

# The Right of Self-determination by the Free Papua Movement through International Law Analysis

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This paper calls the question of the right of self-determination under International Law. The issue of self-determination in Indonesia was re-triggered in December 2018, when the Free Papua Movement shot the employees of PT Istaka Karya, and 16 out of 28 people died in that tragedy. The Free Papua Movement, also known as OPM, is the first group to have echoed the independence for Papua since 1965. The Papua, known as West Papua by international society, has been a never-ending debate among scholars. The purpose of this study is to find the concept of self-determination, and peoples who are entitled to that right. The research method used is normative legal research and uses a historical approach and a doctrinal approach. The result shows that the concept of the right of self-determination is related to the context of decolonisation, which reveals the type of self-determination – not limited to external self-determination, but internal as well. Such context is not present in the Papua circumstances, whatsoever.

**Key words:** *Self-determination, Peoples, Secession, Separatist, Sovereignty, National security, Papua, Free Papua Movement.*

## Introduction

In December 2018, the attack on PT Istaka Karya employees, among others, remains questionable. Sixteen people died in that tragedy (“TNI Pastikan 16 Korban Tewas di Papua,” 2018). According to the Deputy of Public Relations and Media Department for Regional Military Command XVII/Cendrawasih, Letkol Inf. Dax Sianturi (“TNI Pastikan 16 Korban Tewas di Papua,” 2018), the perpetrator was the Free Papua Movement, known as Organisasi Papua Merdeka (hereafter referred to as OPM). The joint operation between the Indonesian National Police (hereafter referred to as POLRI) and the Indonesian Armed Forces (hereafter referred to as TNI) was deployed to eradicate the OPM. Martuani Sormin Siregar (the

Regional Chief of Police of Papua) stated that the location where the assault occurred could only be reached on foot due to the geographic conditions.

In early January 2019, the joint-force successfully took over the West Papua National Committee Headquarter (“TNI, Police seize Free West Papua HQ,” 2019), previously belonging to the group known as *Komite Nasional Papua Barat* (hereafter referred to as KNPB), a movement which vociferously demands self-determination for West Papua. According to them, the presence of KNPB as the media is to support and drive the agenda of International Parliamentarians for West Papua and International Lawyers for West Papua (“National Parliament of West Papua”, n.d.). The existence of such an organisation or movement demanding independence for West Papua could not be considered trivial. The terror and conflict caused by OPM surely interfered with the security and defence conditions. As the term “West Papua” is frequently mentioned, this paper attempts to clarify the West Papua area as referred to in Indonesia. The “West Papua” commonly known by international society refers to the whole of the Papua provinces in Indonesia. Meanwhile West Papua in Indonesia is referred to as the Province of West Papua. To be clear, there are two provinces in Papua Island, Indonesia, namely the Province of Papua and the Province of West Papua.

Recently, the Indonesia Government recognised OPM as *Kelompok Kriminal Bersenjata* (hereafter referred to as KKB). Further research by Djopari shows that the OPM formed when the Papua National Committee was established by the Netherlands (Djopari, 1993). The Roundtable Conference or *Konferensi Meja Bundar* (hereafter referred to as KMB) held in 1949 led to an agreement between the Netherlands and Indonesia, which formulated the Sovereignty Charter concerning sovereignty handover, but the West Papua handover happened one year later. However, after the Charter came into force, the Netherlands promulgated *Besluit Bewindsregeling Nieuw Guinea* in West Papua. The *Besluit Bewindsregeling Nieuw Guinea* is a law to govern the institutions of West Papua. That policy shows there was an intention by the Netherlands to disobey their obligations to handover West Papua. Meanwhile, they also perpetrated several efforts to prove that Papua people refused to be integrated with Indonesia. From local school establishment to the founding of *Komite Nasional Papua*, it appears that everything began from the Netherlands’ plot, which led to the *newborn* separatist group, the OPM.

The OPM carried out the first attack in Manokwari on July 26, 1965. The attack extended to the regencies in Irian Jaya (Biak-Numfor, Sorong, Paniai, Fak-fak, Japen-Waropen, Merauke, Jayawijaya and Jayapura). The main reason the OPM exists is because most of the important figures of OPM are graduates from *bestuurschool*, a school established by the Resident of Hollandia in *Afdeeling* Hollandia (Jayapura), J.P. van Eechoud, also known as "Father of Papuans" (Djopari, 1993). Those important figures are Markus and Frans Kaisiepo, Nicolaas Jouwe, Herman Wajoi, Silas Papare, Albert Karubuy, Mozes Romainum, Baldus Mofu,

Elieser Jan Bonay, Lukas Rumkorem, Martin Indey, Johan Ariks, Herman Womsiwor and Abdullah Arfan. Markus Kaisiepo is the notable figure of OPM who desired Papua become newly independent states. This is in contrast with his cousin, Frans Kaisiepo, who assisted Papua and Indonesia integration. Frans Kaisiepo was granted the title of Hero by the Government of Indonesia. Irian, the name for Papua and derived from Biak languages, is Frans Kaisiepo's idea.

