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The logo of the International Institute of Social Studies, featuring the word "Erasmus" in a stylized, cursive script.

Between Recognition and Control: Law, Land, and the Contradiction of Papua's Special Autonomy

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List of Acronyms

BPS	Badan Pusat Statistik
BPK	Badan Pemeriksa Keuangann
BPUPKI	Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia
DPR RI	Dewan Perwakilan Rakyat Republik Indonesia
FPIC	Free, Prior and Informed Consent
MIFEE	Merauke Integrated Food and Energy Estate
MRP	Majelis Rakyat Papua
NKRI	Negara Kesatuan Republik Indonesia

OPM	Organisasi Papua Merdeka
PPTEM	Proyek Pengembangan Terpadu Pangan dan Energi Merauke
UN	United Nations
UNTEA	United Nation Temporary Executive Authority

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Abstract

This research aims to understand how Special Autonomy has become a space of contradiction between recognition and control in Papua. Through research in Jakarta and Sorong, I explore how laws that promise to provide recognition and respect for indigenous Papuans have instead resulted in state power and elite interests. Using legal theory complemented by Class Relations Theory, I examine how the special autonomy law shapes social relations between the state, elites, and society. I employ Qualitative Case-Based Methodology and Extended Case Methodology to understand the real dynamics of Special Autonomy in the context of the state and indigenous communities and expand my theory through fieldwork in Jakarta and Papua. This study demonstrates that Special Autonomy in Papua is not a neutral legal entity and has given rise to a new bureaucratic class at the local level that mediates relations between the state and society and enables indigenous communities to make claims through condemnation and demands against the state. Ultimately, through this research, I encourage a rethinking of the meaning of Special Autonomy, not merely as a legal entity, but as a space for control and recognition, as well as resistance to uphold justice for indigenous Papuans.

Relevance to Development Studies

This research contributes to Development Studies by examining how law operates as a social and ideological force born of violence but sustained through moral legitimacy. Inspired by E.P. Thompson's work in *Whigs and Hunters* (1975), this research views law not simply as an administrative tool of the state, but as a historical space in which power is exercised through a combination of coercion and consent. In the context of Papuan Special Autonomy, legal language that promises recognition for indigenous communities simultaneously masks mechanisms of control and land grabbing carried out in the name of justice and development. By linking critical legal analysis and the political economy of development, this research broadens understanding of how power operates through law in postcolonial development projects. This approach enriches development studies by demonstrating that development is never entirely neutral but always operates in tension between legalized violence and the moral claims to justice that underpin the law's legitimacy.

Keywords

Papua, Papua's Special Autonomy, Law, Violence, Legitimacy, Dispossession

Chapter 1

Introduction

"Whoever works this land faithfully, honestly, and obediently will progress from one wonder to another." (Rev. I.S. Kijne, 1947).

The above message is not only religious in nature but also serves as a moral reflection that shapes the way Papuans think and view their land and relate to one another. For me personally, this message raises reflective questions about justice and the recognition of how Papuans can live within a legal system that truly recognizes justice and the existence of their rights. However, throughout history, the legal paradox has clearly shaped Papua as a space where justice and sovereignty have always been intertwined with practices of violence and control, starting with the political tensions of the colonial era and continuing through the post-colonial period of Indonesian rule, which was rife with structural violence, which gave rise to the Papua's Special Autonomy.

In this chapter, I explain how this tension was historically shaped through changing relations between the colonial government, the Indonesian state, and the Papuan people, leading to the establishment of Papuan Special Autonomy as a policy that recognizes and respects the uniqueness of indigenous Papuans. I also explain how its implementation has revealed a profound contradiction between recognition and control. The main argument in this study is centered on this contradiction, examining whether Papuan Special Autonomy truly serves as a space for recognition, emancipation, and respect, or whether it serves more as a controlled domination that allows for the legal dispossession in Papuan rights and land.

1.1 From the Margins of Empire: Colonial Governance and Politics of Strategic Neglect

Before it became recognized in modern political discourses on autonomy and integration, the Papuan region existed on the fringes of regional and imperial powers. Papua's geographic and cultural position at the eastern end of the archipelago made it a historical presence, but it rarely received attention. In this context, colonialism and state power shaped Papua as a geographical and political space defined by neglect, a form of strategic neglect that has persisted for centuries. Papua's marginal position did not emerge suddenly, but was shaped through a long historical process that placed Papua in a symmetrical relationship with surrounding regional powers.

Historically, the origins of the Papuan people are uncertain. Current knowledge suggests that Papuan ancestors came from two ethnic groups: Africans and indigenous Melanesians (Singh, 2008). As early as the 8th century, Papua and the Srivijaya Kingdom had established relations, both direct and indirect. Initially, this relationship consisted of peaceful trade, but later, foreign traders exploited and enslaved Papuans (*ibid*). By the 17th century, Papuans were engaged in trade with Eastern Indonesia. The exchange of spices, forest products, and slaves occurred during this trade, and this simultaneously served as an effort to Christianize the Papuan people. However, the Papuans retained their own cultural beliefs and practices (*ibid*). This series of early interactions established a pattern in which Papua was positioned as a space of extraction and an object of cultural mission.

After the fall of Constantinople in 1453, European nations began seeking a direct trade route to Indonesia for spices in the sixteenth century. This search led the Portuguese to the Moluccas in 1512 (*ibid*). This marked the beginning of Western imperialism in the Indonesian archipelago, and at the same time, European contact with the Papuan region also began through expeditions by explorers who named the western coast of Papua after themselves.. The expedition was not neutral, it positioned Papua and showed how Papua in the colonial imagination was a resource and not a political entity, which became an early form of frontier thinking that would later take root in the way the state and corporations viewed the land of Papua (*ibid*).

In 1828, the Dutch annexed West Papua, establishing Fort De Bus as a symbol of their sovereignty. However, due to challenges such as the harsh tropical climate and resistance from the native population, they eventually evacuated the fort in 1836. Dutch interest in Papua then increased as they sought to expand their colonial territory and counter German and British influence (Singh, 2008).

However, Dutch control during this period was symbolic, representing a claim to sovereignty rather than the establishment of a real government, marking the beginning of a pattern of strategic neglect. In this pattern, the state's presence was only manifested through sovereignty, such as forts and maps, without any actual governance practices. This pattern of claims without administration became the blueprint for subsequent Papuan governance. This means that recognition from the outset was a legal language that facilitated control through intermediaries, so that local legitimacy became a mechanism for distancing power from the Papuan people.

In 1841, a treaty between the Sultans of Tidore and Ternate, witnessed by W.B. Martin established the boundaries of their territories. The Tidore Sultan's territory in West Papua was under Dutch control, but the extent of this boundary remains a matter of debate. The Dutch and British finally agreed to divide their territories in 1895, with the western part of New Guinea coming under Dutch control. However, uncertainty remained over which part of the island would remain under Dutch control, while Papua would remain under the authority of the Sultanates of Tidore and Ternate (Singh, 2008). This treaty provides a glimpse into Dutch colonial rule through layers of local intermediaries and symbolic laws that shaped practices of recognition and control. In this way, colonialism introduced the language of administrative recognition.

Papua was named Netherlands New Guinea or West New Guinea by the Dutch, and was tied to Indonesia as a colony of the Dutch East Indies (Kluge, 2020). After becoming a Dutch colonial power, exploration of Papua began. Dutch expeditions, both government and private, uncovered data about the Papuan interior, including its natural resources and geography. Administrative posts were established by the Dutch in Papua in the late 19th century, which increased Dutch interest in the region. The discovery of oil and minerals in the early 20th century further fueled this interest, with companies such as Royal Dutch Shell and Freeport conducting extensive exploration and mining operations (Singh, 2008).

Expeditions to northern and southern Papua departed from Hollandia and Digul (Tanah Merah), respectively. Digul (Tanah Merah), was a place of exile for political prisoners where around 823 people, including figures of the Indonesian independence movement, were exiled after the PKI (Indonesian Communist Party) rebellion in 1926-1927 (*ibid*).

World War II then spread to Southeast Asia and the South Pacific, and in 1942, Japan occupied much of the region, including Papua. This resulted in forced labor and suffering for the indigenous Papuans, but it fueled their resistance and aided the return of Allied forces. Japanese rule over Indonesia ended in 1945 after Allied forces from the United States took over Papua and Japan surrendered unconditionally following the atomic bombings.

During the Japanese occupation of Indonesia, Japan sponsored the establishment of several organizations aimed at improving relations with Indonesia and the Preparatory Committee for Indonesian Independence or known as BPUPKI, was one of the organizations sponsored by Japan. BPUPKI whose members were several national figures including the first president of Indonesia, Soekarno and his Vice President, Mohammad Hatta. BPUPKI then met in July 1945 to vote on the boundaries of Indonesia, Most supported the inclusion of Papua into

Indonesian territory, but Hatta refused and argued that "Indonesia should not be perceived as an expansionist or imperialist state". Hatta is "Melanesian" and Hatta proposed a referendum because he believed that the Papuan people had the right to gain independence and defended his opinion at the round table conference in The Hague in 1949. This aroused great anger from President Soekarno who represented others and this became an issue that created distance between the two Indonesian leaders (Singh, 2008).

Allied forces then landed at Humboldt Bay on April 22, 1944, and used the bay as a base to prepare for an attack on Japan. The Dutch saw this as an opportunity to retake Indonesia with their navy. The Allies finally abandoned Hollandia (Papua) in December 1945, and the base was returned to Dutch control on January 25, 1946 (Singh, 2008). Following the return of the Dutch to Papua after World War II, Papua found itself at the center of political tensions between the Netherlands and Indonesia, a contested balance between colonial interests and Indonesian nationalism. Within colonial discourse, figures like Van Eechoud framed Papua as a region that "needed protection" and was accorded special status due to its perceived backwardness (Penders, 2002, pp. 61–62).

This paternalistic logic demonstrates the shift from exploratory colonialism to administrative colonialism, with strategic neglect continuing since the early colonial era. Eurasian (Indo-Dutch) groups, who lost their social standing after decolonization, continued to seek to establish New Guinea (Papua) as a "new homeland" under the protection of the Dutch crown. Movements such as the Groter Nederland Actie and figures such as Captain C.T. Berg urged that Papua be separated from Indonesia and maintained as an autonomous Dutch colony, citing the protection of Eurasian cultural identity. Ultimately, however, the Linggadjadi Agreement was reached on November 12, 1946, recognizing the authority of the Republic of Indonesia over most of the archipelago and establishing the United States of Indonesia, which, in the interpretation of both parties, included West New Guinea (West Papua). (Penders, 2002).

Dutch concerns began to arise over Australian interference in the Pacific following the establishment of the South Pacific Commission and the potential loss of control over Papua. Figures like Van Mook initially considered Papua to be part of Indonesia economically, socially, and culturally, but after discussions with Van Eechoud and other colonial officials, he shifted his support to the idea of Papua's separation and granting it special status. He argued that Papua was not yet ready for "civilization" and needed to be protected from Indonesian domination. Furthermore, Papua required significant capital, and if handed over to Indonesia, it would be economically and administratively neglected. Van Mook then proposed three status

options, all of which maintained the Dutch as the primary authority, either directly or through international mechanisms, such as the UN Trusteeship (Penders, 2002).

To reassure the opposition, Jonkma, one of the Dutch officials, proposed the creation of a political zone encompassing Papua, Ambon, and Timor under Dutch control. On December 5, 1946, the Dutch finally issued a final decree establishing a special status for Papua within the framework of the Netherlands-Indonesian Union. However, this decision met with opposition from Indonesia because it constituted a unilateral change to the original contents of the Linggarjati Agreement and sparked great anger among the Indonesian government and the East Indonesian states (Penders, 2002).

After losing all of Indonesia's territory in 1949, the Dutch maintained their colonial authority and sought to develop Papua by opening opportunities in education, bureaucracy, and development aimed at forming a Papuan elite loyal to the Dutch. This policy gave birth to a generation of politically aware, educated, and inter-ethnic Papuan intellectuals and bureaucrats. These elites then began to advocate for Papuan identity and political rights (Kluge, 1158). In 1960, under international pressure and protests from Indonesia, the Dutch accelerated the self-government plan for Papua, targeting it for 1970. However, this project opened up space for the emergence of Papuan nationalist consciousness (Kluge, 2020).

