

Journey to Justice: The United Nations Declaration on the Rights of Indigenous Peoples in the Context of West Papua

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Abstract

This article aimed to examine the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), focusing on the rights of the Indigenous Papuan people in the Indonesian provinces on the western half of the island of New Guinea, commonly referred to in English as Papua or West Papua. By drawing on the theory of norm diffusion in the study of international relations, this article argues that despite adopting a declaration on the rights of indigenous peoples, the Indonesian government seems to find fulfilling the rights of Indigenous Papuans challenging due to obfuscation and lack of political will. This article finds that the implementation of special autonomy in Papua has been a failure, as the human rights situation has deteriorated and the fundamental rights of Indigenous Papuans remain unfulfilled.

Keywords: UNDRIP, indigenous rights, West Papua Indonesia, special autonomy, norm diffusion

Introduction

After a long process, the United Nations (UN) General Assembly adopted the landmark UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. The declaration is significant for indigenous peoples because it is the first universal instrument to protect indigenous people's rights, including the right of self-determination (Isa, 2019). Unfortunately, although many countries have adopted and implemented UNDRIP, its implementation is unsatisfactory and there is no consensus on policy of indigenous people of some commonwealth countries (Lenzerini, 2019, Whall 2003). One argument that helps explain the limited progress is states' suspicion around the right of self-determination. Many

states worry that the recognition of self-determination rights will threaten the state's own sovereignty. The basic principle of self-determination is to accommodate the participation of indigenous peoples in decision-making processes that affect them (Cambou, 2019). Lenzerini (2019) argues that the implementation has varied significantly around the world, ranging from full acceptance to modification and even outright rejection.

In recent decades, states around the globe have increasingly given rise to illiberal norms (Glasius, Schalk, & De Lange, 2020). Introducing new restrictions against non-governmental organisations (NGOs) is particularly common. Such restrictions are problematic because civil society has an essential role in educating the public and providing information, especially in terms of transnational community and advocacy networks (Soetjipto & Yuliestiana, 2020). Civil society campaigns on specific issues, strategies, and tactics have a real impact on international relations. However, although NGOs contribute positively to transnational advocacy, their advocacy is not always successful. One of the keys to the success or failure of advocacy is political opportunity. This is how domestic groups usually attempt to bring domestic issues onto the international agenda (Soetjipto & Yuliestiana, 2020). On the other hand, it should be noted that the state – as one of the main advocacy targets – is not passive in the situation. Rather, states may actively strive against NGOs by restricting foreign funding and constraining the space for external support for domestic civil society (Poppe & Wolff, 2017; Glasius et al., 2020). In other words, Keck & Sikkink (1998) argue that transnational advocacy networks will always succeed is not necessarily accurate.

De Almagro (2018) analyses internal power dynamics inside transnational advocacy campaigns by using case studies. He finds that the process of norm diffusion is not always linear, as stated by Finemore and Sikkink (1998). In contrast with previous literature, current studies and research on norm diffusion shows that there are many possibilities of norm diffusion due to norm clashes and shifting during this process (Zimmermann, 2014). For example, the adoption and implementation of UNDRIP in Peru (Alva-Arévalo, 2019), Canada (Robinson, 2020), and various Africa nations (Mitchell & Yuzdepski, 2019; Claridge, 2019) has had varying challenges and results. Effective implementation depends on domestic structure and culture.

In Africa, Mitchell and Yuzdepski (2019) argue that UNDRIP could potentially create conflicts in the future, so all governments and stakeholders must be careful in the development of land policies. Meanwhile in Canada, the country's constitution does not fulfil Canada's UNDRIP obligations. If Canada wants to assure the rights of indigenous peoples, the government must not rely upon the courts to implement their UNDRIP obligations (Robinson, 2020). A different and more successful result has been observed in Peru, which is now seen as a model for other countries in Latin America to implement UNDRIP through legislation (Alva-Arévalo, 2019). The previous studies highlight and focus on the diffusion and implementation of UNDRIP in several countries around the world. This research attempts to enrich the study of norm diffusion of the rights of Indigenous Papuans in Indonesia.

Indonesia's central government has tried an array of different approaches to resolve the ongoing low-level conflict in Papua. None have been successful so far. The most recent

approach has been a prosperity approach, using special autonomy (*otonomi khusus* or *otsus*) policies alongside the establishment of new provinces (through what is known as *pemekaran* or proliferation of new administrative regions).