It seems that all forms of actions and aspirations echoed by the OPM did not fully represent the aspirations of all Papuans. There are also misunderstandings of the concept of self-determination, as a result of the Dutch doctrine on the political leaders or elites who initiated the establishment of OPM during the colonial period.

### **Literature Review**

Several scholars interpret the right of self-determination as only applied in the context of decolonisation (Western Sahara Advisory Opinion, 1975). That argument is in accordance with international resolutions and conventions such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in Article 1. Especially in the case of self-determination, these give an implicit impression that this right is only limited to mandate and to non-self-governing territory, which indicates the right of self-determination is entitled only to colonised peoples, a group or population under colonial rule.

Espinosa defines *Peoples*, a term mentioned in the definition of self-determination based on two important parameters; sociological, and geographical parameters (Espinosa, 2017). Espinosa found that in order for a group of people to have fulfilled the criteria of "Peoples", the group must be identified by a clear identity that symbolises similarities such as race, ethnicity, culture, history, religion, language and a connection with the territory where the group live.

Beside Espinosa, Castellino provides the understanding of three types of groups of people who claim the right of self-determination and statehood, namely (1) the peoples, (2) indigenous peoples, and (3) minority populations (ethnically, linguistically, or of religious) (Castellino, 2014). The concept of "*Peoples*" is mistakenly interpreted similarly to the concept of nationhood. However, both are subjective conceptions and are dependent on political factors rather than sociological and historical factors, so the notion of *Peoples* is inconsistent. For instance, Indians and Chinese are defined as a group of people, while Uighurs are not categorised as *Peoples*.

Sterio interprets the meaning of Peoples entitled to self-determination from the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in the context of decolonisation supported by States after the establishment of the United Nations. Sterio divides these into two categories of Peoples: colonised and non-colonised. Colonised peoples are a group of people or a population under colonial control, whereas non-colonised peoples means residents or groups of people who are not subject to or controlled under colonial rule. The relation to the right to independence, that is, being entitled to self-determination and to choosing political status, whether to become a new state or to integrate with other countries, is only possessed by colonised peoples.

### **Research Method**

The research method used in this paper is normative legal research with an historical approach and a doctrinal approach. Terry found that doctrinal research: provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and, perhaps, predicts future developments (Putri, Fakhriah, Karson, 2019). Through its doctrinal approach, the paper attempts to elaborate the fundamental concept of self-determination, following with the historical approach for the purpose of revealing the OPM's presence since Indonesia was under its colonial period. This paper uses primary legal material in the form of regulations, international conventions and secondary legal material in the form of literatures which are relevant to this research object.

### **Results and Discussion**

***Self-determination Adagium: Do West Papua People Defended by the Free Papua Movement Categorise as "Peoples"?***

#### ***Definition of Self-Determination***

The term "*Peoples*", mentioned on several international instruments, turned out to be a clue for international scholars to define "what" is the self-determination means of, and "who" is entitled to its right. The notion of self-determination arose from Woodrow Wilson (the 28<sup>th</sup> President of United States of America) and Vladimir Lenin (Sterio, 2013), both influential rulers prior to World War I (Manela, 2018). Wilson, during *the Occasion of the Visit of the American Mission to Russia*, on 9 June 1917 (Eastwood Jr., 1993), stated that "*no people must be forced under sovereignty under which it does not wish to live*". His message reflected his support toward the "people" to obtain their independence. At the end of World War II, Wilson's notion of self-determination was noticed by the emerging United Nations, which purpose involves the commitment to grant political independence and territorial integrity among States.

Generally, laws formed were for the purpose of creating peaceful circumstance (Marzuki, 2008), in line with the content of the United Nations, “*to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained*”.

There are two types of self-determination in the context of States, namely:

1. Internal Self-determination

This refers to the choice of a system of governance and the administration of the functions of governance, according to the will of the governed (Weller, 2008). There are two distinguished opinions in interpreting the right of self-determination in the internal aspect. According to Antonio Cassese, internal self-determination is the right for a group of people to choose and run their government, or in a racial context, or towards the minority in a country (Senaratne, 2013). Whereas Bruno Simma argues that internal self-determination in the economic, social and cultural context is the right of a group of people in a country to be able to claim the right to use economic resources or to achieve the fulfillment of social and cultural needs (Summers, 2013).