The Papuan National Congress then began in 1961 and was led by Jouwe and Bonay, Papuan elites who formulated their state vision through the declaration of the identity of the “Papuan Nation”, an independence manifesto, national symbols such as the anthem and flag, and finally the raising of the Morning Star flag on December 1, 1961 (Kluge, 2020). Following the declaration of nationalism through the raising of the Morning Star, Papuan elites brought their struggle to the UN and sought support from newly independent African nations, as they viewed the African independence struggle as synonymous with Papua's own. However, Papuan leaders found it difficult to counter Indonesia's diplomatic campaign, which sought support from all Asian-African leaders to reject and oppose the Dutch proposal for Papuan independence. Indonesia then capitalized on the momentum of Cold War politics by negotiating directly with the United States and exerting military and diplomatic pressure on the Netherlands. The US, wary of Soviet influence in the region, ultimately sided with Indonesia (Kluge, 2020).

The pressure exerted by Indonesia on the Netherlands ultimately resulted in an agreement, the New York Agreement, signed in August 1962 by the Netherlands and Indonesia, which agreed to hand over Papua to Indonesia in 1963, without involving the Papuan

people in the agreement. The Netherlands then handed over the administration of Papua to the United Nations Temporary Executive Authority (UNTEA) temporarily. After a transitional period, UNTEA handed Papua completely over to the Indonesian government as a form of implementation of the New York Agreement. Formally, the New York Agreement had one condition, namely "*self-determination*" for the Papuan people, but the process of its implementation was entirely left to Indonesia without a clear oversight mechanism from the United Nation itself (Kluge, 2020). From this, a legal paradox is at work, where an international legal instrument that promises self-determination actually becomes an entry point for the consolidation of state control.

The Papuan people then staged a major protest on August 11, 1962, opposing the handover of Papua to the Indonesian government. They felt betrayed by the Dutch and neglected by the United Nation (Kluge, 2020). The symbols of protest from the Papuan people represent a collective trauma over the double betrayal by the Dutch and the United Nation (UN) in promising justice for Papua.

After power shifted to Indonesia, many Papuan elites fled to Papua New Guinea, Australia, and the Netherlands. They became the first political diaspora to bring the issue of Papuan independence to the international community. The Indonesian government immediately suppressed all forms of political organizations and symbols of Papuan identity, and all expressions of nationalism were considered a threat to national integration. Through the "Indonesiasi" program, Indonesia carried out a process of structural assimilation of Papuan society, a step that not only changed the social order but also eliminated the political and cultural space previously established by the Dutch. UN involvement was also nominal, although the New York Agreement promised UN supervision until the implementation of self-determination (Kluge, p. 1160). Papuan leaders living in exile continued to strive to defend the Papuan issue in international forums, but faced limited political support due to Indonesia's diplomatic power and Cold War geopolitical interests (Kluge, 2020).

Thus, from the colonial period to integration, Papua has never been fully a subject within its own history. Papua continues to exist "*at the margins of empire,*" a periphery defended by colonial and postcolonial powers. Looking at this long trajectory, it appears that colonialism left not only physical traces of power but also bureaucratic perspectives on how land and people are governed. From these traces, ongoing structures of power emerged, and within this landscape, Papua's contradictions began to form between recognition and neglect, between the promise of independence and the practice of domination. These structures inherited from colonial neglect and selective protection were then reflected in the Indonesian

government's governance of Papua, where "recognition" became a new language for restructuring forms of control. While the post-Suharto national political transition opened up space for reform, it was this legal-extractive legacy that limited the horizon for change.

1.2 The Making of the “Papua Question”: Between Integration and Resistance.

Papua's integration into Indonesia was not a natural process, but rather a traumatic one, involving major international powers, not a typical colonial relationship. The issue in Papua subsequently attracted global attention, with major powers such as the United States, the Soviet Union, the Netherlands, the United Kingdom, France, and Australia becoming involved for their own geopolitical interests. In the period 1962-1969, international politics played a dominant role in forming three blocs, namely the pro-Indonesian (United States and the Soviet Union), pro-Dutch, and neutral blocs, which reflected the ideological struggle of the Cold War (Singh, 2008).

After Papua came under Indonesian control in 1963, Papuan activists continued their decolonization campaign. Leaders living in exile in Papua New Guinea or the Netherlands also championed the same issue internationally, linking their struggle to Pan-African solidarity and the right to decolonization. During this period, Papuan leaders also highlighted the violence and human rights violations occurring in Papua and began using campaign language that combined issues of race and human rights in an effort to build global support (Kluge, 2020).

While under Indonesian rule, Papuans faced restrictions imposed by Indonesian laws to enforce Indonesian control over Papua. The Indonesian government abolished Papuan political symbols, relocated residents from Java to Papua through a transmigration program, replaced local officials, and forced Papuans to use Indonesian in education. After the 1965 coup and the rise of Suharto as president of Indonesia, Indonesia returned to the UN and announced plans to implement the Act of Free Choice in Papua. This decision gave Papuan activists renewed enthusiasm to fight for a legitimate referendum (Kluge, 2020). In addition to racial approaches, Papuan activists also submitted a petition to the UN on the basis of international law, demanding a free and democratic vote by all Papuans (Kluge, 2020). However, the UN Secretary-General, U Thant, rejected Jouwe's request to implement democratic principles and replaced it with a limited representation system of 1,022 delegates elected by Indonesia (Singh, 2008).

In 1969, the Act of Free Choice was implemented, involving approximately 1,000 representatives selected by the Indonesian government. All delegates voted for integration with Indonesia independently and under political and military pressure (Kluge, p. 1167; Singh,

2008). Following the announcement of the Act of Free Choice results, Indonesia and Western countries (the Netherlands, Australia, and the United Kingdom) pushed for international legitimacy for the results to end the long-running dispute, and the UN General Assembly merely recorded the AOFC results without conducting a substantive evaluation of the process (*ibid*, 2008). At the UN General Assembly, several African countries criticized the process as not fulfilling the principle of self-determination, citing decolonization resolution 1514/1960. Countries such as Sierra Leone and Ghana rejected Indonesia's claim of Papua's unpreparedness, but Ghana's proposal for a repeat vote was rejected. The majority of African countries ultimately abstained in order to maintain the political solidarity of the Non-Aligned Movement (Kluge, 2020).

Following the Act of Free Choice, Papua was integrated into Indonesia not through the will of the people, but through a legalized colonial procedure, which later became the root of a long-term political problem known as the "Papua Question." This process did not close the chapter of colonialism, but opened a new one, where control over Papua was exercised under Suharto's leadership as president, who led Indonesia after Sukarno and established the New Order regime.

1.3 The Birth and Evolution of Papua's Special Autonomy Law

With the end of the Act of Free Choice, Papua officially became part of Indonesia, but this integration immediately made Papua an early laboratory for economic colonialism in the New Order era. Following integration in 1969, Indonesia entered the New Order regime under Suharto's leadership. Papua, then known as West Irian, began to be exploited extensively by the Suharto government. Indigenous lands were taken for mining, forestry, and transmigration without compensation for the Papuan people. As a result of this massive migration from Java and Sulawesi, Papuans began to be marginalized demographically, socially, and culturally, becoming a minority in their own land (King, 2004).

Four years before integration, in 1965, Papua became an early laboratory for foreign investment-based development policies. Even before Indonesia gained formal sovereignty over Papua in 1969, the Suharto government signed a contract with the American mining company Freeport McMoRan in 1967, two years before the Act of Free Choice and extended in 1991. In a legal vacuum, Freeport was the only foreign company to sign a contract under very favorable conditions with the new Indonesian government, despite the law being (Leith, 2002; Soares, 2004). The contract gave the company broad rights to control land, relocate residents, and exploit resources without compensation or consultation (Soares, 2004). Through the legal

framework of the 1967 Foreign Investment Law, the Indonesian government attracted foreign investors to invest in Indonesia (Soares, 2004). Through national law and work contracts, law became the choreography of investment, regulating the order of rights, permits, and relocations. This was the moment when legitimacy replaced violence as the primary mode of land acquisition in the name of economic development during the New Order era.

At the 1967 Geneva International Conference, Freeport actively lobbied to strengthen the economic image of the new Indonesian regime in the eyes of the world. By making Freeport a symbol of modern partnership and development, and supported by political pressure from Washington, the influx of foreign capital and expertise reached 1.226 billion dollars in 1969. This influx of investment became a major pillar of the Suharto regime's survival in the early years of its rule and helped strengthen the political stability that allowed it to endure for three decades (Leith, 2002). This was the beginning of a symbiotic relationship between foreign capital and the political legitimacy of the state, which became the main pattern in the management of post-integration Papua.

Mining exploitation in Timika led to the forced displacement of the Amungme and Kamoro tribes, the loss of living space, and severe ecological damage. Modernization took the form of militarization and unbalanced industrialization, making indigenous peoples minorities in their own lands (Soares, 2004). Although customary law was legally recognized, in practice, all land deemed "unproductively used" was categorized as state property. This provision, contained in Article 33 of the 1945 Constitution and the Basic Agrarian Law, served as the legal basis for the acquisition of customary land (Soares, 2004)¹. Tensions arose between the indigenous peoples and the company, until in 1973, after years of dispute, Freeport finally initiated a consultation process with the community, which resulted in the January Agreement in 1974.

Suharto's rule in Indonesia was marked by violence, intimidation, and terror against anyone with a different ideology. The concept of "dual function" (Dwi fungsi ABRI) allowed the military to act not only as a defense force but also as a political and social control force (Singh, 2008). The repression of Papua was not only military but also ideological, through tight control of the media and public representation (Kirksey & Roemajauw, 2002). As a result,

¹ Land and water and the natural riches therein shall be controlled by the State and shall be made use of for the greatest welfare of the people". See Article 33 of the Indonesia's 1945 Constitution and see also Article 33 point 3 of The 1945 Constitution of the Republic of Indonesia as amended by the Fourth Amendment of 2002

justice was not administered through independent legal institutions, but rather through a logic of power that suppressed opposition and silenced ideological dissent.

Since 1983, the Indonesian military, through Kopassanda (now Kopassus), has carried out brutal operations in Papua under Jakarta's direct control, targeting anyone deemed to oppose the state or associated with the Free Papua Movement (OPM) (Singh, 2008). Extrajudicial arrests, torture, and murder have become a systematic pattern of violence. When residents around the Freeport mine protested against the use of their customary land between June 1994 and February 1995, the military responded with brutal violence in villages surrounding the mine area. This violence was also linked to the raising of the Morning Star flag by the OPM group led by Kelly Klawik on July 1, 1994.

Similar violence also occurred in Biak, Manokwari, Jayapura, Wamena, and the PNG border as part of the military's operation to crush the resistance (Chauvel & Bhakti, 2004). Until the violence in Jayapura in 1984, including the murder of Arnold C. Ap, a Papuan intellectual and artist who used the Mambesak group to preserve Papuan culture and foster nationalist awareness. After being accused of supporting the OPM, he was murdered in a staged incident, triggering a wave of refugees, cultural resistance, and causing thousands of Papuans to cross into Papua New Guinea to escape. Many Papuan observers believe that the security approach based on violence and human rights violations actually fostered a spirit of independence among the Papuan people (Chauvel & Bhakti, 2004; Singh, 2008).

The Arnold Ap case marked a shift in New Order repression from mere military politics to a form of cultural extermination, where artistic and cultural expression were considered threats to the integrity of the state. Arbitrary detentions, extrajudicial killings, and the disappearance of public figures reflected the complete failure of the Indonesian legal system controlled by the military. The Free Papua Movement (OPM), founded in 1965, then fought against Indonesian occupation and exploitation. Since then, Papua has experienced a cycle of violence and military repression that has continued until the fall of the Suharto regime in 1998 (King, 2004).