Indonesia has been unable to handle the issues in Papua due to a lack of serious engagement with human rights, which is reflected in the government's repeated denial of allegations of human rights violations in the region (Karim, 2020, p. 10; Wangge & Lawson, 2021). Recognizing the rights of indigenous peoples is the key to bringing peaceful and inclusive societies for development. In practice, both *otsus* and *pemekaran* have created more complex social problems in Papua, such as horizontal conflict, because these policies have been trapped in technical and administrative issues and have not been adapted to the social context in Papua. The Indonesian government's reliance on such policies and the continuous failure to address human rights violations, violence, and racial abuse, especially against indigenous Papuans, has been causing significant problems in Papua for decades without resolution. In December 2021, the UN Special Rapporteur on the Rights of Indigenous People, along with the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Execution and the Special Rapporteur on the Human Rights of Internally Displaced Persons, raised the issue with the Indonesian government regarding the use of excessive force against indigenous Papuans. Allegations from the UN Special Rapporteurs, based on various reports, indicate extrajudicial killings, including of young children, enforced disappearance, torture and inhuman treatment, and the forced displacement of at least 5000 Indigenous Papuans by security forces between April and November 2021 (OCHCR, 2022).

The deterioration in Papua's human rights situation was previously raised by the UN High Commissioner for Human Rights, Michelle Bachelet, in 2019 after a series of protests and riots across Papua and Indonesia in response to physical and racial abuse of indigenous Papuans by authorities (Septiari, 2019; ICP & the Westpapua-Netzwerk, 2021). To defuse the tension, the Indonesian government responded by blocking internet access across Papua, allegedly in the name of state security, but in fact an appalling attack on people's right to freedom of expression (Lantang & Tambunan, 2020). Civil society groups heavily criticised and condemned the Indonesian authorities' actions.

The research aims to examine the rights of indigenous people and the fulfilment of these rights in Papua. The article argues that despite achieving some progress in providing more opportunities for Papua, including giving special autonomy and becoming a signatory to UNDRIP, the Indonesian government has not realised the rights of indigenous Papuans. It is due to distrust between indigenous Papuans and the Indonesian government, development strategies that lack socio-cultural dimensions, and unresolved long-term conflict and violence.

Theoretical Framework

Understanding the Process of Norm Diffusion in the Study of International Relations

To understand the failure of the implementation of UNDRIP in the case of Papua, the article mobilises the notion of norm diffusion. Norm diffusion allows us to understand why despite ratifying UNDRIP, Indonesia is reluctant to implement the provisions.

When discussing norm diffusion, Finnemore and Sikkink (1998) are the key thinkers behind this prominent theory in international relations. They argue that norms are integral to the study of international politics. The academic discipline has transformed to acknowledge the empirical research on the role of norms in advocating and creating political change. Finnemore and Sikkink, then, introduces the theory of the 'norm life-cycle', which moves from norm emergence into norm cascade and finally into internalisation.

Constructivist scholars believe that norms cannot be applied without the involvement of agents or actors advocating for them. It means that 'norm entrepreneurs' are essential in the dissemination and even the creation of issues. In this case, following the first stage of the norm life-cycle - norm emergence - indigenous movements play an essential role as norm entrepreneurs to put forward and advocate for the rights of indigenous peoples globally. They seek international allies to work on pressuring state actors and international organisations to achieve their goals.

It was in 1982 that Indigenous peoples came together, forming the Working Group on Indigenous Populations (WGIP). WGIP became a prominent forum for Indigenous peoples from around the world, working primarily to advocate for indigenous peoples' rights and fundamental freedoms (Sanders, 1989). However, networks of indigenous movements have had to take political opportunities thoughtfully to "secure the support of state actors to endorse their norms and make norm socialization a part of their agenda" (Finnemore & Sikkink, 2019). Following the establishment of WGIP, the International Labour Organization (ILO) issued the Indigenous and Tribal Peoples Convention in 1989, also popularly known as ILO Convention 169 or C169. In 2000, the United Nations Permanent Forum on Indigenous Issues (UNPFII) was established, and it was only in 2007 that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted. Even though Australia, Canada, New Zealand, and the United States voted against UNDRIP, 144 member states voted in favour, including Indonesia (United Nations, 2007). This can be said to be the first stage of norm diffusion: norm emergence. In the second stage, the global norm has become more institutionalised (norm cascade) in persuading state actors to adopt the norm progressively. At the highest or more advanced level, the norm is widely internalised by signatories. They "take for granted" the ability to transform global norms into domestic politics (Finnemore & Sikkink, 1998).