2. External Self-determination

This refers to the right of the Peoples to be free from foreign or alien domination (“Legal Aspects of Self-Determination”, Para 1) and free to build its foreign affairs (Chadwick, 1996). But controversially, external self-determination will normally be taken to include the right to secede from their mother states (Weller, 2008).

Self-determination is one of the fundamental rights for every nation to determine its fate. Currently, the fundamental principles of human rights are generally accepted as part of customary international law, although not everyone would agree on the identity or content of the fundamental principles (Crawford, 2012). The right of self-determination exists in purpose to resist the act of colonisation (Cohen, 2006). Under international law, self-determination turns into a rule of customary international law which is binding to all States (Sterio, 2013). To understand what the right of self-determination means, we refer to these international legal bases below:

(1) Charter of United Nations

Post-World War II encouraged the establishment of United Nations, substituting the League of Nations that failed in maintaining international peace and security. The United Nations Charter also mentions, yet not specifically, for the definition of the right of self-determination, that is:

*“To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”.*

(2) 1960 Declaration on Granting Independence to Colonial Territories

This Declaration was adopted 14<sup>th</sup> December 1960 and became a historic moment in the turn against colonialism. Also known as the General Assembly Resolution 1514, the declaration states:

*“All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”*

(3) 1970 The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States

This declaration is also known as the “Friendly Relations Declaration”. The Declaration states:

*“By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, **all peoples** have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.”*

(4) United Nations Covenant on Economic, Social, and Cultural Rights

Known as the International Covenant on Economic, Social and Cultural Rights (hereafter referred to as ICESCR), this is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966. The self-determination mentioned in this Covenant, says:

*“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”*

(5) International Covenant on Civil and Political Rights

This multilateral treaty, widely known as ICCPR, also defines the right of self-determination. Unfortunately, its definition is similar to Article 1 of ICESCR, so there are no differences in criterion for the right of self-determination between ICCPR and ICESCR.

(6) *United Nations General Assembly Declaration on the Occasion of the Fiftieth Anniversary of the United Nations*, GA Resolution 50/6

Adopted in 1995, this Declaration was formed in commemoration of the 50<sup>th</sup> anniversary of the establishment of the United Nations. The substances include peace, development, equality, justice and the organisation of the United Nations. Countries' commitments to the existence of self-determination are listed in the Peace section number 1, namely to:

*“Continue to reaffirm the right of **self-determination of all peoples**, taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, and recognise the right of peoples to take legitimate action in accordance with the Charter of the United Nations to realise their inalienable right of self-determination.”*

(7) *Vienna Declaration and Programme of Action A/Conf.157/24*

This declaration was adopted during the United Nations World Conference on Human Rights on June 25, 1993. This instrument explains that Human Rights are universal, inseparable, interdependent and interrelated. This declaration essentially reaffirms the substance of Article 1 of the ICCPR and ICESCR.

Briefly, those definitions above could be summarised as, “all peoples freely to determine their political, economic and social status”. Those formulations are used in all relevant United Nations documents which relate to the right of self-determination. All those definitions above mention the term “peoples”. It is not easy to define the proper meaning of the right of self-determination due to its diverse definition above. Prior to defining the right of self-determination, the term “*peoples*” included in its definition should be defined as well. This is such a highlight for debates among scholars or even between States. The question “Are the peoples of West Papua entitled to this right?” will be resolved on the next section.

### ***Definition of Peoples***

The definition of *Peoples* can not be determined based on race or skin colour. The term “peoples” is sometimes mistakenly associated with minority groups, which are generally distinct from the notion of minority rights (Sterio, 2013). According to Marc Weller,

*Minority rights protect the existence of national, religious, linguistic or ethnic groups, facilitate the development of their identity and ensure that they can fully and effectively participate in all aspects of public life within the state (2008).*

Therefore, this right as such is protected and guaranteed by International Law as the respect of basic rights (Wippman, 1999).

There are two perspectives in understanding the term *Peoples*. According to Weller, the recognition of the right of groups, which mostly occurs within the scope of international human rights law, shows a focus enhancement on international law, especially in context of

self-determination, which is also the main key to distinguish “Peoples”, “indigenous people”, “tribal population” and “minority” (Hohmann and Weller, 2018).

