LEGAL PROTECTION OF PAPUAN INDIGENOUS PEOPLES THROUGH THE ROLE OF THE PAPUAN PEOPLE'S ASSEMBLY REGARDING FOREIGN INVESTMENT AFTER THE PAPUA SPECIAL AUTONOMY LAW

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Abstract

One of Papua's special autonomy rights is the existence of the Papuan People's Council (MRP) as a cultural representation of the indigenous Papuan population which is given certain powers. The main problem is that the MRP, which is a direct representative of indigenous Papuans, is considered to have weak authority in carrying out the direct aspirations of the Indigenous Papuan people, including matters relating to the entry of foreign investors into their customary land. Therefore, the implications of foreign investment on the enjoyment and ownership of indigenous peoples' rights to land are becoming increasingly neglected. This research was conducted to examine the legal protection of Papua's indigenous communities through the role of the Papuan People's Council towards foreign investment. This type of research is included in normative juridical with a statutory approach. The research results show that the regulation of foreign investment in Indonesia is regulated by Law Number 25 of 2007. This law contains a number of principles which form the background for the formation of norms and rules contained in the articles of this law. The legal protection of Papua's indigenous communities in relation to foreign investment is realized through several provisions, including Article 38 paragraph (2) and Article 43 of Law Number 21 of 2001 concerning Special Autonomy for Papua Province. In this law, it is stipulated that economic businesses that utilize natural resources in Papua must respect the rights of indigenous peoples. Furthermore, the Papuan People's Assembly must pay attention to indigenous communities in carrying out its functions and authority.

Keywords: Legal Protection, Papuan People's Assembly, Foreign Investment

INTRODUCTION

Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that the State recognizes and respects customary law communities and their traditional rights as long as they remain alive and in accordance with societal developments and the principles of the Unitary State of the Republic of Indonesia, as regulated by law. The amendments to the 1945 Constitution implemented by the People's Consultative Assembly (MPR) from 1999 to 2002, one of the most prominent of which was the amendment to Chapter VI, Article 18 of the 1945 Constitution concerning Government, which was implemented in the second amendment in 2000.

The resulting consequences regarding the administration of state governance resulted in the entire territory of the Republic of Indonesia being divided into provincial regions, and within these provinces, further subdivided into districts and cities. Each province, district, and city is granted autonomous rights to regulate and manage its own affairs and interests. The transfer of autonomous rights to each region must be based on law, as a characteristic of a state based on the rule of law.

The implementation of Article 18, Article 18A, and Article 18B of the 1945 Constitution of the Republic of Indonesia, the substance of which explicitly and transparently provides recognition of the existence of regional governments (provinces and districts/cities), with the principle of decentralization which gives birth to regional autonomy in each autonomous region, the Government of the Republic of Indonesia recognizes Special Autonomy in several regions in Indonesia (Moonti, 2017).

One of the special autonomous regions is Papua Province. To protect and enhance the dignity and status of the Papuan indigenous people, granting Special Autonomy status to Papua Province is a necessity that does not conflict with the Constitution or the 1945 Constitution of the Republic of Indonesia (Asnawi, 2021). Special Autonomy for Papua is a special authority recognized and granted by the State to Papua Province to implement and manage the interests of the local community according to its own initiative, based on the aspirations and fundamental rights of the Papuan indigenous people (Harruma, 2022).

The purpose of granting Papua special autonomy status is to realize justice, uphold the rule of law, respect human rights, accelerate economic development, improve the welfare and progress of the Papuan people, and achieve equality and balance with other provinces in Indonesia (Paendong, Kalalo, & Nainggolan, n.d.).

Law Number 23 of 2014 concerning Regional Government has strengthened the Special Autonomy held by Papua Province as regulated in Law Number 21 of 2001 concerning Special Autonomy for Papua Province which was amended by Law Number 35 of 2014 concerning the Stipulation of Government Regulation in Lieu of Law (Perpu) Number 1 of 2008 concerning Amendments to Law Number 21 of 2001 concerning Special Autonomy for Papua Province to Become a Law as amended again by Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for Papua Province.