After Suharto's fall, Jusuf Habibie and Abdurrahman Wahid took over as leaders of Indonesia. Political space opened up for the Papuan people, and in the reform era, collective efforts for sovereignty emerged that had been unspoken under the New Order regime (King, 2004, p. 29). The post-Suharto government faced a challenging situation in Irian Jaya, inheriting the desire for independence fueled by the New Order's security approach. This predicament mirrored the challenges of the New Order in the 1960s, with its economic decline

and Papuan discontent, and posed a dilemma for policymakers in balancing freedom of expression and association with growing support for Papuan independence (Chauvel & Bhakti, 2004, p. 25). Finally, Abdurrahman Wahid, who served as the fourth president at that time, offered special autonomy for Papua in 1999. This proposal was then approved in 2001 by Megawati as the fifth president who served to replace Abdurrahman Wahid. This proposal was what formed the policy of law number 21 of 2001 concerning special autonomy for Papua (Tebay, 2005). The Special Autonomy Policy for Papua was created with the aim of strengthening national integrity within the framework of Indonesian unity (Chauvel & Bhakti, 2004).

The Special Autonomy Policy provides the possibility for Papua to express its cultural identity, form a Truth and Reconciliation Commission, hold government powers except for international relations, defense, monetary policy, and the supreme court, and receive most of its revenue from natural resources (Tebay, 2005). However, the government did not fully implement this policy by delaying the issuance of a government regulation on the Establishment of the Papuan People's Assembly as a special institution representing the Papuan people and diverting it to the policy of new regional expansion in Papua through Presidential Instruction Number 1 of 2003 (Tebay, 2005)². This policy was highlighted because it was considered to violate Papua's Special Autonomy and was seen as an attempt to divide Papua and destroy Papuan culture, thus facing strong opposition from Papuans and a number of Indonesian politicians. Although President Susilo Bambang Yudhoyono took formal steps by issuing Government Regulation Number 54 of 2004 to establish the Papuan People's Assembly (MRP) as a representative forum for indigenous peoples, this institution only had a consultative function, not a decision-making one. This meant that its authority was very limited. As a result, the implementation of special autonomy did not bring real change and only became a political promise without real realization. This law was considered to have no practical power to improve the lives of the Papuan people (Tebay, 2005)³.

Another issue identified in the implementation of Papua's special autonomy is the recognition of land rights, which have been legally recognized under special autonomy. However, in reality, indigenous communities continue to lose their land due to large-scale investments (Dewi, 2024). Based on empirical studies by Savitri, Mereke argues that the FPIC element, a key indicator for the protection of indigenous communities, is also absent from

² Presidential Instruction (INPRES) Number 1 of 2003 is about "Accelerating the Implementation of Law Number 45 of 1999" regarding the formation of new provinces and districts in Papua (formerly Irian Jaya)

³ Government Regulation (PP) Number 54 of 2004 concerns the Papuan People's Assembly (MRP). This regulation outlines the role, status, duties, and authority of the Papuan People's Assembly in providing consideration and approval for the formulation of regional policies in Papua.

Papua's special autonomy regulations, resulting in indigenous community involvement being merely "ceremonial" (Savitri & Price, 2016). A similar dynamic is evident in palm oil expansion in West Papua, where permits are only reviewed after ecological and social damage has already occurred. Many communities who initially welcomed the company in hopes of a better life ultimately lost their land, forests, and traditional livelihoods (Runtuboi et al., 2021).

Special Autonomy then underwent changes through the issuance of Law Number 2 of 2021 concerning amendments to Law Number 21 of 2001 during the Jokowi administration. This revision under the Jokowi administration amended several specific articles that tended to strengthen central control by narrowing the authority of the People's Consultative Assembly (MPR), eliminating local parties, and rapidly establishing new autonomous regions without meaningful public participation (Supriatma, 2021). This weakened Papuans' trust in the central government, and numerous disputes arose, yet the special autonomy policy continues to this day.

Thus, from integration to reform and revision of special autonomy, Papua has never fully emerged from the shadow of colonialism perpetrated internally through state power. This use of law and autonomy presents a contradiction in how recognition and control are integrated within a politically based legal space and structural violence by the state to maintain its dominance over Papuan society.

1.4 Problem Statement and Research Questions

From the colonial period until the establishment of the Special Autonomy policy, Papua was not truly a subject within its own legal history. Special Autonomy created a legal paradox of simultaneously recognizing identity and controlling it. Through Papua's Special Autonomy, the law functioned not only as a recognition of the Papuan people but also as a legal instrument for the government to maintain its power, thus enabling the legal seizure of the rights and land of indigenous peoples by the state.

This contradiction forms the basis of my main research question, which asks:

“How does Papua’s Special Autonomy (Otsus) operate within legal and institutional orders that simultaneously recognize and dispossess Indigenous peoples of their customary lands, and how do Indigenous communities respond to and engage with these dynamics?”

Sub-Questions:

1. How do the contradictions within Papua's Special Autonomy—particularly between the recognition of customary (ulayat) rights and the protection of investment interests—shape legal and institutional practices that enable the state and corporations to gain access to Indigenous lands?
2. How do Indigenous communities and their local allies enact resistance under the Otsus regime—through legal mobilization, customary institutions, everyday practices, and cross-regional networks—and what are the effects and limitations of these strategies?

1.5 Concept Used in the Research

This study adopted the theory of law from E.P. Thompson (1975) as the center theoretical frameworking for my research. I work with this theory as a center of my study to understand, explore, and analyse the contradiction of special autonomy in Papua. I also put class as lense that has been interpreted in law and in the context of Papua, it's already embedded since integration until the establishment of the special autonomy law for Papua. As Thompson explained about the black of act he states that *“passage of the Black Act as a severe measure of Government business, serving first of all the interest of Government's own closest supporters”* (Thompson, 1975, p. 206). This idea is in line with the problem that I see, where formally the formation of the Special Autonomy Law is for the recognition and protection of Indigenous Papuans, but this law also has a dual function like the Black Act, where this law promises protection while maintaining the stability of the country during the reform era.

Furthermore, E.P Thomposon (1975, p.206) stated that *“Act would not have been possible without a prior consensus as to the values of property in the minds of those who drafted it - indeed, a consensus which gained on the minds of the ruling class as a whole”*. This understanding is connected to the class and shows how class relates in law. As Thompson states *“Classes are based on the differences in legitimate power associated with certain positions, i.e. on the structure of social roles with respect to their authority expectations An individual becomes a member of a class by playing a social role relevant from the point of view of authority He belongs to a class because he occupies a position in a social organisation;organisation; i.e. class membership is derived from the incumbency of a social”* (Thompson, 1963, p. 11). Thompson also further gives explanation about how class is constructed through historical experience. While Bernstein (2015) states that *“class relations are universal but not exclusive “determinations” of social practices in capitalism. They intersect and combine with other social differences and divisions, of which gender is the most*

widespread and which can also include oppressive and exclusionary relations of race and ethnicity, religion and caste” (Bernstein, 2010, p. 115).

In the context of Papua this lens helps me to analyse the law, because law is not working alone, it has interconnection in class relations through the historical history of Papua since integration. Class relations in Papua are inextricably linked to issues of ethnicity and race. Balibar and Wallerstein (1991) deepen this reading by showing how class intersects with race, nation, and cultural identity, particularly in postcolonial societies, where exclusion often masquerades as recognition (Balibar & Wallerstein, 1991). These formations are further shaped by Mamdani (2018) in his concept about *"decentralized despotism"* where the state empowers customary leaders to manage the population from below, often without democratic legitimacy (Mamdani, 2018). Through this process law is not work alone, it has relation to the state's contradictions. Fox (1993) distinguishes between state autonomy and capacity, as well as the tensions between political legitimacy and economic accumulation (Fox, 1993). This accumulation related with David Harvey (2003), concepts about accumulation by dispossession, where he explains that accumulation by dispossession is a recurring feature of capitalism: privatization, commodification, eviction, and takeover reappear in new forms (Harvey, 2003, p. 78).

Moreover, through analysis of Historical institutionalism, Thelen and Steinmo (1992) demonstrate how choices made at critical junctures can lock in power trajectories that are difficult to preserve (Thelen & Steinmo, 1992). These legal and state contradictions create spatial control. Rasmussen and Lund (2018) conceptualize territorialization as a political project that reorders people and resources through mapping, zoning and boundary-making (Rasmussen & Lund, 2018). Nikita Sud adds this point and states that *"land-making is 'state-making'"* as regulating land is to regulate population to strengthen the position of the colonial state (Sud, 2022). While Borrás et al. (2012) critique the narrow "foreign vs national" land-grab proposal, proposing *"control grabbing"*, where property and control are reworked by foreign, national, or hybrid coalitions (Borrás et al., 2012). These fit to support my analysis process to see and understand the contradiction of Special Autonomy Law in Papua.

1.6 Method

The methodology I used in this research are the Qualitative Case-Based Methodology (Lund, 2014) and Extended Case Method (Burawoy, 1998). These methodology helped me implement the theoretical concepts I used in my fieldwork. Lund (2014) explains that *"Theorization, ultimately, is about moving from observation of empirical events, through*

concepts, to being able to say something about the inherent qualities and dynamics in contexts other than the one studied" (Lund, 2014). While The Extended Case Method emphasizes the researcher's reflective involvement in the research being developed. This approach assumes the researcher is embedded in social and power relations (Burawoy, 1998).

Practically, my field research took place in two main locations. First, Jakarta, where I work, specifically at the Ministry of Home Affairs. This location allows me to access official documents related to Papua's special autonomy and its derivative regulations, as well as conduct interviews with relevant officials responsible for regional legal products and special autonomy. The second location is Sorong Regency, my birthplace, where I will conduct interviews with the Sorong Regent, Malamo traditional leaders, local brokers, and the local community to explore in-depth legal contradictions and the resistance movements within the community itself.

I strategically selected these two locations to capture the dynamics of governance that occur at two levels, namely the central and regional levels, within the framework of special autonomy. Jakarta represents the arena of state power at the central level, where legal decisions and special autonomy policies are produced. Meanwhile, Sorong reflects the space of local governance, where special autonomy policies are reinterpreted, negotiated, and often debated in practice. As Vedi R. Hadiz (2004) explains, *"Decentralization has emerged in the last two decades as one of the most important topics in development policy and theory debates. Understood as 'the transfer of political, fiscal, and administrative powers to subnational governments'"* (Hadiz, 2004). Referring to this understanding, my study views decentralization not simply as a place for the delegation of administrative authority, but as a political process that shapes the capacity and contradictions of local governments in managing customary lands. Through this analysis, I seek to examine how the delegation of authority through decentralization and special autonomy creates a space that simultaneously recognizes and controls indigenous communities.

In my research, I also examine several case studies related to the land grabbing of customary land in Papua. These include the Palm Oil Case Study, which I observed directly in Sorong; and the MIFEE Case, including the case of the Awyu Tribe in Boven Digoel, through NGO reports, particularly from the Pusaka Bentala Foundation; and direct interviews with Pusaka researchers, both in Jakarta and Sorong. Thus, this research triangulates official documents, interviews, and secondary data.

1.7 Positionality

I am a Papuan woman working in the central government. I have two distinct positions: an insider and an outsider. On the one hand, I have rare access to state documents and direct discussions with state officials. On the other hand, I come from an indigenous community and have directly experienced marginalization under Papua's Special Autonomy. My positionality and reflexivity in this research are central. My position as both a civil servant and an indigenous Papuan does not weaken me in this research; rather, it becomes a strength for me, allowing me to see how legal contradictions function both in the recognition of institutionalized violence and as a platform for struggle.

As a matter of research ethics, I have not named some of the informants I interviewed in this study at their request, as a form of consent and respect for those interviewed. However, I will present their positions within their respective institutions in the following table.