The category of Peoples could be understood through interpreting the right of self-determination definition from ICCPR and ICESCR. There are two categories concerning this issue, specifically, the non-colonised peoples and the colonised peoples. The non-colonised peoples are the peoples who are living within their mother States and are entitled to form internal governance (or known as special autonomy) within their mother States, however, they did not possess the right to secede and to seek independence (Sterio, 2013). Meanwhile, the colonised peoples refers to a group of people who are living in the area occupied by other States or who are colonised. The colonised peoples are entitled the right to freely decide to determine their fate, whether they choose to associate with other States, to remain a part of their existing coloniser, or choose to be newly independent States (Sterio, 2013).

Pursuant to the Declaration on granting Independence to Colonial Countries and Peoples and the United Nations General Assembly Resolution 1541, *Peoples* who are entitled the right of self-determination are those who were subjected to colonial rule, which reveals through its annex that which specifies the modalities of self-determination for colonised peoples. Furthermore, the right of self-determination belongs to a people as a whole where living in a given colonial territory. Therefore, for the various ethnic groups who lived in a single colony, their right of self-determination had to be exercised as a whole, with all ethnic groups uniting as a single “self” that corresponded to the entire territory of that colony (Sterio, 2013). Sterio states as well that self-rule by smaller minority groups operating within a larger central state is entirely consistent with notions of democracy, so that even if the minority group, or people, does not have the capacity to exercise jurisdictional authority equivalent to a true state, it nonetheless deserves a measure of autonomy that it is capable of exercising (Sterio, 2013).

This argument is also reaffirmed by Judge Rosalyn Higgins, who states that the meaning of *Peoples* could be used as: 1) Peoples means the entire people of a State, or 2) Peoples means all persons comprising distinctive groupings on the basis of race, ethnicity and perhaps religion. Nevertheless, the emphasis in all the relevant instruments and in State practice (by which the statements, declarations and positions are taken) on the importance of territorial integrity means that “Peoples” is to be understood in the sense of all the peoples of a given territory (Janis and Noyes, 2011). Thus, in line with the statement, Papua peoples do not have a right to secession, to independence, or to join with comparable groups in other States. They are not entitled the right of Self-determination particularly the right to secede from Indonesia as the parent States.

## Are Indigenous Peoples Entitled the Right to Secede?

Indigenous people existence has been acknowledged by International Law since the Berlin Conference in 1884. Pursuant to Article 6 on the General Act of Berlin Concerning the Congo, mentioning indigenous peoples, namely (Dixon, McCorquodale, and Williams, 2016):

*“All the Powers exercising sovereign rights or influence in the aforesaid territories bind themselves to **watch over the preservation of the native tribes, and to care for the improvement of the conditions of their moral and material well-being**, and to help in suppressing slavery, and especially the slave trade. They shall, without distinction of creed or nation, protect and favour all religious, scientific or charitable institutions and undertakings created and organised for the above ends, or which aim at instructing the natives and bringing home to them the blessings of civilisation”.*

Sometimes, the right of indigenous peoples is mistakenly interpreted that if they are also entitled the right to seek independence, so they could secede from mother States. However, in the *Peoples* classification as it is elaborated above, the characteristic of indigenous peoples depends on its case; if they are the peoples as a whole of the territory and under the colonial rule, they might exercise the right of self-determination, specifically as newly independent States.

In 2007, the United Nations General Assembly adopted the Declaration on the Rights of Indigenous Peoples (hereafter referred to as UNDRIP). This is the international instrument which addresses the individual and collective rights of Indigenous peoples, including their ownership rights to cultural and ceremonial expression, identity, language, employment, health, education and others (United Nations, 2007). The indigenous rights, therefore, not only seek to enhance the maintenance of the cultural identities of indigenous peoples but may also extend to land rights and to political or territorial autonomies (Weller, 2008). Yet, the term *Peoples* of indigenous populations on Convention 169 of International Labour Organisation clarifies that it does not imply the right to self-determination, particularly in the sense of international law, such as Secession (Weller, 2008). On the other hand, the right of Self-determination is evidently ruled under UNDRIP.