Although the theory of norm life-cycle offers an effective approach to understanding norm diffusion in the study of international relations, this model is unlikely to be able to capture "when norms clash or shift during norm diffusion" (Soetjipto & Yuliestiana, 2020). Moreover, norm diffusion cannot be simplified as a linear process toward changes in politics and human rights (Setiawan & Spires, 2021). Therefore, the article utilises a more critical approach to examine the implementation of UNDRIP as a global norm at the domestic level in Indonesia, and specifically to understand main issues in the region of Papua. In this context,

the Indonesian government is the actor that plays an essential role in the implementation of UNDRIP, along with civil society in advocating the rights of indigenous Papuans.

Methods

The research aims to provide a deeper examination of the dynamics of the implementation of the rights of indigenous Papuans by using case selection (Klotz & Prakash, 2008). The research design draws on an interpretive approach and uses a critical perspective toward traditional theories in international relations, scrutinising the failure of liberal constructivism in understanding historical and political context (cultural relativism) (Schippers, 2018).

Research for this article was conducted between March and April 2022 in Jakarta. The discussions are based on a semi-structured interview approach, with meetings held virtually through Zoom. Participants are from the Papuan Customary Council (*Dewan Adat Papua/DAP*), academia, civil society organisations, the Indonesian National Human Rights Commission (*Komisi Nasional HAM/Komnas HAM*), and the Directorate for Human Rights and Humanitarian Affairs in the Ministry of Foreign Affairs Republic of Indonesia (MoFA RI). The research also utilises data from previous field research conducted in Papua in 2017, updating several findings based on the 2022 interviews. In addition to being more contentious than the previous research, this research synthesises the literature to enable new theoretical frameworks and perspectives to emerge (Torraco, 2005; Snyder, 2019).

Analysis

Sovereignty is central how we understand the state system. It is a fundamental principle enunciated in the Charter of the United Nations (Croxton, 1999; Musgrave, 2015). This traditional paradigm in international relations has led to the broad subjugation of indigenous peoples around the world, which means that conventional theory is unable to address the root problem of identity or indigeneity in this context (Elisabeth, 2017; Krause, 2015). The Act of Free Choice (*Pepera*), held in Papua in 1969, gave Papuans the option of remaining a member of Indonesia or declaring independence. However, the implementation was contentious, leading to the choice to remain as part of Indonesia. (Chauvel & Bhakti, 2004; Situmorang, 2010; King & Johnson, 2018; Heryanto, 2018; Chao, 2021). Since then, the struggle for self-determination in Papua has been largely dismissed by the Indonesian government. In other words, indigenous Papuans have not been able to exercise a genuine act of self-determination.

Since Papua was legally incorporated into Indonesia as a result of the 1969 Act, the journey to justice for the rights of the indigenous Papuans has been a long and arduous one. Even the term 'indigenous' itself is highly controversial in Indonesia. Hadiprayitno (2017) argues that "the [Indonesian] government believes that Indonesia is a nation that has no Indigenous peoples, or that all Indonesians are equally Indigenous". However, this claim is problematic since it seems remarkably phlegmatic to acknowledge the rights of indigenous

peoples. For that reason, indigenous Papuans set up international fora in an attempt to create a 'compulsory power'. Compulsory power here refers to the concept coined by Baldwin (2002) and Barnett and Duvall (2005). It means that power is a relationship of interaction of direct control by one actor over another. Compulsory power is not only limited to material resources as it also entails symbolic and normative resources.

By exercising the concept of compulsory power, activists in indigenous transnational networks may construct cognitive frames through immaterial forces (Baldwin, 2002; Barnett & Duvall, 2005). Doing so has achieved the networks' goals of influencing the international community to adopt a new norm on Indigenous rights, leading to the development of UNDRIP in 2007. This global norm provides a shared scheme to create a better world and a more sustainable future for indigenous peoples' survival, dignity, and well-being worldwide (Cambou, 2019). Nevertheless, in Indonesia, even though the Indonesian government has pledged to adopt UNDRIP into domestic law, the government still tends to obfuscate when identifying the concept of Indigenous peoples.

Debates over Terminology

In the Indonesian language, terminology used to refer to Indigenous peoples is unclear and often confusing. Multiple terms are commonly used, including *masyarakat [hukum] adat* ('customary [law] societies'), *orang asli* (literally 'native people'), and *penduduk suku asli* ('native ethnic inhabitants') (Li, T., 2000, p. 155). Unlike its neighbour, the Philippines, Indonesia does not have legislation on Indigenous people's rights. A draft law has been proposed in parliament, but limited progress has been made. Part of the issue is that, in Indonesia, the rights of indigenous peoples overlap with other legal issues such as the existing forestry and agrarian laws.