The customary institution that serves as the legislative body for the indigenous Papuan people is the Papuan People's Assembly (MRP), whose members consist of representatives from religious, traditional, and women's groups, representing the indigenous Papuan people. This is regulated in Law Number 21 of 2001 concerning Special Autonomy for Papua Province, Chapter V, Part One, Article 5, paragraph (2), which states: "In the context of implementing special autonomy in Papua, an MRP shall be established that is a cultural representation of the indigenous Papuan people, based on respect for customs and culture, empowering women, and strengthening religious harmony." The existence of this MRP truly brings meaning and social benefits to indigenous Papuans, especially in relation to efforts to improve the quality of life and welfare of indigenous Papuans themselves.

The main problem lies in the MRP, which is the direct representative of indigenous Papuans, which is considered to have weak authority to convey the direct aspirations of the indigenous Papuan people, including matters related to the entry of foreign investors into their customary lands. The presence of foreign investors in the form of multinational corporations, with business activities in various sectors, such as production and services, will significantly change the way of life of a nation (recipient country).

According to An An Chandrawulan, the flow of foreign investment into a country (recipient country) has a significant impact, especially on factors such as technology transfer, employment, and capital transfer. However, on the other hand, the existence of foreign investment is subject to different interpretations. First, it can provide benefits and advantages to developing and underdeveloped countries. One of these is an increase in the standard of living and welfare of its people. Second, negative implications have also been found, namely the marginalization of the rights of indigenous

peoples to natural resources, the natural environment, and their habitats, which have been passed down through generations (Chandrawulan, 2012).

The government consistently undermines the interests of national development, resulting in various laws and policies related to indigenous communities tending to ignore, marginalize, and even seemingly eliminate their position within the fabric of national life. Even where community rights are recognized through national laws, their implementation is extremely weak.

In developing agreements between host countries and foreign investors, the tendency is for the agreements to only regulate the host country's behavior or actions toward the investor. These agreements merely facilitate and grant legal rights for economic expansion, such as foreign investment, without regulations to prevent the negative impacts of such activities. Therefore, whether realized or not, the implications of foreign investment on the enjoyment and ownership of indigenous peoples' rights to land, natural resources, and development are increasingly neglected.

RESEARCH METHOD

Type of Research

This research falls into the category of normative legal research. Normative legal research is conducted by examining applicable laws and regulations applied to a specific legal problem. Normative research is often referred to as library research because the objects of study are legal documents and library materials (Abdurrahman, 2003).

Research Approach

This research uses a legislative approach because it examines Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for Papua Province, Law Number 25 of 2007 concerning Investment, and other regulations related to the research.

Data Sources

This research is a normative juridical study. Therefore, the data used is secondary data. Secondary data consists of three legal sources:

1. Primary Legal Materials
   These are binding legal materials, consisting of various regulations, laws, and other regulations, including:
   a. The 1945 Constitution;
   b. Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for Papua Province; and
   c. Law Number 25 of 2007 concerning Investment.
2. Secondary Legal Materials
   Secondary legal materials provide explanations regarding primary legal sources, such as books, newspapers/magazines, and scientific papers in the fields of special autonomy and foreign investment.
3. Tertiary Legal Materials
   Tertiary legal materials provide guidance on primary and secondary legal sources, such as legal dictionaries, encyclopedias, and bibliographies.

Analysis Techniques

Using the data and legal materials described above, the data processing, analysis, and construction were conducted using qualitative analysis methods, emphasizing the interesting aspects of legal principles, particularly positive law related to the legal protection of Papuan indigenous communities through the role of the Papuan People's Assembly in relation to foreign investment.

RESULTS AND DISCUSSION

Principles of Foreign Investment Related to Natural Resource Management

In developing countries, including Indonesia, financial support for development comes from the World Bank and foreign investment (Wattimena, n.d.). Key sectors funded by these foreign funds are predominantly oriented toward the natural resource industry. The natural resource industry is considered to play a crucial role in economic development and growth. To attract foreign investment in this sector, the government typically issues regulations in the form of laws and various economic policies that benefit foreign investors. The government even doesn't hesitate to adopt regulatory policies from other countries or international organizations.

According to Hikmahanto Juwana, such regulatory policies are used as instruments to achieve their interests, directly or indirectly. Such laws are stigmatized as instruments of pressure, forcing the affected country to comply with its policies. Hikmahanto further stated that such laws become political instruments of those in power (Juwana, 2010). As a result, social, legal, economic, environmental, and other facts are ignored. Thomas Walde stated that if this happens, then the neglect of human rights, including the rights of indigenous peoples, is something that is vulnerable and could happen at any time (Walde, No Year).