Table 1.7 List of Informan

No	Informan	Institution
1	Head of the Regional Legal Products Sub-Division in the eastern region of Indonesia	Ministry of Home Affairs
2	Legal Analyst of Regional Legal Products	Ministry of Home Affairs
3	Pusaka's Researcher in Jakarta	Yayasan Pusaka Bentala Rakyat
4	3 Pusaka's Researcher in Sorong	Yayasan Pusaka Bentala Rakyat
5	Local broker	Broker
6	Head of Regent in Sorong Regency, Jhon Kamuru	Sorong Regency Regional Government
7	Klasau District Traditional Council, Sorong	Member of the Malamoi Traditional Council

Chapter 2

The Legal Construction of Special Autonomy Law and Its Contradictions.

In this chapter I start with the Special Autonomy Authority not fulfilling its legal ideals or mandate in the Constitution of the Republic of Indonesia, namely the 1945 Constitution, Article 18B paragraph (2) and how there are contradictions in its implementation.

2.1 Special Autonomy as a law that recognizes but also controls

Special Autonomy for Papua was first granted in Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua as a state effort to maintain the integrity of the Unitary State of the Republic of Indonesia (NKRI) and simultaneously recognize Papua's uniqueness. This law was enacted by the Indonesian House of Representatives (DPR RI) in October 2001, then ratified on November 21, 2001, by President Megawati Soekarnoputri and took effect in January 2002. The purpose of Special Autonomy to respect and acknowledge the indigenous Papuan people is also in line with the mandate of the state constitution, Article 18B paragraph (2), of the 1945 Constitution, which states, *"The state recognizes and respects indigenous communities and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law."* (1945 Constitution, Article 18B)⁴.

The 2001 Papua Special Autonomy Law itself contains 79 articles governing the authority of the Papuan Provincial Government in implementing Special Autonomy. Based on Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua, the section considering, specifically letters f, i, and j, explains that the implementation of governance and development in the Province of Papua has not yet fulfilled the sense of justice and welfare, as well as respect for human rights, particularly for Indigenous Papuans (Special autonomy law No. 21/2001)⁵.

⁴ Article 18B of the fourth amendment to the 1945 Constitution recognizes and respects the state for customary law communities and their traditional rights, as long as they remain viable and in accordance with societal developments and the principles of the Unitary State of the Republic of Indonesia. This article also regulates state recognition of regional government units with special or exceptional characteristics.

⁵ Letters f, i, and j in Law Number 21 of 2001 define Special Autonomy, the Central Government, and the Regional Government of Papua Province. Special Autonomy is the exclusive authority to regulate and manage local communities based on the aspirations and fundamental rights of the Papuan people. The Central Government

The establishment of authority to the Papuan provincial government involves the right to choose the direction of development based on the local wisdom of the Indigenous Papuan people, which is one of the reasons for the establishment of regional autonomy. The granting of special autonomy to the Papuan people can be substantively seen in the specific organizational structure of the Papuan Regional Government, the division of customary territories, the establishment of customary institutions, and the management of special autonomy funds, which are administered directly by the Papuan Provincial Government.

The Papuan People's Assembly (Majelis Rakyat Papua) is one example of a special organization within the Papuan Provincial Government, serving as a cultural representation of indigenous Papuans, with specific authority to preserve and protect indigenous Papuan rights. Institutionally, according to Article 5, paragraph (2) of the Papuan Special Autonomy Law, the Papuan People's Assembly is necessary for the implementation of Papuan special autonomy, and its members are drawn from indigenous Papuans, according to the customary territories within Papua Province⁶.

In the context of financial management, the Papuan regional government is granted authority over the Special Allocation Fund (DAK) or special autonomy fund, as stipulated in Article 34 letter c number 2, which states, "*The Special Allocation Fund is determined in accordance with statutory regulations, prioritizing Papua Province.*" In general, the allocation of special autonomy funds is given to accelerate development and improve the welfare of indigenous Papuans, the allocation of special autonomy funds to the provinces of Papua and West Papua, but in the context of management it is still centralized in the Papua provincial government whose level of reach and coordination is quite far by the West Papua Government, until finally the government felt the need to consider separation in the form of autonomous administration in the management of special autonomy, so that it can be well coordinated without having to reach out to Papua Province. Then the government issued Central Government Regulation Number 1 of 2008 concerning the implementation of special autonomy funds in West Papua Province⁷.

refers to the President and his ministers, while the Regional Government of Papua Province is the Governor and other officials as the Executive Body of Papua Province.

⁶ This article states that the implementation of the rights of members of the Papuan People's Assembly (MRP) will be further regulated in the MRP's Rules of Procedure, and such implementation must be based on Government Regulations. The MRP is the institution that exercises special rights in Papua Province, and this article regulates the mechanism for their implementation.

⁷ The regulation was issued to provide a legal basis for special autonomy for West Papua Province, which at the time lacked such a legal basis. This regulation was important because West Papua Province had been governed since 2003 but did not yet have special autonomy status under Law 21/2001.

The government also grants authority to Papua as a special autonomous region to establish special regional regulations and Provincial Regulations where these regulations refer to the regional autonomy law and the Papua Special Autonomy itself. The purpose of establishing these regulations is to implement certain articles in the special autonomy law and function to regulate special matters mandated by the Papua special autonomy law. One of these special articles is article 43 concerning the protection of the rights of indigenous peoples and is the basis for the issuance of special regional regulations and Papua provincial regulations that have been issued to recognize and protect indigenous peoples, namely, Special Regional Regulation Number 21 of 2008 concerning Sustainable Forest Management in Papua Province, Special Regional Regulation Number 22 of 2008 concerning the preservation and utilization of natural resources and Special Regional Regulation Number 23 of 2008 concerning Customary Rights of Indigenous Peoples and the individual rights of indigenous peoples to customary land.

During its implementation, Papua's Special Autonomy underwent several changes or amendments, starting with a significant amendment through Central Government Regulation No. 1 of 2008 concerning the special autonomy of the Papua and West Papua Provinces to accommodate the formation of West Papua Province, followed by the enactment of Special Regional Regulation No. 9 of 2019 concerning guidelines for the recognition, protection, and empowerment of indigenous communities and customary territories in West Papua Province⁸.

The most significant change occurred with the enactment of Law No. 2 of 2021 concerning Special Autonomy for Papua, which aims to improve the implementation of special autonomy by amending several crucial articles contained in Law No. 21 of 2001, such as Articles 38 and 76.⁹ Furthermore, Provincial Regulation No. 5 of 2022 concerning the Recognition and Protection of Indigenous Communities in Papua Province was reissued to continue protecting and recognizing the customary rights and laws of indigenous Papuans. The various implementations of Special Autonomy and its evolution provide insight into the central government's urgency in improving the quality of life of the Papuan people and its

⁸ Special Regional Regulation (Perdasus) Number 9 of 2019 of West Papua Province concerns the Recognition, Protection, and Empowerment of Indigenous Communities and Indigenous Territories. This regulation does not directly regulate forests, but because forests are part of customary territories, this Perdasus is closely related to forest management in West Papua Province, where forests fall within the scope of "Customary Territories" regulated by the regulation.

⁹ Papua Special Autonomy Law Number 2 of 2021 is the second amendment to Law Number 21 of 2001 concerning Special Autonomy for Papua Province. It aims to grant the Papuan people broader authority to regulate and manage their own region and ensure the sustainability of special autonomy funds for development. Article 38 of this law relates to the recognition and protection of the rights of indigenous communities in Papua, while Article 76 discusses the possibility of provincial expansion in Papua.

effectiveness¹⁰. They also provide a contextual understanding of the indigenous Papuan values within government activities, both in the social and institutional contexts within Papuan society itself. However, its development, particularly in the recognition and protection of indigenous peoples' rights, has not been fully effective.

I found that Special Autonomy and its derivative regulations have become a complex arena that intersects state control, political class relations at both the central and regional levels through institutional specificities, and structural violence, all fused within the spatial sphere of control. The authority I observed was limited between Papuan customary law and positive law, in the form of regulations and Special Regional Regulations, which lack synergy. I found this in the articles of Papuan Special Autonomy, the Special Regional Regulations (Perdasus), and the Provincial Regulations enacted by the Government. Article 43 of the Special Autonomy Law is often cited as a basis, but its wording is declarative, leaving room for administrative interpretation¹¹. Furthermore, Special Regional Regulations, such as Special Regional Regulation No. 23 of 2008, recognize customary rights but require "*research results*" to determine the existence of customary rights of customary communities and/or individual rights of customary community members to land¹².

The recognition of customary rights under special autonomy is documented as a right to autonomy, but is implemented as a permit that is only valid after state research/determination. This allows for spatial control from the central government and the legal appropriation of customary territories. Hierarchically, the Special Autonomy Law, Special Regional Regulations, and Provincial Regulations refer to each other but fail to resolve who has the final say in determining boundaries, subjects, and rights. This results in functional uncertainty, which can be exploited by powerful actors.

I also found that the evidentiary standards stipulated in the Papua Special Regulation on the recognition of Papuan customary rights are technocratic in nature, requiring Papuan communities to translate their claims into archives, surveys, and maps to be accepted. Failure

¹⁰ This regulation briefly regulates the rights and obligations of indigenous communities, the use of natural resources, data collection on indigenous communities and territories, and the resolution of indigenous disputes by indigenous institutions.

¹¹ This article regulates the protection of the rights of indigenous peoples in Papua.

¹² Special Regional Regulation (Perdasus) Number 23 of 2008 regulates research to prove customary territories through Article 1 paragraphs (1) and (2) and Chapter VI concerning the Affirmation and Determination of Customary Law Communities, which outlines the stages of identification and verification based on history, territory, customary law, assets, and institutions. This Perdasus serves as the basis for the government to conduct research and recognition of customary rights of customary law communities, which involves the formation of a committee to conduct identification and verification.

to comply results in the community's substantive rights losing their formal recognition, and the language of recognition, coupled with a restrictive arsenal, is both proactive and productive for administrative control. From this, I see how spatial control arises from state production and politics, which restrict or channel access to resources through state verification schemes (committees, research, maps), placing Indigenous Peoples in the position of applicants, while technocratic, corporate, and bureaucratic actors control institutional capital through standards, data, and permits. This aligns with Nikita Sud's (2022) concept that land-making is '*state-making*'. Special Autonomy and its derivative regulations constitute a form of legal ambiguity, where recognition of Papuan Indigenous Peoples operates through administrative mechanisms that centralize validation on the state. Thus, Special Autonomy opens up a channel for land grabbing with a legal face.

The amendments to Papua's Special Autonomy, enacted in Law Number 2 of 2021, also contain numerous contradictions. I found that several articles amended by the central government weaken the political position of the Papuan people and limit political freedom, leaving full control within the state. For example, Article 76 paragraph (1) contains loopholes and contradictions that weaken the Papuan People's Assembly (MPR) by eliminating the imperative of the Papuan People's Assembly's approval of the expansion of the Papuan region. Other articles, which add indigenous Papuans to a special institution led by the vice president, merely reaffirm political control of Papua back to the central or state government¹³.

I also found ambiguous and hierarchically unclear language in Law Number 2 of 2021, Article 38 paragraph (2), which states,

"Economic enterprises in Papua Province that utilize natural resources shall be conducted while respecting the rights of indigenous peoples, providing legal certainty for entrepreneurs, and adhering to the principles of environmental conservation and sustainable development, the regulations for which are stipulated in a Regional Regulation."

This article does not provide legal certainty and a clear position between indigenous Papuan communities and entrepreneurs, which can lead to misinterpretation and exploitation of Papua's resource management. This can be exploited by state and corporate actors to legally dispossess Papuans through legal ambiguity. Thus, this shows how legal ambiguity in giving an uncertain position to indigenous peoples and allowing for control grabbing as stated by

¹³ This amendment eliminates the role of MRP approval in regional expansion, where previously Law 21/2001 required the approval of the MRP and DPRP for expansion, while the amended version of the Papua Special Autonomy Bill changed it to the central government being able to carry out expansion unilaterally with certain provisions.

Borras et. al (2012), because control over resource development remains with the state and companies and the meaning contained in the article cannot fully guarantee the protection of indigenous peoples due to the legal language itself. And this is the same as the Black Act described by E.P. Thompson.

Based on in-depth discussions with an official formerly responsible for the establishment of Special Autonomy at the Ministry of Home Affairs, I found that two important terms are not incorporated into the implementation of Papua's special autonomy: "respect and acknowledge" in accordance with the legal ideals or legal mandate contained in Article 18B paragraph (2) of the 1945 Constitution.