AMAN (*Aliansi Masyarakat Adat Nusantara*/Alliance of Indigenous People of the Archipelago) is Indonesia's peak indigenous civil society organisation. At their national congress on 17 March 1999, AMAN defined indigenous peoples by referring to UNDRIP and ILO 169, as "a community that lives based on ancestral origins from generation to generation over a customary area that has sovereignty over land and natural wealth, socio-cultural life, which is regulated by customary law and customary institutions that manage the sustainability of human life" (AMAN, 2021). AMAN argues that the Indonesian government needs to establish a definition for indigenous peoples, but so far, the Ministry of Foreign Affairs does not want to have a dialogue on the meaning of indigenous peoples in Indonesia. In AMAN's view, the Indonesian government, which supports UNDRIP, believes this norm will not apply, as they argue that Indonesia does not have any indigenous peoples (Nababan, interview, 2022).

According to the Indonesian government, the definition of indigenous peoples cannot be determined permanently. Ellen Tambunan, the Coordinator of the Civil and Political Rights Function in the Directorate of Human Rights and Humanity, Directorate General of Multilateral Cooperation, Ministry of Foreign Affairs, states that the concept of indigenous peoples is not applicable in Indonesia. Ellen gave an example of how the definition of

indigenous peoples appears in ILO Convention 169, relating to tribal communities and indigenous peoples. Therefore, even though Indonesia has agreed to UNDRIP, Indonesia acknowledges terms such as *masyarakat adat* and *masyarakat hukum adat* to promote and consider ethnically diverse cultures and societies in Indonesia (Tambunan, interview, 2022; Join Communication Ref. No. AL IDN 11/2021). *Adat* itself can be translated as 'custom, tradition, or customary law'. Under Dutch colonial rules, customs and traditions were codified and associated with ethnic groups across the archipelago.

In response to a critical report on Papua before the United Nations Permanent Forum on Indigenous Issues (UNPFII) in 2004, Indonesia rejected criticism of its refusal to attribute the status of indigenous to Papuan peoples. As a matter of principle, Indonesia regards all of its more than 500 ethnic groups as equally indigenous, therefore arguing that a reference in the forum report was irrelevant (Bertrand, 2011).

The government of Indonesia reiterated this position in its 2006 report to the United Nations Committee on the Elimination of Racial Discrimination (UNCERD). Instead, Indonesia offered four principles to determine Indigenous ethnic groups (*masyarakat adat*): names, language, environment, and customs. The report also mentioned new legislation that made no distinction between indigenous and other groups, and differentiated *masyarakat adat terpencil* (isolated or remote ethnic groups) from the broader category of *masyarakat adat* (UNCERD, 2006).

The Struggle for Indigenous Papuans Rights

Transnational advocacy on the rights of indigenous Papuans began internationally in the 1980s. Advocacy conducted by an NGO named ELSAM Papua at both national and international fora created alliances with other self-identified indigenous groups to put pressure on the state for recognition and rights. To advocate for the case of Papua, advocates allied with the Melanesian Spearhead Group because of its ethnic similarity (Melanesian) with Papua, and began engaging in international fora and trying to sustain state attention (Lawson, 2016; Blades, 2020).

Leonard Imbiri from DAP, the Papuan Customary Council, acknowledges that international lobbying and advocacy has been beneficial for advancing the struggle for indigenous Papuans' rights. In an interview with researchers, Imbiri (2022) states that this framework is used to help encourage the government to act fairly because domestic voices are not being heard. This framework shows how indigenous Papuans use international fora to strengthen coalitions to encourage fulfilling the rights of indigenous Papuans. Furthermore, through struggles in international fora such as the United Nations, Indigenous peoples' groups can negotiate with representatives of the Indonesian government and other countries to provide support, especially regarding these countries' cooperation with the Indonesian government (Imbiri, 2022).

During the authoritarian regime of President Suharto, the struggles of indigenous people in Indonesia to obtain their rights were arduous. The situation was similar across the

entire Asian region due to the absence of a clear distinction between indigenous and non-indigenous in domestic political situations and policies. It was only when the Suharto regime fell in 1998, that the following period of regime change and state vulnerability led to a decision of accommodation in response to the Papuan demand of self-determination, culminating in the introduction of a special autonomy policy in 2001 (Special Autonomy Law no 1/2001). In the end, most Asian states including Indonesia began paying attention to the indigenous movement when it entered the UN system in the 1980s and 1990s, culminating in the majority signing UNDRIP upon its creation. Indonesia itself formally recognised ILO Convention 169 in 1989, before signing UNDRIP in 2007.