In fact, foreign investment is predominantly directed at the mining, oil, and forestry industries. These natural resource sectors have the greatest impact on the rights of indigenous communities. The oil, mining, and forestry industries prioritize and utilize land extensively for their operations. These industries result in the appropriation of indigenous peoples' land, sometimes on a very large scale. This land is easily taken for mining activities, with little or no compensation (Wattimena, n.d.).

Law Number 25 of 2007 concerning Investment emphasizes several important principles that serve as the basis for the law's formulation. The principles contained in this law at least reflect the ideals or hopes to be achieved. According to Sudikno Mertokusumo, legal principles or legal principles are not concrete laws but rather general and abstract basic thoughts or are the background of concrete regulations contained in the legal system that are embodied in statutory regulations which are the image of positive law (Mertokusumo, 2007). The principles contained in the Foreign Investment Law can be mentioned, among others: (Wattimena, No Year)

1. The principle of legal certainty is a principle of the rule of law that establishes laws and statutory provisions as the basis for every policy and action in the investment sector.
2. The principle of transparency prioritizes the public's right to obtain accurate, honest, and non-discriminatory information regarding investment activities.
3. The principle of accountability stipulates that every activity and final result of investment must be accounted for to the public or the people, as the holders of the highest sovereignty of the state, in accordance with laws and regulations.
4. The principle of equitable efficiency is the principle underlying investment implementation, prioritizing equitable efficiency in an effort to create a fair, conducive, and competitive business climate.
5. The principle of togetherness encourages the collective participation of all investors in their business activities to achieve the welfare of the people.
6. The principle of sustainability is a principle that systematically strives for the development process through investment to ensure prosperity and progress in all aspects of life, both now and in the future.
7. The principle of environmental awareness is a principle of investment carried out by paying attention to and prioritizing environmental protection and maintenance.

Substantially, the foreign investment principles stipulated in Law Number 25 of 2007 concerning Investment are an expression of the state's policy to stimulate national economic growth through the exploitation of Indonesia's natural resources (mining). The process of developing national legal instruments is inextricably linked to global political and economic interests. These legal instruments are oriented toward facilitating the interests of foreign investors in the exploration and exploitation of natural resources. The rights of indigenous peoples are not included in this legal policy.

A characteristic of every law on natural resource management is that it always adheres to a centralistic, state-centered natural resource management paradigm. This prioritizes a sectoral approach and ignores the protection of indigenous peoples' rights to the land and natural resources they have access to (Nurjaya, 2008).

This natural resource management paradigm is enshrined in Article 33 of the 1945 Constitution, which states, "The land, water, and natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people." "The State's right to control" can be interpreted from two perspectives: as a reflection of the implementation of the State's values, norms, and legal configurations that govern the State's control over natural resources. On the other hand, it describes the State's authority and legitimacy to control and utilize natural resources within its sovereign territory. The concept of State sovereignty over natural resources has actually been recognized by UN General Assembly Resolution 1803 (XVII) as "permanent sovereignty over natural resources." The struggle of developing countries to initiate this resolution is based on the interests of national development and the welfare of their people.

The meaning of state sovereignty over natural resources can be indicated by the state's external ability to conduct relations (cooperation) with other countries to manage Indonesia's natural resources,

for example, by bringing in foreign investors for development purposes. A state's internal sovereignty is guaranteed if it possesses legal sources such as a constitution, laws and regulations, and unwritten customs practiced by the community. In this regard, M.U. Resolution 1803 also emphasized that the entry of foreign investors must comply with the laws and conditions of the host country (Thaib, 2001).

Thus, it is understandable that state sovereignty over natural resources for development purposes must be respected by foreign investors while still adhering to the laws of that country. Conversely, the host country must be able to regulate the activities of foreign investors within its jurisdiction using its national laws. Legal implementation requires that Indonesia's pluralistic legal system, along with the inherent rights of indigenous communities in natural resource management, be respected. Meanwhile, when establishing a national legal system, general principles accepted by nations must be prioritized without abandoning the principles of indigenous law or customary law that are still valid and relevant (Chandrawulan, 2012).