He said:

When we talk about the special autonomy granted to Papua, we must be aware that this law provides two important things to the Papuan people: "respect" and "recognition" of their existence as the embodiment of our own legal ideals, namely the 1945 Constitution.

There are two important terms that must be truly internalized by both the drafters and implementers of the law. They must not be confused, as if in practice, the promotion of development disregards the unique characteristics recognized and respected by the state.

Furthermore, I found that, in the study of Special Autonomy, the legal contradictions surrounding the protection of indigenous peoples are historically inseparable from factors or the policy environment. However, in the legal context, it is examined politically and legally, from both conceptual and empirical aspects. Therefore, Special Autonomy is not a failed policy, but rather contains contradictions. Politically, it stems from violence, while empirically, it aims to strengthen Papua's integration into Indonesia, and is understood by the state as a perfectly normal occurrence.

The official I spoke with also stated that:

"The solutions outlined in Papua's Special Autonomy are not fully perceived as solutions by the community in real life and have not been fully addressed by the community. Papua's Special Autonomy is often interpreted as a gift from the state, and policymakers often forget the mandate of the establishment of the Special Autonomy itself."

I reflect back on this statement and connecting it into the historical context of Papua, which special autonomy was formed as a promise for recognition of the Papuan people because during the reform era, where the central government experienced political tension due to repression

from the Papuan people who wanted independence due to the violence that occurred in Papua. This aligns with E.P Thompson's (1975) explanation of the black act. Thompson stated that *"The law must have been passed under the pressure of an extraordinary emergency"* (E.P Thompson, 1975, p. 23).

I personally witnessed the massive expansion of the provinces of South Papua, Highlands Papua, and Central Papua, followed by the expansion of Southwest Papua, after the enactment of special autonomy for Papua, aimed at accelerating development and autonomy for the Papuan region and the welfare of the Papuan people. I see this not as fulfilling state obligations or accelerating development, but rather as a way for the state to open up new frontiers in Papua and exploit them for capitalist purposes. When protests erupted, much violence occurred as a form of *"consent and coercion"* which explained by Harvey (2003),

Another factor contributing to the delay in the implementation of special autonomy was the dishonesty of central elites or central bureaucrats who wield significant power within the state, and the involvement of local elites in this process, often neglecting the recognition and respect for the indigenous rights of Papuan indigenous peoples. Based on an in-depth discussion with a legal analyst at the Ministry of Home Affairs, he stated:

"The Special Autonomy Law is often overridden by other national laws, weakening the implementation of special autonomy in Papua."

I found that the scope for Papua's special autonomy was being narrowed by the enactment of other laws aimed at accelerating the economy and opening up space for corporations, without considering the specific articles contained in the Special Autonomy Law that protect and respect the uniqueness of Indigenous Papuans. Ministries and other national institutions frequently disregard the Special Autonomy Law, which has the same hierarchical standing as other national laws but lacks the force of law. Consequently, structural violence continues, and Indigenous Papuans' rights to customary land are increasingly being sidelined.

This is evident in the rapid rate of deforestation in the Papua region. According to Forest Watch data from 2000 to 2009, the rate of deforestation in the Papua bioregion was 60,300 hectares per year, and tripled from 2009 to 2013, reaching 171,900 hectares per year. This further increased from 2013 to 2017 to 189,300 hectares per year (FWI, 2019).

Thus, I see Papua's Special Autonomy as a different gray area in the context of the state and the indigenous Papuan people, where Special Autonomy on the one hand becomes a space that opens up emancipation for the indigenous Papuan people to develop, but on the other hand

Indigenous Papuans are trapped in legal propaganda that politically excludes the recognition and protection of customary rights and is completely dominated by the state. Asymmetric decentralization is only an empty pattern without real implementation, the existence of indigenous Papuan rights is only delegated in legal formalities, but in its implementation is squeezed by technocratic pressure and state domination that continues to strengthen its control over Papua in the name of strengthening the Unitary State of the Republic of Indonesia.

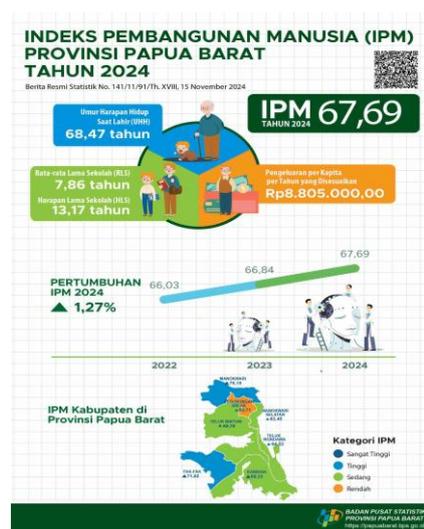
2.2 Special Autonomy Creates Political Class Relations in Local Elites and Spatial Control

Class identity and consciousness, in the analysis of collective political practices, involve a series of additional factors and determinants that influence the capacity for political action and must be maintained through political power and ideology, primarily through the state (Bernstein, 2010, p. 115). In the context of Papua's Special Autonomy, the specificity granted in the formation of the regional bureaucracy becomes an instrument for the formation of a new class through the appointment of regional heads who must be indigenous Papuans, the establishment of the Papuan People's Assembly, and the Papuan People's Representative Council. The formation of classes at this level also creates new mechanisms of control through state structures, as the MRP remains under the central government and its authority has been limited since the 2021 amendments to special autonomy. This aligns with Fox's explanation about the capacity of the state and E.P Thompson's explanation about the Black of Act in the context of authority that has been given by the ruling class. This also shows how law is connected to the intersection between racial and ethnic classes that form the new elite in Papua cannot be separated from the intersection of class with race and ethnicity.

This was also demonstrated in my in-depth discussion with an official who had overseen the establishment of Papua's special autonomy. I discovered that the creation of this special institution in Papua has also given rise to ethnic and racial violence against Papuans themselves due to the political interests of representatives of each indigenous region competing for seats in the Regional People's Assembly. According to one official with whom I had an in-depth discussion, the implementation of this special autonomy is often overlooked by regional policymakers, who often prioritize political interests in securing strategic positions in regional government institutions, such as the Regional People's Assembly, the Papuan People's Council, and the Regents/Mayors and Governors, as representatives of the central government in the regions. Consequently, the indigenous rights of Papuans are sometimes sidelined in the implementation of special autonomy.

Another issue I encountered was the inconsistent stability of development and the disbursement of special autonomy funds since the enactment of Special Autonomy in Papua in 2001. Despite the establishment of a special institution to regulate regional governance in Papua, the implementation of Special Autonomy in Papua has still not been able to provide full welfare for indigenous communities. This is evident in the Human Development Index (HDI) in West Papua Province, which only rose to 67.69 in 2024, a mere 0.85 point increase from the previous year. Meanwhile, Indonesia's average HDI reached 75.02 points in 2024, indicating a significant disparity in the Human Development Index, leaving Papua at the bottom of the list of provinces across Indonesia (BPS Papua Barat, 2024)¹⁴.

Figure 2.1.
Human Development Index (HDI) of West Papua Province in 2024



Source: bps.go.id, 2024

Based on this index, it can be seen that the existence of special autonomy, along with its substantial specificities, has not significantly improved the acceleration of development and prosperity for the Papuan people. The underprivileged communities are increasingly underdeveloped, while officials who serve as their proxy are increasingly empowered to further expand their political power. Another obstacle to the implementation of special autonomy in Papua is corruption in the management of Papua's special autonomy funds, perpetrated by regional government bureaucrats in Papua. A 2020 report by the Papua Provincial Audit Agency (BPK) found misappropriation of special autonomy funds amounting to Rp556 billion in expenditures unsupported by valid evidence, procurement of goods and services that did not

¹⁴ Report from the Central Statistics Agency of West Papua Province (BPS) (bps.go.id)

comply with regulations, Rp29 billion in fictitious special autonomy funds, and Rp1.85 trillion in deposits (BPK RI, 2020).

Furthermore, a 2022 report by BBC Indonesia stated that over Rp100 trillion in Special Autonomy Funds disbursed by the central government since 2001 have not been properly managed for the people of Papua Province. The then Governor of Papua, Lukas Enembe, was named a suspect in a corruption case involving Papua's special autonomy funds (BBC, 2022). This corruption case demonstrates the exploitative relationship between bureaucrats and local elites who have the authority to access state resources. The Special Autonomy Fund, which should be used as a levy for the welfare of the Papuan people, is instead used as an instrument of accumulation by local elites acting as intermediaries between the state and indigenous Papuans. This case demonstrates the weak governance of special autonomy funding in Papua and the disregard of norms by local elites in its implementation, particularly the transparent, accountable, and responsible management of special autonomy funds, which are crucial for fostering trust and prosperity for indigenous Papuans.

Papua's Special Autonomy clearly displays class differentiation at the local level, with a small group of Papuans benefiting from special autonomy funds, while the majority of indigenous communities remain marginalized. This reinforces Mamdani's (2018) description of "*decentralized despotism*" and demonstrates that the management of special autonomy funds in Papua has experienced administrative failure and confirms the new class logic emerging within the Papuan regional government bureaucracy. After further discussions with an official with experience as a member of the special autonomy formation team, I also received a reflective response, stating that Special Autonomy is interpreted as a "momentary party" for state and regional bureaucrats, thus forgetting the true nature of special autonomy, and in these gaps, numerous actors seek to profit.

The involvement of indigenous Papuans has also not been fully visible in the various processes of implementing regional special autonomy, particularly in the management of Papuan community resources, both in the economy and in customary rights and customary forests. The neglect and minimal involvement of indigenous Papuan communities in this empowerment aspect provides an opportunity for companies to take over completely and manipulate legal language to shift customary territories into state and corporate territory. Ultimately, the community loses their rights to their customary lands and is marginalized. A concrete example of this is evident in the Awyu community's lawsuit, where the Supreme Court's recent decision rejected the Awyu community's appeal. An article from Ekuatorial in 2025 explained that the Awyu indigenous community had sued the Papua Province Investment

and One-Stop Integrated Services Agency and PT Indo Asiana Lestari for granting a permit for a planned 36,094-hectare palm oil plantation and mill in Mandobo and Fofi Districts, Boven Digoel Regency, South Papua Province, for failing to involve the Awyu indigenous community in the decision-making process. However, the appeal was rejected on procedural grounds, where the lawsuit was deemed to have exceeded the applicable legal limit or expired. This decision was deemed to have failed to address the root of the problems faced by the Aywu community (Ekuatorial, 2025).

This strengthens Rasmussen & Land (2018) opinion regarding zoning and shifting carried out by the state in the form of legal legality, thus displacing indigenous Papuan communities from their own areas. The Papuan Regional Government is also considered weak in this position and is deemed incapable of concretely implementing Papua's Special Autonomy and its derivative regulations to protect the rights of Papua's indigenous peoples. Thus, Papua's special autonomy is a law whose existence hovers in a gray area in determining the future and well-being of the people. A law that stands parallel to other laws can be overridden by other laws disguised by the interests of state elites and corporations seeking to control land belonging to Papua's indigenous peoples.

Chapter 3

MIFEE and Awyu Case Studies

In this chapter, I focus on the dynamics of cases of customary land grabbing that occur in the name of "development" for capitalist accumulation by the state and corporations. This is inseparable from the weaknesses of special autonomy in protecting the rights of indigenous Papuans. However, this special autonomy law can also transform into a force for indigenous peoples to claim protection of their rights through advocacy, such as the case of the Awyu indigenous people's lawsuit, which I also explain in this chapter.

3.1 MIFEE in the Land of Malind: Food Deprivation and Violence

The Merauke Integrated Food and Energy Estate (MIFEE), also known as the Merauke Integrated Food and Energy Plantation (PPETM), is a program launched by the Indonesian government to strengthen national food and energy reserves. The primary objective of MIFEE is to improve national food and energy security, and a secondary objective is to anticipate future food crises. MIFEE's integrated food production development encompasses food, plantations, livestock, and fisheries. MIFEE's primary location is in Merauke Regency, South Papua Province, with over 2 million hectares of land being developed within the Merauke forest area.