After being integrated into Indonesia in 1969, Papua was restructured to conform to Indonesia's political and administrative structure, obtaining the status of province. Its territory was subdivided into regencies, districts, and villages as specified in the regional autonomy law (Law No. 5 of 1974 concerning the Principles of Regional Government). No modifications were made to consider the different socio-economic, political, and cultural differences that distinguished the area from the rest of Indonesia. Crucially, the government imposed restrictions on Papua cultural expression. Indonesian was adopted as the sole language of education, and the national curriculum was imposed on Papua with no local content (Widjojo, 2009; Gietzelt, 1989).

The central government also controlled the management of land and national resources. Under the Indonesian Constitution of 1945, natural resources are part of the public domain and can be exploited according to policies set by the central government in Jakarta. Indeed, one of the most controversial issues in Papua is mining, particularly the Freeport-McMoRan mine in Mimika, which is frequently a target for protests due to its failure to benefit indigenous Papuans (ICP & the Westpapua-Netzwerk, 2021).

Since the 1980s, indigenous Papuans have used international fora by sending representatives to the Working Group for Indigenous People (WGIP) in the hope of pressuring the Indonesian government to recognise them as indigenous people. In their first appearance, they contested the legitimacy of the 1969 Act of Free Choice and the United Nations' support for Papua's integration into Indonesia. Significant emphasis was placed on the disappearances and alleged killings perpetrated against Papuans by the Indonesian armed forces, the repression of Papua culture, the seizure of land for mining, and the Indonesian government's policy of transmigration (Kluge, 2020; Bertrand, 2011).

After the fall of the Suharto regime in 1998, Papuans increased their networking internationally, particularly in indigenous peoples fora. Legal aid organisation Elsam Papua tapped the international human rights network to present the Papuan case at WGIP (Elsam, 2003). After 2002, the newly created DAP, composed of representatives of all 253 Papuan tribal groups, assumed Papua's leadership role in international fora (Mandowen, 2005).

By casting all its people as Indigenous, Indonesia supports UNDRIP without recognising its applicability within Indonesia. In Indonesia, the coalition of Indigenous peoples have attempted to connect *adat* with Indigenous people's rights but has failed to gain

much traction. Papuan peoples, as a result, have continued their dual strategy and made some gains as a sub-state nation (province) but few as indigenous peoples.

Special Autonomy Law and Political Compromise

Despite being a signatory of UNDRIP, Indonesia is not fully committed to the declaration. It has been mentioned that the Indonesian government argues that the concept of indigenous peoples is not applicable in Indonesia, as the country has more than 500 ethnic groups. In the eyes of the Indonesian government, all Indonesians are indigenous and thus have the same rights (Tambunan, interview, 2022; AMAN, 2017). The same argument also applies in Papua: the government simply views Papuan peoples as part of Indonesia's 500 ethnic groups. This overlooks the fact that Indonesia has already recognised the existence of indigenous peoples in Article 18 B of the 1945 Constitution, implicitly including indigenous Papuans.

Moreover, Indonesia also did not support the recommendation to ratify ILO Convention 169 (ILO 169) on Indigenous and Tribal Peoples in Independent Countries. ILO 169 is the major binding international convention concerning Indigenous and tribal peoples, and is the forerunner of UNDRIP. The objective of this convention is to protect indigenous peoples' lands and resources. This means it could disrupt a nation's desire to exploit its natural resources for economic development. As a result, Indonesia still has not ratified ILO 169 because it could potentially allow millions of Indonesians to self-govern their own resources and lands (Bedner & Van Huis, 2008). Indonesia's robust economic development relies heavily on natural resource extraction, making the ratification of ILO 169 unlikely.

Papua is incredibly rich with natural resources, especially forests, mineral deposits, oil, and gas. This has made the region become a fundamental source of revenue for the Indonesian government. The largest mining operation is the Freeport-McMoRan mine in Mimika, run under the Indonesian company PT Freeport Indonesia. In 2020, the company reported total production of 0.8 billion pounds of copper and 0.8 million ounces of gold (Freeport-McMoran, 2020). This makes the mine one of the world's largest copper and gold mines for Freeport-McMoRan.