The Indonesian state treats indigenous communities by recognizing one identity and excluding others (ambiguity). In many cases, this other identity is often linked to the accumulation of foreign capital to exploit natural resources (Steni, 2009). Indigenous communities are consistently in a weak position in defending their rights amidst the power of capital that exploits land and natural resources. Yet, land, territory, and the natural resources contained therein are crucial and meaningful to their survival, culture, and civilization. Land is the raison d'etre for their entire existence, including social, cultural, spiritual, economic, and political life (Steni, 2009).

The plight of indigenous communities, who are depressed, marginalized, and marginalized in their own lands, amidst abundant natural resources, is an undeniable fact. Various legal instruments that recognize indigenous peoples' rights seem to have no legal force and no benefit in the face of foreign investors. This can be seen in various legal instruments related to natural resource management, such as Law No. 5 of 1994 concerning Biodiversity, which stipulates free and prior informed consent; Law No. 11 of 1967; Law No. 41 of 1999 concerning Forestry; Law No. 12 of 2005 concerning Economic, Social, and Cultural Rights (a ratification of the Convention); and Law No. 32 of 2004 concerning Regional Government. These legal instruments further express government power, with a legal model that has been developed with a more repressive character.

The implication of a repressive legal model is that land, territory, and natural resources can be seized at any time under the pretext of development. On the contrary, the government consistently favors the interests of foreign investors. The entry of foreign investors should, in fact, improve the people's welfare and provide equal opportunities to enjoy national development. This situation occurs in almost all countries where indigenous communities exist, and it seems to be a long struggle for their survival. The role of law as a means of national development should not only rely on universally accepted principles and concepts, which benefit one party (for example, foreign investors). However, legal development as a means of improving people's welfare must also be based on indigenous legal principles or values, norms, and unwritten laws that are still valid and relevant to the existence of indigenous legal communities.

Legal Protection for Indigenous Papuans Through the Role of the Papuan People's Assembly in Foreign Investment Following the Papuan Special Autonomy Law

The enactment of the Papuan Special Autonomy Law was initiated by the Papuan people. This law reflects the aspirations of the Papuan people, which emerged from the political unrest in Papua. In this case, the law was enacted to quell the Papuan people's desire for independence from the Republic of Indonesia. The concept and plan for the Special Autonomy Law were formulated by the indigenous Papuan people, prioritizing the protection and support of indigenous Papuans on their land.

As mandated by Law No. 21 of 2001, the Papuan Special Autonomy Law essentially grants broader authority to the Provincial Government and the Papuan people to govern and manage themselves within the framework of the Unitary State of the Republic of Indonesia (NKRI). This broader authority means greater responsibility for the Provincial Government and the Papuan people to govern and regulate the use of natural resources for the prosperity of the Papuan people. This authority also means the authority to empower the socio-cultural and economic potential of the Papuan people, including providing an adequate role for indigenous Papuans through representatives of traditional customs, religions, and women. This role includes participating in formulating regional policies, determining development strategies while respecting the equality and diversity of Papuan life, preserving Papuan culture and the natural environment, and establishing regional symbols in the form of a regional flag and regional anthem as a manifestation of the Papuan people's identity and recognizing the existence of customary rights, customs, indigenous communities, and customary law.

With the enactment of Special Autonomy for Papua, indigenous Papuans have a distinct identity and represent a distinct part of the indigenous Papuan community. The Special Autonomy Law for Papua Province provides for and protects the basic rights of indigenous Papuans. Therefore, protection of the basic rights of indigenous Papuans encompasses six basic dimensions of life, namely (Sumule, 2003):

1. Protection of the right to life for Papuans in the Land of Papua, namely a quality of life free from fear and with all physical and spiritual needs met appropriately and proportionally.
2. Protection of the rights of Papuans to land and water within certain boundaries, along with the natural resources contained therein.
3. Protection of the rights of Papuans to assemble and express their opinions and aspirations.
4. Protection of the rights of Papuans to participate actively in political and governmental institutions through the implementation of a healthy democracy.
5. Protection of the freedom of Papuans to choose and practice their religious beliefs, without coercion from any party. and
6. Protection of Papuan culture and customs.

By protecting the basic rights of indigenous Papuans, encompassing six fundamental dimensions of life, it is hoped that this will foster an understanding of justice within the legislation concerning Special Autonomy for Papua Province. These six fundamental dimensions serve as a basis for assessing whether the Special Autonomy Law incorporates a sense of justice within Special Autonomy.