MIFEE was officially opened on August 11, 2010, by the Indonesian Minister of Agriculture, who immediately launched a large-scale development project that was projected to produce and generate food production in the form of 1.95 million tons of rice, 2.02 million tons of corn, 167,000 tons of soybeans, 64,000 cattle, 2.5 million tons of sugar, and 937,000 tins of crude palm oil per year by 2020 (Tohari, 2013). However, as a "new major land grab in Indonesia," exploitation in the MIFEE project poses a major threat. The Malind Anim community relies entirely on the Merauke forest for its primary livelihood (McDonnell, 2021).

The MIFEE program faces significant challenges in providing a large amount of vacant land to encourage investor growth in Indonesia. Therefore, the government's approach to providing this land is through spatial control exercised by numerous actors claiming access to resources, including normalizing "illegal" practices such as hunters and gatherers, indigenous people, and local smallholders (Ito et al., 2014). This demonstrates the spatial control used to legalize dispossession through the national program, MIFEE. This is evidenced by how MIFEE successfully divided Merauke into ten agricultural production centers and granted consensus

to 44 companies for land management covering an area of approximately 2,144,650,099 hectares (Suryani, 2016).

I found that MIFEE displays three main layers: spatial politics, pseudo-legality, and the relationship between the state, corporations, and the Malind indigenous people inhabiting Merauke Regency. First, MIFEE represents capital accumulation legitimized by the state, which aligns with David Harvey's explanation of the "spatio-temporal fix," where global surplus capital finds a new agrarian frontier in Papua. The development of capital projects transformed into MIFEE itself. Furthermore, the provision of large amounts of vacant land highlights the epistemological contradiction in Indonesian agrarian policy, where land deemed by the state as vacant and unproductive is transferred to investors. This aligns with the explanation by Nikita Sud, where she states "*Just as land-making in the form of territorial (b)ordering has entrenched state authority across time, land-making has also been used by states to embed regimes of property, as also regimes of development more broadly*" (Nikita Sud, 2022). Yet, this land is socially and ecologically inhabited by indigenous people, in this case the Malind. The MIFEE program clearly demonstrates how the Malind's existence is erased through spatial control strategies and how dispossession is enabled by state legality and power.

In its implementation, MIFEE is considered detrimental to indigenous people and destructive to the environment. The implementation of the MIFEE program is also considered contrary to Papua's special status within Papua's Special Autonomy. Indonesia's largest environmental movement, the Indonesian Forum for the Environment (WALHI), in its report stated that MIFEE is a food estate development that violates the basic rights of indigenous Papuans. This program does not involve the indigenous Malind community in decision-making, as clearly stated in Papua's special autonomy. This program is considered to design a new scheme of human rights violations against indigenous Papuans (WALHI, 2021).

Another report presented by an NGO concerned with advocacy and protection of indigenous peoples' rights is Pusaka Bentala. In the 79-page report, entitled "*MIFEE: Out of Reach for Malind Dreams: Notes on Efforts to Accelerate MIFEE Development in Merauke Regency, Papua,*" Pusaka Bentala reports on the MIFEE controversy within the Malind indigenous community. MIFEE is called the illegitimate child of the '3 Fs and 2 Cs' crisis because it does not provide a solution for many people, especially marginalized groups. Meanwhile, for large businesses and the government, MIFEE is seen as a good thing for economic improvement amidst the hardships of others (Pusaka 2011). This shows how

primitive accumulation takes shape by prying customary land from its owners under pressure and pushing people into plantation labor (Harvey, 2003, p. 64).

Furthermore, a participatory study entitled *"The Sweetness and Bitterness of Sugarcane"* (2013) found a lack of clarity in compensation and agreements between the company, the state, and the community during land clearing. It also found deliberate manipulation and division in decision-making by Malind customary institutions, which also led to elite co-optation and social division within the community (Forest People Programme et al., 2013). From this, I discovered how a new class structure was formed through mediation between representatives of Malind customary institutions, the company, and the state in the MIFEE project. This class structure formed "elite brokers" at the local level and, in the context of global land grabbing, as Borras & Franco (2012) argued, namely the emergence of '*land grabbing entrepreneurs*'. In the context of the expansion of global agrarian capital, groups of local actors such as brokers, speculators, and scammers emerged who exploited institutional structures in land ownership to achieve personal gain in the wake of large-scale land investment (Borras & Franco, 2013, p. 1727).

From this perspective, Mamdani Regarding its contradictions with the postcolonial, this situation demonstrates the continuity of colonial power structures within the postcolonial state (Mamdani, 2018). I also found that Special Autonomy here does not demonstrate its power as a protective law and is again displaced by national regulations and projects that ignore the specificity of recognizing and protecting the customary rights of indigenous Papuans, in this case the Malind community in Merauke Regency. Special autonomy is submerged in bureaucratic capitalism where the law becomes an arena for stimulating between recognition and dispossession.

MIFE also creates structural violence among the Malind indigenous people, and this violence is also found in the pattern of structural legal violence in the MIFEE case. Based on the report entitled "Necropolitics of the State: Militarization of Food Production in the Land of Malind Anim" written by Savitri and published by PUSAKA in 2025, it was found that militarization is a major concept used by the government in land grabbing and control of natural resources. Even long before the implementation of MIFEE, plundering had occurred through large-scale transmigration in the Suharto era (Savitri, 20225). The report from Tapol & WasaS MIFEE in 2022 also reported that the Military and the Ministry of Defense of the Republic of Indonesia, have a role in the management of food estates, where the Ministry of Defense identified two areas that would be developed into rice and cassava plantations in Merauke Regency, Papua Province in 2022, and this report shows the involvement of the Ministry of

Defense in food estates, which is a form of military business (TAPOL & awasMIFEE!, 2022). From this, I see how the post-colonial conditions of Papua continue to transform under state control. Military businesses, which should be prohibited in a democratic system, continue to thrive and encourage militarization in Papua.

The law appears to be non-neutral in fulfilling the needs of capitalism. In the context of the MIFEE project, law is constructed as a tool of violence to enforce socio-economic order (E.P. Thompson 1975). This is further reinforced by the concepts of consent and coercion proposed by David Harvey (2003), where militarization is a form of coercion within the dispossession process. Militarization exerts coercive power within the state to subdue groups that oppose the MIFEE project. Furthermore, the goals of MIFEE, narrated in terms of food security, national investment, and welfare, are used as aspects of consent. In this case, I found that indigenous communities, in this context the Malind, were "*persuaded*" to accept dispossession as part of progress, using a pseudo-consent concept where the community faces structural, military, and legal pressures that leave them with no alternative but to surrender their land. This illustrates how the process of accumulation by dispossession occurs and how "*consent and coercion*" as proposed by Davis Harver (2013) is used so that the government can continue to access all natural resources.

This also shows how legal contradictions occur in justified national provisions such as militarization in order to achieve state stability and the success of the MIFEE project and is in line with E.P Thompson's (1975) explanation of the Black Act, where he concluded that "*that 'the provisions of he Black Act' were in fact 'the appropriate powers', the 'something' that was not only necessary but was justified*". (E.P Thompson). Special autonomy lacks legal certainty and is hampered by the contradictions of a state that uses central provisions and is justified by the state. Ultimately, special autonomy functions only as an administrative legality that demonstrates the effectiveness of legal ideology in crudely manipulating violence such as the Black Act as described by E.P. Thompson (1975).

When linked to the implementation of Special Autonomy in Papua, I found that special autonomy is a dual-structured law, like two opposing poles that respond to each other. On the one hand, I see the law of recognition, and on the other, I see a gray zone situation where special autonomy is neither fully repressive nor fully emancipatory. Through the case of the Malind indigenous people, I also see special autonomy in Papua as a law that reproduces uncertainty, thus opening up capitalist operating space for powerful actors such as militarization, the state, corporations, and local elites to interpret the law according to their own interests. Furthermore, special autonomy lacks the principle of Free, Prior, and Informed Consent (FPIC), which is

internationally recognized as a standard of respect for indigenous peoples. Specific articles, such as Article 43 of Papua's Special Autonomy Law No. 21 of 2001, remain implicit and are often interpreted differently by central and local elites, as well as investors, to legalize the seizure of indigenous territories, while continuing to claim development and improving the welfare of indigenous Papuans. This demonstrates the contradictions of special autonomy, which has transformed into a mechanism enabling legal dispossession due to its very existence and legal substance.

Thus, the MIFEE case affecting the Malind community reflects a fundamental contradiction in postcolonial development in Papua. While national programs like MIFEE are claimed to be legally supported food security programs, on the other hand, they operate through legal manipulation, administrative uncertainty, and structural violence. The massive development project, led by the MIFEE project, displaces indigenous communities and causes ecological damage in Merauke Regency, South Papua Province. The MIFEE project also strengthens the relations of the privileged middle class, perpetuating the cycle of dispossession and injustice in Papua.

3.2 The Awyu Case in Boven Digoel: Litigation, Law, and Moral Economy.

In this section, I describe the Awyu community's resistance through advocacy to voice their customary rights, as clearly stated in Papua's Special Autonomy. Here, we can see a distinct contradiction in the law, where the law is manipulated and used as a platform for Papuan claims in an effort to legally protect their rights. I begin by providing a general overview of the Awyu community.

The Awyu are an indigenous Papuan tribe living in Mappi and Boven Digoel Regencies, South Papua Province. Like the Malind, the Awyu also depend on nature for their livelihoods. Land, forests, rivers, swamps, and other natural resources provide a source of livelihood, food, and even identity and culture. However, the Awyu's customary forests are under threat from the expansion of several palm oil companies, permitted to operate in Boven Digoel Regency, South Papua. A Greenpeace report titled "Suing the State to Defend Customary Forests: The Struggle of the Awyu Indigenous People against Palm Oil Corporations" shows that approximately 78,843 hectares of Awyu customary land has received forest release permits, and another 39,190 hectares of customary land has received location permits for oil palm plantation expansion in Boven Digoel Regency, South Papua Province (Greenpeace, 2023).

In addition to oil palm expansion, the large-scale timber industry also poses a major threat to the Awyu customary forests. A 2024 report published by Pusaka found that the Tanah Merah Project would destroy Papua's forests, and that it also faced numerous other issues, such as corruption and the involvement of officials and conglomerates in falsifying official documents (Pusaka, 2024).

In a Briefing Paper published by Pusaka entitled "*Examining the Awyu Case*" (2025), it was noted that approximately The state handed over 280,000 hectares of forest to large companies for the Tanah Merah project, a large-scale timber industry project whose raw materials come from converted forest areas (Pusaka, 2025). This briefing paper also highlights Pusaka's findings, which is the granting of environmental permits by the Regent of Boven Digoel in 2010 without the required environmental documentation, which constitutes a legal flaw in the permit issuance process and disregards the rights of local indigenous communities to their customary lands .

From this, I continue to find the same scheme in the context of class relations formed within the local elite. High-ranking local governments exploit their power to allow entrepreneurs to enter the Awyu customary forest area. The government also transformed customary land into government land, in line with the concept put forward by Nikita Sud (2021) that "land-making is 'state-making,'" which serves as a permanent regulation in land grabbing and strengthens state control, in this case carried out through local elites acting as brokers without involving indigenous communities. This also shows how the state's capacity to use its power to control the land and resources of the Awyu tribe, and this is in line with Borrás et al.'s (2012) explanation of "*control grabbing*," which states that "*land grabbing is essentially 'control grabbing': grabbing the power to control land and other associated resources such as water in order to derive benefit from such control of resources*" (Borrás et al., 2012, p. 850).

The Awyu indigenous people did not simply accept this decision. Their struggle began in 2022, when representatives of the Awyu tribe filed an objection to the permit granted by the government. Protests continued into 2023, when the Awyu indigenous people sued the Jayapura State Administrative Court (PTUN) against the planned development of a palm oil plantation and palm oil processing plant (Pusaka, 2023). A report published by Greenpeace on March 14, 2024, also demonstrated the Awyu people's struggle to defend their customary territory (Greenpeace, 2024). The report noted that indigenous people continued to file lawsuits, not only with the Jayapura State Administrative Court but also with the Manado State Administrative Court in North Sulawesi province .