With this in the background, special autonomy (*otsus*) is thus seen as a compromise between the Indonesian government and indigenous Papuans in the fraught space of political contestation over West Papua's place within the nation. There are various literature to analyze Special Autonomy Law of 2001 (MacLeod, 2007; 2011; Aspinall & Fealy, 2004), all agreed that the policy is an avenue for Indonesia central government to preserve Papua within the Indonesian nation. *Otsus* is, therefore, a way for the Indonesian government to deal with the main causes of conflict in Papua but still within the framework of the Indonesian state. In preambular paragraph (f), the Special Autonomy Law stipulates that "the administration and development of the Papua Province has not complied with the feeling of justification, has not yet achieved prosperity for the whole community, has not yet fully supported legal enforcement and has not yet shown respect to human rights in Papua Province, in particular

the Papua community". In other words, *otsus* was adopted to respond to the sense of injustice felt by indigenous Papuans.

On the other hand, *otsus* can be seen as a partial implementation of UNDRIP. The Special Autonomy Law was drafted by Papuan leaders and intellectuals, denoting a new Indonesian approach toward Papua and marking a new stage of the Papuan struggle for their rights (McGibbon, 2004; Macleod, 2007; 2011). The law gave Papua special authority, political, cultural, economic, and special revenue. Additionally, through *otsus*, Indonesia has recognised the terms '*orang asli Papua*' ('original Papuan people') and '*masyarakat adat*' ('customary societies') in Article 1 of the Special Autonomy Law, meaning the government explicitly recognises indigenous Papuans' existence and rights.

The Indonesian government and Papuan peoples have different interpretations of the concept of indigenous peoples. For indigenous Papuans, *adat* and the representation of *adat* communities (specifically *orang asli Papua* [OAP] in the Papuan People's Assembly [*Majelis Rakyat Papua* or MRP], the institution which oversees the implementation of special autonomy in Papua), as stated in the Special Autonomy Law in articles 19-25, accommodates the Papuan peoples' demands for sovereignty and recognition of their identities as Indigenous Papuans. In contrast, although the Indonesian government indeed gave increased recognition and accommodation for Papuan identity, this was only seen as a way of strengthening indigenous Papuans' trust in the state (Ruhyanto, 2016; Macleod 2007; 2011). These differing interpretations lead to the Indonesian government and the Papuan peoples' holding different ideas on how to fulfil the rights of indigenous Papuans, especially since the power held by the MRP is ambiguous and restricted, it requires consultation and approval from government on issues dealing with customary rights (Imbiri, 2022).

The special autonomy package was designed to support greater Papuan self-rule but within the framework of the Indonesian state. Under special autonomy, tax revenue generated by resource projects that previously went to the central government in Jakarta was supposed to return to the provincial government in Papua. The special autonomy law also allowed Papuan symbols, such as the morning star flag, previously associated with independence movement and banned by the government, to be displayed, while structural mechanisms such as the MRP were instituted to facilitate a measure of Papuan self-rule.

However, the implementation of special autonomy has not been especially successful. This is for several reasons, including the lack of capacity within civil service in Papua, endemic corruption by local government leaders at the district and regency levels, and the failure of the central and provincial governments to implement various legal mechanisms that would enable policy to be operationalised. Progress toward self-rule has also been hampered by disunity and fragmentation among the people of Papua, and although the non-violent movement for self-determination and independence continues, competition and factionalism among resistance organisations have mitigated against success (MacLeod, 2007).

A culture of impunity, ongoing human rights violations by Indonesian police and military, and a confusing and contradictory policy mix eventually led to Jakarta's decision to divide the territory into two separate provinces in 2013 and again in 2022, bringing the total

number of Papuan provinces to five. Papuans have been profoundly disappointed and frustrated with the splitting up of the region into additional administrative areas, mainly because the government has not entered into genuine dialogue with them on the issues. In 1999, the then-province of Irian Jaya (which changed its name to Papua Province in 2000) only had nine regencies. By 2012, Papua was made up of two provinces (Papua and West Papua) and 42 regencies/cities. Now in 2022, the Indonesian parliament has agreed on a bill to further sub-divide the region, adding three new provinces: South Papua, Central Papua, and Highland Papua. Suppose the bill passes next year, after *pemekaran* (proliferation of administrative regions). In that case, the total number of provinces in Papua will be seven and more than 72 regency/cities with a total population of only 3.6 million people (Asmara, CNBC Indonesia, 2022).

Despite these changes, Papuans have obtained no power to manage key issues such as transmigration or mining and development that threatens their livelihoods, lands, and natural resources. Ultimately, special autonomy has failed to address the underlying causes of injustice in Papua. The government must move beyond *ad hoc* policy development in responding to Papuan issues and cease relying on the armed forces to sustain control in Papua.

By drawing the contested concept of special autonomy between the Indonesian government and Papuans, we illustrate that UNDRIP is very challenging to implement. In addition, it proves that UNDRIP is too vague, so the government interprets UNDRIP based on their own interests. The conception of Indigenous peoples in UNDRIP is, therefore, unable to represent indigenous peoples comprehensively.