On the other hand, the Papua Special Autonomy Law contains a specific provision for the implementation of Special Autonomy for Papua. This is evident in the establishment of an institution called the Papuan People's Assembly (MRP). The MRP is an inseparable and independent part of the implementation of Special Autonomy for Papua. The MRP is a working partner of the Regional People's Representative Council (DPRD) and the Papuan Regional Government in implementing Special Autonomy for Papua, emphasizing the protection of indigenous Papuans within the implementation of Special Autonomy for Papua. The division of power in the context of Special Autonomy for Papua concerns not only the relationship between the central and regional governments but also the distribution of power and authority within Papua Province.

The establishment of the MRP illustrates the existence of two legislative bodies in Papua: the DPRP, which represents members of political parties directly elected by the community, and the MRP, which is a cultural institution whose members come from indigenous, religious, and women's communities. The MRP is an institution that partners with the Regional Government and the Papua DPRP. The position of the MRP with all its duties and authorities can provide benefits for the implementation of Special Autonomy, where it is hoped that it can provide input on the interests of the indigenous Papuan people.

The problem with the MRP is the imbalance in its implementation. In this case, the MRP is unable to exercise the rights and obligations stipulated in the Papua Special Autonomy Law. This occurs because the MRP and the Regional People's Representative Council (DPRP) operate independently in implementing Papua's Special Autonomy. This results in the MRP, which should be a working partner, becoming merely an institution created to fulfill the mandates stipulated in the Papua Special Autonomy Law, lacking any significant oversight powers.

The MRP's suboptimal position has weakened its commitment to indigenous Papuans. The MRP's responsibility lies in protecting and developing unity within indigenous Papuan society. It not only encourages the development of regulations that protect the interests of indigenous Papuans but also maintains the overall unity of Papuan society and provides protection for indigenous Papuans from foreign investment seeking to exploit Papua's natural resources. The Papua Special Autonomy Law assigns a significant and centralized role to the Papuan People's Assembly (MRP). This assembly is the culturally representative institution of indigenous Papuans. The MRP consists of representatives from traditional, religious, and women's organizations spread across all regencies, particularly representatives representing the 250 tribes in Papua.

Legal protection for Papuan indigenous communities in relation to foreign investment is implemented through several provisions, including:

1. Law Number 21 of 2001 concerning Special Autonomy for Papua Province. This law stipulates that economic enterprises utilizing natural resources in Papua must respect the rights of indigenous communities. The following are several provisions in Law Number 21 of 2001 that regulate the legal protection of Papuan indigenous communities:
    a. Article 38 paragraph (2) stipulates that economic enterprises in Papua utilizing natural resources must respect the rights of indigenous communities.

b. Article 43 regulates the protection of indigenous communities' rights.
2. Papua Provincial Regulation Number 5 of 2022, which regulates the recognition and protection of indigenous communities in Papua Province.
3. The Papuan People's Assembly (MPR) considers indigenous communities in carrying out its functions and authorities.
4. A portion of the Papua Provincial Budget (APBD) is allocated for spending on assistance for the empowerment of indigenous communities.

Legal protection for indigenous communities is also guaranteed in the 1945 Constitution of the Republic of Indonesia (UUD 1945). In addition, indigenous peoples have rights to customary territories, natural resources, development, spirituality and culture as well as the environment.

CONCLUSION

The influx of foreign investment into Indonesia plays a significant role in economic growth and national development. Regulation of foreign investment in Indonesia is regulated by Law Number 25 of 2007. This law contains several principles that underlie the formation of norms and rules outlined in its articles. These principles include legal certainty, transparency, accountability, efficiency with justice, togetherness, sustainability, and environmental awareness. The Foreign Investment Law and other laws governing natural resource management adhere to a dominant paradigm with a repressive legal approach. This perpetuates serious threats to indigenous communities through excessive prioritization of investment.

Legal protection for indigenous Papuans in relation to foreign investment is realized through several provisions, including Article 38 paragraph (2) and Article 43 of Law Number 21 of 2001 concerning Special Autonomy for Papua Province. This law stipulates that economic activities utilizing natural resources in Papua must respect the rights of indigenous communities. Furthermore, the Papuan People's Assembly must consider indigenous communities in carrying out its functions and authorities. Legal protection for indigenous communities is also guaranteed in the 1945 Constitution of the Republic of Indonesia (UUD 1945). In addition, indigenous communities have rights to their customary territories, natural resources, development, spirituality, culture, and the environment.

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