Pusaka's report on *"The Awyu Tribe Sues the State"* also demonstrates a concrete framework of resistance in response to these cases. In this context, I examine the indigenous people's struggle to claim their unique rights as Indigenous Papuans. This is where a grassroots movement emerged, forming a community resistance movement, as a manifestation of their rejection of the seizure of customary rights that occurred under "legal" schemes. However, the Awyu people's struggle was not entirely successful within the legal and legal sphere (Pusaka, 2023).

According to a report published by Greenpeace on March 14, lawsuits filed by the indigenous people were consistently rejected by the Manado Administrative Court (PTUN), North Sulawesi Province, on the substantial grounds that the lawsuits were deemed to have passed the 90-day deadline from the time the dispute was discovered (Greenpeace, 2024). This culminated in 2024, when the lawsuit application the community's case was rejected by the Supreme Court for the same reasons as the Manado Administrative Court.

According to a 2024 report by WAHLI, environmental activists from the Awyu tribe, Hendrikus Woro, and the Save Customary Forests Coalition, expressed great disappointment with the Supreme Court's decision to reject the Awyu community's appeal to defend their customary forests (WALHI, 2024). From this, I can see a clear legal contradiction in the protection of indigenous communities and how communities continue to make claims through legal channels to reclaim their rights seized by corporations and the state, along with their elites. I discovered a complex legal structure that is not neutral. Here, I again reflected on how lands that were once customary have now become state lands under the control of corporations and the state itself.

In the Awyu case, I found that the government or companies do not legally own the customary land, but they control permits, land use, production output, and boundaries, thus providing more than just certificates, but also power over the land. From a legal perspective, I observed how indigenous communities lost their rights, even after filing lawsuits. This demonstrates control grabbing.

In Papua's Special Autonomy, I observed a strong pattern where Papua's special autonomy is part of the national land regime, even enabling and facilitating control-grabbing. Its derivative regulations, such as Regional Special Regulation (Perdasus) No. 23 of 2008, provide flexibility in the administrative framework, simplifying land permits and affirming a vertical hierarchy, ensuring that all customary recognition is valid, as long as it is regulated by law. The Special Autonomy Law does not provide clear legal capacity and certainty, even though communities

have continued to fight for their rights through media, demonstrations, and advocacy and legal channels, such as those pursued by the Awyu indigenous people.

3.3 NGO's View : Pusaka's Views on Otsus, Violence, and the History of Dispossession

After examining two case studies that illustrate the fundamental contradictions that reflect the law as a space of control and an arena for claims-making for indigenous peoples' resistance now, I explain the perspectives of an NGO, in this case the Pusaka Bentala NGO, with whom I conducted in-depth interviews and discussions during my fieldwork in Jakarta. I begin with a description of NGOs in Papua and then provide an overview of the Pusaka Bentala NGO.

Non-Governmental organizations (NGOs) are individuals or groups that voluntarily provide services to the community. In the era of regional autonomy, NGOs have both macro and micro roles in supporting the achievement of regional autonomy. In the context of customary law protection, NGOs play a role through policy advocacy, community assistance, mapping customary territories, and strengthening the capacity of customary institutions. One such NGO is the Pusaka Bentala Rakyat Foundation. The Pusaka Bentala Rakyat Foundation (PUSAKA) was founded in Jakarta in 2007. The NGO Pusaka aims to fight for justice for indigenous peoples and the poor.¹⁵

The Pusaka Bentala Rakyat Foundation has conducted extensive research, advocacy, education, and empowerment efforts related to indigenous peoples' rights. The Pusaka Bentala Rakyat Foundation has been actively involved in several advocacy projects, including the Awyu indigenous people's issues, the MIFEE Project case, and the palm oil expansion case in Sorong. During my observations in Jakarta, I had the opportunity to meet directly with one of the Pusaka Foundation's researchers. During this meeting, we had an in-depth discussion regarding the cases handled by Pusaka, Pusaka's perspective on Special Autonomy itself and its dynamics in protecting indigenous peoples' rights against the increasingly frequent seizure of customary territories.

Based on the in-depth discussion with the PUSAKA researcher, I gained several key points that served as my reflection, but also served as a valuable analytical tool for me, placing me in a position to reflect on how NGO intervention sometimes does not fully provide solutions. The first point relates to the researcher's perspective on Papua's Special Autonomy. The researcher states that:

¹⁵ See <https://pusaka.or.id/>

Special Autonomy is not simply an administrative policy; it is a form of sovereignty negotiation rooted in the post-Suharto transition around 1998. Once seen as a victory over historical wounds, Otsus has since opened the door to a new colonialism through violence, irreducible to a project of reconciliation.

This is related with Thelen & Steinmo's (1992, p. 2) formulation that "*historical institutionalism is an attempt to explain how political struggles are mediated by the institutional arrangements in which they occur*" (Thelen & Steinmo, 1992, p. 2). Papua's position can be understood as a manifestation of postcolonial institutionalism—where Otsus operates as an arena for reproducing and debating the meaning of recognition, control, and sovereignty, rather than as a neutral administrative reform.

The second point of our discussion concerns the researcher's perspective on violence in Papua since the 1969 integration. The researcher argues that violence is a method of the state—a combination of legal and illegal practices through which the law legitimizes violent land acquisition to pacify the community. The researcher recalls how, during Suharto's New Order, villages were burned, families evicted, and collective trauma was passed down through generations. This illustrates how legal violence functions institutionally—sanctioned by the state but transcending its formal boundaries. Violence here is not simply a method, but rather an institutionalized and normalized form of power.

This aligns with Thelen & Steinmo's (1992, p. 2) explanation that "*institutions shape the goals pursued by political actors and the way they structure power relations among them, privileging some and disadvantaged others*" (Thelen & Steinmo, 1992, p. 2). Therefore, the persistence of violence in Papua reflects an institutional configuration that systematically privileges state interests. A third insight involves the researchers' perspective on land grabbing in Papua. The ongoing grabbing, they argue, reflects historical continuity: since the Dutch colonial era, cartographic practices—drawing boundaries using rigid, straight lines—ignore local spatial epistemologies.

While indigenous boundaries follow natural markers that shift over time, the linear colonial model is fixed and immutable. This epistemological inconsistency delegitimizes indigenous peoples' territorial claims, allowing the state to classify these areas as *terra nullius* ("empty land"). In Christian Lund's (2022) framework, the relationship between public authority, property, and citizenship is "always in the making" (Lund, 2022). The state continually creates ownership and possession, determining who is considered the legitimate landowner and who is not. This pattern persists through projects such as the Dutch Combe Rich

project in southern Papua and the New York Agreement, which allows Freeport to extract resources without recognizing the rights of indigenous peoples.

The fourth reflection concerns the expansion of oil palm plantations and the transmigration program, which the researcher posits as instruments enabling dispossession. Historically, the case of the Arso oil palm plantation (Manokwari, 1971) is an example of politically justified forced evictions. The transmigration program of the 1960s and 1970s, presented as "*New Order agrarian reform*," cleared indigenous lands without Free, Prior, and Informed Consent (FPIC). My own understanding of the Special Autonomy Law and Regional Regulation No. Article 23 of 2008 asserts that the principle of Free, Prior, and Informed Consent (FPIC) is absent—Article 43 merely implies community involvement without guaranteeing it. This aligns with Skocpol (1985) and Migdal (1988) in Fox (1999), who describe state power as consisting of state autonomy and state capacity (Fox, 1993).

In Papua, the state demonstrates high political autonomy to implement development projects—such as oil palm and transmigration—while Special Autonomy and Special Regional Regulation No. 23/2008 reveal the tension between weak legal legitimacy and strong political capacity to control customary land.

Chapter 4

Palm Oil Expansion in Sorong

In this chapter, I discuss the palm oil expansion that has taken place in Sorong and present the findings from my field observations at several palm oil company sites that I was able to access, providing concrete empirical evidence that illustrates how the reality of palm oil-related issues continues to persist to this day.

4.1 Historical Background: From Logging Concessions to Palm Oil Expansion

The first case I explain is the general context of Greater Sorong and Sorong Regency, the administrative region of Greater Sorong itself.

Geographically, Greater Sorong refers to the administrative region encompassing Sorong City, Sorong Regency, South Sorong Regency, Raja Ampat Regency, and Tambrauw Regency in Southwest Papua Province, Indonesia. Southwest Papua is the 38th province in Indonesia and was officially established in 2022. Sorong Regency covers an area of 56,840 square kilometers, with its capital located in Aimas District. The indigenous people inhabiting Sorong Regency and Sorong City are the Moi¹⁶. Sorong is also known as one of Papua's oil-producing regions and has been operating since 1935.

Sorong's natural resources have never truly belonged to the Moi indigenous people, and they have been subject to international and internal colonialism since 1969. The Moi people face a dire reality due to the expansion of palm oil companies in Sorong Regency. According to a report by suarapapua.com written by Reiner Brabar on January 28, 2022, palm oil companies have been operating in several districts, such as Klamono, Salawati, and Klawak, since the early 2000s (Reiner Brabar, 2022).

Four companies began operating in Sorong in the early 2000s: PT Papua Lestari Abadi, PT Cipta Papua Plantation, PT Sorong Agro Sawitindo, and PT Inti Kebun Lestari. These companies entered Moi customary land with unclear or questionable permits. PT HIP does not operate alone in palm oil management, but KLG also expanded its investments in palm oil over the next 15 years and succeeded in building strong relationships with local rulers and government officials. These alliances allowed them to obtain location and plantation permits

¹⁶ The Moi are an indigenous people inhabiting the Sorong and Raja Ampat regions of Southwest Papua. They are divided into several sub-tribes, including the Moi Legin, Moi Abun, Moi Karon, Moi Klabra, Moi Moraid, and Moi Maya.

with ease. This clearly illustrates how class relations play a central role in mediating between corporations and local bureaucrats who hold the authority to issue permits (Pusaka, 2014).

The mediation process took place directly without involving the Moi indigenous people as the legitimate landowners, and all they received were empty promises fraught with uncertainty. From this, I observed that the existence of Papua's Special Autonomy was ignored and undermined by these companies when clearing land, given their already strong ties with local elites. Here, I see how the company exploited the indigenous community by providing compensation that was vastly disproportionate to the size of the land ceded. In this context, the company assumed complete control and became the de facto landowner—"illegal," but legal in the eyes of the law, as it had paid compensation to the community as a form of moral responsibility. In reality, this actually worsened the situation for the Moi community.

This was further reinforced by my findings from in-depth discussions with a local Papuan broker who manages land permits and mediates between companies and indigenous communities in Sorong. One interesting insight from this discussion was the internal dilemmas faced by communities regarding the presence of logging and palm oil companies, which often involve the influence of local elites themselves. One of the most striking issues was that not all communities reject the presence of these companies—some continue to accept it. The broker I interviewed said that indigenous communities often request that their land be cleared for economic purposes, hoping this will bring prosperity and a better future. However, the reality is far from their expectations. As the broker noted, communities continue to tolerate this situation until they become exhausted and eventually file complaints against the companies for failing to fulfill their promises. Meanwhile, a small number of communities choose to adapt to the situation and even work for the companies.

This perspective opened up new insights for me and revealed a paradox: marginalized communities sometimes accept their condition out of economic necessity, while others persist in their resistance to defend their ancestral lands. In this context, indigenous communities continue to suffer losses, while logging and palm oil companies continue to operate—expropriating land, both covertly and legally, through various possible channels.

This pattern illustrates what can be seen as a state contradiction: the state must maintain its political legitimacy while continuing to facilitate capital accumulation. The paradox seen in Sorong demonstrates how the promise of prosperity for indigenous communities has been normalized as a justification for the seizure of their customary lands.