Marginalisation, Impoverishment, and Depopulation of Indigenous Papuans

Since Papua's integration to Indonesia in 1963, and especially followed by the Act of Free Choice in 1969, the composition of the region's population has significantly altered with the influx of Indonesian migrants. There are two types of migrants coming to Papua. First are the migrants brought into Papua by the Indonesian government under the transmigration program. From 1964 to 1999, nearly 250,000 households (over 500,000 people) have settled in Papua in 200 settlements or villages built by the government (Scott & Tebay, 2006). For the Indonesian government, transmigration is pursued to reduce poverty and undertake social engineering around promoting the Indonesian identity. However, the transmigration program has failed to alleviate poverty and strengthen nationalism. Conversely, this program marginalised indigenous Papuans and created economic disparities between migrants and local Papuan (McGibbon, 2006; Elmslie, Webb-Gannon, & King, 2015). For Papuan people, the transmigration program also means the presence of a larger military force, increased deforestation, a large number of settlements for non-Papuan migrants, and land grabbing (McGibbon, 2006).

The second type of migrant is those who migrate of their own accord and using their own means. The majority are better educated and have more skills than the local Papuans, and quickly come to play a dominant role in Papuan society. They excel in trading, services,

construction, and contracting, and all government offices and private companies in Papua are now dominated by migrants.

As a result of migration, Papuans are becoming strangers in their land, with tens of thousands of migrants coming to the region every year. According to the 2010 census, Papua's population was 3.6 million: 2.83 million in Papua Province and 760,000 in West Papua Province. Based on historical growth rates, it is estimated that the 2010 population consisted of 52% indigenous Papuans and 48% non-Papuans. Elmslie (2010) stated that Papuans are becoming a minority in towns and urban areas of Papua, with the non-Papuan urban population in excess of 70%, while in rural and remote areas, Papuans remain the majority. Similarly, Ananta, Utami, and Handayani (2016) found that ethnic heterogeneity in the province of Papua and West Papua is very high (0.91), although the ethnic polarisation index is low (0.29). As in many other regions in Indonesia where migration is high, resentment toward migrants is widespread in Papua.

The phenomenon of depopulation is also triggered by difficulties experienced by indigenous Papuans to effectively access national development programs. As previously mentioned, civil servant positions in Papua are dominated by non-Papuans, and even the provincial houses of representatives are filled by non-Papuans. Meanwhile, migrants easily adapt and readily participate in the massive development activities taking place in Papua, in comparison with indigenous Papuans, who are not prepared for the large inflow of investment into Papua.

Finally, indigenous Papuans are further marginalised because their customary council is weakened by the government. The Indonesian government only recognises the Papua Indigenous Peoples' Institution (*Lembaga Masyarakat Adat Papua*), a government-controlled institution, and have rejected the DAP (Kusumaryati, 2019). This has triggered horizontal conflict among Papuan peoples within the scramble for natural resources, positions, and funds.

Land Grabbing, and the Violation of the Free, Prior and Informed Consent Principle

Free, prior, and informed consent (FPIC) is a principle recognised by both UNDRIP and ILO 169. The principle has become the legal foundation for Indigenous peoples to negotiate projects that affect their rights to land, livelihoods, social traditions, natural resources, and so on (FAO, 2016). Hence, FPIC is an essential tool to protect the rights of indigenous peoples.

The 2011 Special Autonomy Law stipulates in Article 43 that companies are required to reach agreement with indigenous Papuans if they try to access indigenous communal land (*tanah ulayat*). In practice, however, legal procedures are not in line with the FPIC principles (ICP & the Westpapua-Netzwerk, 2021). As a result, land rights violations are rampant in Papua and have been documented across the region. The majority relate to plantation companies running their business operations on Indigenous communal land, and some natural resource companies in Papua even reportedly obtained their operational licenses before receiving the FPIC of the local Indigenous communities (ICP & the Westpapua-

Netzwerk, 2021). FPIC is required before the approval and/or beginning of any project to ensure the collective rights of Papuan peoples to self-determination and to their lands, territories, natural resources, and other rights.

Logging, mining, and plantation companies are valuable to the Indonesian government because they contribute significantly to national revenue and create labour opportunities in remote areas. In Papua, these operations are often under the protection of security forces, who consider the investment as vital assets for the state. Accordingly, security forces often act in the company's interests and readily resort to repressive acts when conflict between local communities and the company occurs.

