Studies No. 73 (2015).

²⁶ Academics from Gadjah Mada University, Yogyakarta, Dr. Purwo Santoso, highlights that the provision for granting 1.25% of special autonomy funds based on local government's job performance means greater control by the central government. This also means reducing the autonomy of the Papuan government.

<https://nasional.kompas.com/read/2016/09/01/15142021/read-adverd.html?page=all>

²⁷ There is also concern that regional proliferation in Papua will affect the demographic balance between indigenous Papuans and migrants. Proliferation will create a new government administration in which immigrants are the majority. This opinion has been expressed by indigenous Papuans such as Nioluen Kotouki, a member of Commission I of the Indonesian Parliament, and a researcher from LIPI, Adriana Elisabeth. See, <https://tirto.id/pemekaran-papua-dalam-uu-otsus-baru-berpotensi-mengancam-oap-ghTa>

²⁸ This was stated by Jaleswari Pramodhawardani, Deputy V of the Presidential Chief of Staff, in her written statement as quoted by Tirto.id. <https://tirto.id/pemekaran-papua-dalam-uu-otsus-baru-berpotensi-mengancam-oap-ghTa>

²⁹ Law 21/2001 says, "The division of Papua Province into provinces is carried out with the approval of the MRP and the DPRP after seriously paying attention to socio-cultural unity, readiness of human resources and economic capacity and future developments (article 76)."

³⁰ Back in April, the Interior Minister, Tito Karnavian told the press that the central government plans to divide Papua into six provinces, namely Southwest Papua, West Papua, Central Papua, Central Mountains, South Papua, and Papua Tabi Saireri. Tito argued that the proliferation would accelerate development and improve public services. He also explained that the demand for provincial proliferation was very high but could not be implemented because of opposition from the Papuan People's Representative Council (DPRP) and the Papuan People's Assembly (MRP). Therefore, in the revision of the Special Autonomy Law, the requirement for approval from the DPRP and the MRP was removed. See,

<https://www.cnnindonesia.com/nasional/20210408171759-20-627596/papua-ditarget-mekar-jadi-6-provinsi-perdebatan-masih-alot>

³¹ Interview with Timotius Murib, Chairman of Papua's People Council (MRP), 15 April 2021 in Jayapura.

³² See, Adriana Elisabeth, fn. 27.

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