4.2 Dynamics of Palm Oil Problems in Sorong

While conducting observations in Sorong, I had the opportunity to discuss with indigenous community leaders, including a member of the Moi customary council and several heritage researchers in Sorong. The customary council established in Sorong is one of the special features of special autonomy, where it supports cultural preservation and safeguards the rights of indigenous land and the indigenous communities themselves.

During discussions with heritage researchers, I discovered several crucial points. One of the Pusaka researcher said:

The palm oil company here is able to operate because of the presence of a logging company. The workers who previously worked there always approach the community and make the same promises, like schools, 20% plasma plots, and healthcare. We learn this by speaking the local language, so the community trusts us. Companies also often manipulate the law. Initially, the community promises a temporary handover, but the agreement actually involves a release. The company then obtains a land use permit (HGU) from the government, which results in the community losing their land rights because their land has been transferred to the company and the government. So, when the contract expires, the land reverts to the state, not the community.

Another Pusaka's researcher also added an example of a case in Maladofok District, where much of the plasma plots are neglected, and companies like PT. HIP also leave behind many neglected plots. Furthermore, the researcher believes that Papua's special autonomy and regional regulation number 23 of 2008 do not grant full legal force to the community, and the principle of Free, Prior, and Informed Consent (FPIC) is not truly embedded in the law. This allows companies to freely enter into agreements and legalize land grabbing.

From this, I discovered how legal language is used through promises made to the community, and here the law derives its ideological effectiveness through regulations established by the state. This aligns with E.P. Thompson's explanation of the Black Act, which states that *"The essential precondition for the effectiveness of law, in its function as ideology, is that it shall display an independence from gross manipulation and shall appear to be just"* (Thompson, 1975, p. 263).

I also conducted observations at PT. HIP, one of the largest palm oil companies in Sorong, found signs marked by the company as a high conservation area belonging to indigenous communities, but located within the company itself.

Figure. 4.1

One of the signs that marks an area of high conservation value



source: Author, 2025

The image above shows a sign denoting a high-level conservation area belonging to the Gisim clan, a clan of the Moi indigenous people. From this, I see how legal manipulation can be transformed through legal language that expresses protection through symbolic signs like this, and become a form of manipulation of legal forms to suppress and displace indigenous communities in Moi. I further engaged in in-depth discussions with the Klasau District Customary Council, and from these discussions, I learned important insights from their explanation of how customary institutions overlap and create the existence of other institutions. The customary council stated:

In our Malamoi customary structure, we only recognize the customary council as a form of representation for our community. However, during the reform era, the Moi Customary Institution was established by the government, resulting in two customary institutions. We, as the customary council, carry out legislative functions, while the customary institution carries out executive functions. However, in reality, these institutions lack proper coordination, resulting in constant conflict. The government has also recently established seven sub-tribal councils, which I believe are unnecessary and further increase the number of customary institutions filled with individuals with their own interests, ultimately preventing us from fully carrying out our functions with proper coordination.

I also had an in-depth discussion with the Regent of Sorong, Mr. Jhon Kamuru, and asked about the 2021 lawsuit against the palm oil company. I wanted to understand his position as a regional official involved in the action and the revocation of several permits for companies that violated regulations regarding business permits and land clearing in the area. In the discussion, he stated:

The special autonomy law granted by the government is substantially flawed, thus failing to provide clear legal certainty regarding the protection of indigenous communities. I also feel called as a Papuan and have a moral responsibility to revoke these permits for their violations. However, I am also subject to national law. Therefore, when the national government begins implementing national strategic projects, we continue to follow those regulations.

Here I clearly see how special autonomy is only legal in a legalized administration and in its implementation is weakened by national laws and the results of this discussion also show how state capacity continues to be distributed through local governments that are subject to higher national rules. This is in line with Fox's (1993) explanation regarding the dimension of "state capacity", where state leaders have the power to use government institutions in implementing their policies so that the public remains obedient to follow them (Fox, 1993).

In further discussions with researchers from Pusaka, they also reported their findings in the field regarding a new palm oil company operating in the Moi tribe's customary forest area, which previously housed the former owners of previous companies. One such company, PT. Sorong Global Lestari, is located in the district area, which has not been publicly disclosed.

This was revealed during my observations, where I discovered the company was actively operating and had recently cleared new land in Sorong Regency, located deep within the community's customary forest area. As proof, I managed to enter the area to conduct observations and obtain visual evidence.

Figure. 4.2

New land clearing from PT. Sorong Global Lestari



Source: Author 2024

The image above clearly shows how companies are clearing forests inhabited by indigenous communities and still obtaining permits to operate. Furthermore, I found a similar pattern, where these companies are exploiting the presence of existing timber companies to establish other companies. Here, I see a pattern of ongoing land grabbing, where companies continue to exploit forest land, creating a new frontier, as David Harvey argued regarding spatio-fix. During my observation, I also saw how the nursery was temporarily placed in the house of a logging company and also other nurseries had been spread in several locations that had been cleared and all the transportation processes were carried out without the knowledge of the indigenous people and were completely far from public areas known to many people. I then managed to obtain visual evidence from the car I was driving, this visual evidence was evidence of the storage place for new oil palm seedlings placed in the logging company, and on the other hand this logging company was still actively operating around the forest and also found a lot of illegal logging in the forest to continue to open new land for the palm oil company

Figure. 4.3

Temporary Nursery Housed at a Timber Company



source: Author, 2025

From this picture it is clear how the timber company became a temporary storage place for oil palm seedlings and I also saw that this company was still operating, so it is clear how land grabbing on community land that is considered as "*empty land*" and unproductive places and is used by the state and companies to build large-scale investments and this shows how class relations in positions of power between the government and companies that make the class differentiated and shift the position of the weak population and the upper group continues

to benefit. On the other hand, it is clear that accumulation by dispossession occurs, where even though the local government has revoked its business license, national law remains strong and gives permission and access for companies to continue operating and legalize the seizure of customary territory.

4.3 Indigenous Woman Participation in Customary Protection

After explaining the dynamics of the indigenous people's struggle and the regent's political position, in this section I explain one of my findings regarding how women play an active and significant role in protecting customary territories.

I begin with an encounter that made me see the influence of women's presence. Upon arriving in Sorong for fieldwork, my friend, known as Kaban (Kaban means "*woman*" in the Moi language), invited me to visit her family's customary land. The division of customary land among the Moi people is based on clan lineage, and her clan name is Osok Denlo. I wasn't alone; I was accompanied by my parents and Kaban's mother. During the trip, I spoke with Kaban and her mother, and our conversation developed into a deep discussion that revealed to me the crucial role of women in protecting their customary lands.

In a further discussion, Kaban explained that the customary land owned by her clan has now been entrusted to her, as the daughter, to protect and maintain the boundaries of their territory. She emphasized that women are considered stronger and more assertive than men when it comes to safeguarding customary land rights. I also conducted another discussion with a female local official, who shared her perspective on the role of women in preserving and protecting customary territories. She stated that although Papuan women do not possess the same privileges as men within the patriarchal context of Papua, women actually hold the strongest position in defending their ancestral lands—unlike many Moi men, who tend to sell their lands to companies or leave to seek work elsewhere.

This significant role of Indigenous women is also recorded in the 2022 report published by Yayasan Pusaka, which stated that women play a crucial role in protecting customary land and forests because these lands hold deep value for Indigenous communities. The report also noted that Indigenous women stand at the forefront, demanding that authorities restore their community's land rights (Pusaka, 2022). This statement is further supported by Mrs. Kaban herself, who was one of the demonstrators when the palm oil company attempted to enter and take over their customary land. She recounted that it was at her family's home that the protest

against the land-clearing permit took place—and it was the women who stood at the very front to resist.

When analyzed through the lens of agrarian class dynamics as described by Bernstein (2010), I understand how relations of production and reproduction intersect—where women are not merely victims but active agents who defend the means of social reproduction that sustain their livelihoods, which in this case is the protection of their customary land itself.

Chapter 5

Conclusion

Through this research, I hope to shift the perspective on Papua's Special Autonomy law—from a mere policy framework governing the relationship between the state and society, to a historical space where power, ownership, and justice are continually negotiated. Following the thinking of E.P. Thompson (1975), I recognize that law is not born from moral inequality, but rather from "*consensus as to the values of property*" rooted in the minds of the ruling class (E.P. Thompson, 1975, p. 206). With this understanding, the law appears to protect, yet simultaneously regulates and regulates, recognizing and maintaining power. I find that Papua's Special Autonomy serves not only as an instrument of recognition for Indigenous Papuans, but also as a form of legalization of the power structures that have been formed and inherited since the integration era.

By using class as a lens in this research, I understand that class relations are something "*universal but not exclusively determined.*" These relations do not operate in isolation but are institutionalized through the state and shaped through lived experience and social struggle (Bernstein, 2010, p. 115; Thompson 1935). In the Papuan context, these relations are evident in the way the state has created a new elite through special autonomy, a bureaucratic class that exists between central power and the claims of indigenous communities. Through this process, recognition of Papuan authenticity simultaneously serves as a means for the state to reorganize its control. However, the law that underpins all of this cannot be equated with class relations themselves. As Thompson (1975) emphasized, law has its own history and logic; it not only channels power but also shapes it through legal forms. It is within this framework that Special Autonomy reveals itself: not simply an administrative policy, but a historical arena where class relations, state power, and law converge, shape each other, and continually negotiate legitimacy.

Supporting concepts such as Mamdani (2018) on "*decentralized despotism,*" Fox (1993) on state capacity and state autonomy, and Harvey (2003) on "accumulation by dispossession" helped me see how this law operates within a complex political-economic layer. The historical institutionalism approach (Thelen & Steinmo, 1992) shows that past legal choices have locked in a trajectory of power that is difficult to change, while the idea of territorialization (Rasmussen & Lund) and land-making as state-making (Nikita Sud, 2023) and also control-grabbing (Borras et. al., 2013) emphasize that legal control over land is also control over

people. With all these frameworks, I understand that Papuan Special Autonomy is not just a legal text, but a constantly moving political space, where state law and indigenous peoples' claims meet, collide, and negotiate for recognition.

Evidence from the struggles of indigenous peoples also demonstrates that this contradiction extends beyond mere recognition and control, opening up space for claims that reinterpret the law itself. As Thompson (1975) reminds us, "law may be rhetoric, but it need not be empty rhetoric" (Thompson 1975, p. 263)

Ultimately, Papuan Special Autonomy demonstrates itself to be more than just a decentralization policy, but a historical space where power, recognition, and resistance continue to intertwine in efforts to define justice in Papua.

List of Regulation

1. *Undang-Undang Dasar Republik Indonesia Tahun 1945, Amandemen Keempat* (The 1945 Constitution of the Republic of Indonesia, Fourth Amendment)
2. *Peraturan Pemerintah Pengganti Undang-Undang Nomor 21 Tahun 2001* (Papua's Special Autonomy Law No. 21/2001)
3. *Undang-Undang Nomor 2 Tahun 2001 tentang perubahan kedua atas Undang-undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua* (Amendment of Papua's Special Autonomy Law No. 2/2001)
4. *Peraturan Daerah Khusus (Perdasus) Provinsi Papua Nomor 23 Tahun 2008 tentang Hak Masyarakat Hukum Adat dan Hak Perorangan Warga Masyarakat Hukum Adat atas Tanah* (Special Regional Regulation of Papua Province No.23/2008 about the Rights of Indigenous Communities and Individual Rights of Indigenous Communities to Land)
5. *Peraturan Daerah Khusus (Perdasus) Provinsi Papua Barat Nomor 9 Tahun 2019 tentang Pedoman Pengakuan, Perlindungan, Pemberdayaan Masyarakat Hukum Adat dan Wilayah di Provinsi Papua Barat* (Special Regional Regulation of West Papua Province No. 9/2019 about Guidelines for Recognition, Protection, Empowerment of Indigenous Communities and Territories in West Papua Province)
6. *Peraturan Daerah Provinsi Papua Nomor 5 Tahun 2022 tentang Pengakuan dan Perlindungan Masyarakat Hukum Adat di Provinsi Papua* (Regional Regulation of Papua Province No.5/2022 concerning to Recognition and Protection of Indigenous Communities in Papua Province).

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