As of 2020, the government has approved concessions for 1,080,1961 hectares across Papua and West Papua provinces, prior to the decision to further split the area into three additional provinces (ICP & the Westpapua-Netzwerk, 2021). Currently, there are 60 agricultural companies with operational licenses in Papua (Al Rahab, interview, 2022). The number of requests is expected to increase in the coming years as the central government continues to support mega projects such as the Merauke Integrated Food Estate Enterprise in the southern part of the island.

Major issues associated with private companies are broken promises, fraud, and inadequate compensation for land. Companies frequently fail to keep their promises to provide jobs, improve infrastructure, and build health care and education facilities. If communities decide to claim their rights, the local government and its responsible institutions often fail to take a neutral position. The same applies to the police and military, who are among the most critical stakeholders in land rights conflicts in Papua.

Land grabbing in the region is the primary motive for the state to exploit natural resources. Since the ratification of Law no. 11 of 1967 concerning Mining and Law no. 1 of 1967 concerning Foreign Investment, profits from land grabs were not only obtained by the central government but also by multinational corporations such as PT Freeport Indonesia in Papua.

However, the economic development logic pushed by the central government does not always work successfully for local governments and communities in Papua. For example, in 2021, the government of West Papua Province revoked permits for 12 oil palm concessions in five districts, covering a total of 267,857 hectares (Jong, 2021). This step was taken after an audit was taken of the winning bidding company for the oil palm concession. The audit found administrative and legal violations, such as the lack of necessary permits and abandoned lands. The action of the West Papua government led to protests by various indigenous groups in West Papua because it can threaten the sustainability of forests that related to indigenous Papuans life. Indigenous Papuans are fighting for the recognition of land rights and defending their territory against natural resource companies. On that account, it can be concluded that the state's approach to extract Papua's natural resources is not in line with the needs of the local government nor the Indigenous people.

Conclusions

The research analyses how, even though the Indonesian government supports UNDRIP, the human rights situation in Papua has continued to deteriorate and the fulfilment of fundamental rights of Indigenous Papuans has declined. The problem of uncontrolled migration, absence of the rule of law, and extreme level of corruption remains widespread across Papua. The Indonesian government's development strategy lacks an indigenous perspective and, as a result, causes continued conflict and human rights violations.

In the implementation of UNDRIP, there is a condition that can be called the "Asian Controversy", where many countries, especially in the Asian region, agree with and ratify UNDRIP, yet do not recognise the existence of Indigenous peoples in their homelands. This controversy can be explained in several arguments. First, the rejection of the concept of Indigenous peoples arose from states who claimed that all their people are indigenous peoples who have long lived in the territory of the country, so this norm is not applicable. Second, the incompatibility of definitions of indigenous people with the country's constitutions, with the exception for a small part of the population who are immigrants. Third, the implementation of UNDRIP is not inappropriate with the countries' internal policies.

Therefore, for some scholars, UNDRIP is considered as a counter-productive human rights instrument (Merlan, 2009). This argument is based on the fact that UNDRIP has a progressive agenda that attempts to prioritise implementing human rights for Indigenous peoples, yet the debate over the concept of indigenous peoples has led to some states only agreeing to recognise the norm without implementing it.

This controversy corresponds to Indonesia's condition, where the government has refused to recognize the special needs of groups who identify themselves as indigenous peoples. However, the issue of special autonomy law for Papuans can be interpreted as that the Indonesian government has a strong interest in accommodating the basic rights of indigenous peoples in Papua. It is driven by the state's institutionalization of the customary council (Anderson, 2015), their basic rules, as well prioritization of indigenous Papuans to fulfil the fundamental rights in their territory.

The research analyses the situation in Papua in an attempt to bridge a small part of UNDRIP's vision with the objectives of the Special Autonomy Law. It finds that the political will of the state still has a large influence on the implementation of special autonomy, which is a legal product of the central government to resolve the conflict in Papua. Therefore, any action to accommodate the rights and welfare of Indigenous Papuans can be interpreted as efforts by the central government to minimise potential conflict.

In conclusion, the struggle for indigenous rights in Papua requires building and strengthening effective and accountable institutions at all levels. However, the continued failure to uphold the promotion and protection by the revolutionised concept of understanding human rights is, in addition to (lack of) political will, a significant obstacle. This concept argues that human rights are indivisible, interdependent, and interrelated.

Furthermore, although liberal constructivism provides a better theoretical framework regarding the importance of re-defining world politics and challenges of the nation-state system, this perspective is inadequate for broadening understanding of historical, cultural, and political context. In brief, it is argued that further research beyond the liberal constructivism approach is required to understand the concept of indigenous people fully.

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