The main articles on UNDRIP are Article 3, Article 4, and Article 46. Article 3 states the right of self-determination as also granted to the indigenous peoples. As it states: **“Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”** Concurrently, Article 4 declares the right of autonomy for indigenous peoples: **“Indigenous peoples, in exercising their right to self-determination, have the right to**

*autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.”*

Moreover, Article 46 emphasises that the implementation of the right of self-determination should not be against the State/s’ territorial unity. Article 46 states:

- 1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorising or encouraging any action **which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.***
- 2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.*
- 3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and **good faith.***

The right of self-determination means for the collective, which is carried out by groups or communities within an area as a united and inseparable thing. For instance, in the case of Indonesia, even though its people consist of different tribes, the implementation of self-determination in 1945 was carried out on behalf of the people of Indonesia. The right to secede of indigenous people is also unjustified, because under UNDRIP provisions, it implicitly shows that indigenous people are only entitled to the autonomous rights of the parent state.

Thus, despite the West Papua classifying themselves as indigenous peoples and as distinct by skin colour or ethnicity, their right to self-determination is solely limited to ruling their internal affairs. Self-determination as a right to establish an independent State does not exist for ethnic communities that constitute integral elements of a sovereign State and are thus able to take part in the conducting of public affairs of that State (Cohen, 2006).

### ***Self-determination of West Papua: Free Papua Movement Existence and Indonesia Since Colonial Period***

Traced back throughout the post-1945 Indonesian independence history, the Netherlands denied Indonesia's independence declaration which led to assaults (Rockx, 2016) and military aggression (Gouda, 1999) on several territories in order to debilitate Indonesia's defence and security. In 1949, both Parties made a deal between Indonesia and the Netherlands constituting an agreement of sovereignty transfer. Also, some historical records show the occupation area of the Netherlands includes Papua, the area nowadays known as West Papua by international society. According to that, it is proved that West Papua (formerly known as West Guinea) has been part of Indonesia since colonisation by the Netherlands, as part of the Dutch East Indies (Rommelink, 2015).

The Round Table Conference agreement, the Charter of Transfer of Sovereignty, in fact still causes a polemic in the following years. Article 2(f) of the Charter of Transfer of Sovereignty states that the *transfer* of the Papua territory would be determined within one year after the agreement entered into force. However, after the second agreement became effective on December 27, 1949, the Queen of the Netherlands stipulated *Besluit Bewindregeling Nieuw Guinea*, a regulation on state administration for the Nieuw Guinea region (Djopari, 1993). In 1950, when there was supposed to be a discussion between Indonesia and the Netherlands, the Netherlands continued to adjust the governance of the regulations established by the Queen of the Netherlands by issuing the Governor's Decree No. 43 of 1950 to revoke the decision of the Dutch East Indies government regarding the status of the New Guinea or Papua as the *neolandschap*. *Neolandschap* was understandably regarded as a constitutional autonomic unit of the Netherlands (Cribb, 2000).

The existence of the Free Papua Movement began after Japan occupied most of the Indonesian territories. However, the Dutch government in Papua (known then as West Nieuw Guinea), experienced the problem of a shortage of trained personnel in the fields of government and development (Djopari, 1993). Therefore, in 1944, J.P. van Eechoud founded a school, which schooled the political elite or educated petty bourgeoisie in Papua (Djopari, 1993). J.P. van Eechoud, also known as "*vader der Papoea's*" (Father of Papua) was the Resident for *Afdeeling* Hollandia/Jayapura (Djopari, 1993). *Afdeeling* coexisted with the regency, which in Indonesia was called *Kabupaten* (Herlina, Sinaga, Muhsin Z., Falah, 2019). The main mission of the establishment of the school was to instil Papuan nationalism and make all Papuans loyal to the Dutch Government (Djopari, 1993). If the Dutch Government found pro-Indonesian Papuans, they would not hesitate to imprison them and throw them out of Papua to cease their pro-Indonesian activities (Djopari, 1993). Djopari found that the Netherlands seems to have been quite successful in fostering nationalism in Papua, where nationalism was divided into three groups. These were namely a small political

elite group that was Pro-Papua oriented (consisting of two groups, those willing to cooperate with the Dutch and those who refused to cooperate with the Dutch) and a group who were Pro-Indonesia oriented. The splitting of the ideology was allegedly to hamper the integration between Papua and Indonesia.

The handover of the Papua territory to Indonesia as stated in 1949 on the Charter of the Transfer of Sovereignty, that it would be completed a year later, was in fact not fulfilled by the Netherlands. The Netherlands also made several efforts to make it difficult to hand over the Papuan territory to Indonesia in the following years.

As per the elaboration above, this paper argues, first, the Netherlands has controlled half of the territory of New Guinea as agreed with the Sultan of Tidore in 1660 (Webb-Gannon, 2014). Papua, or formerly known as Irian Jaya, is a territory colonised by the Netherlands and is under the rule of the Dutch East Indies along with the territories of Indonesia. Based on the principle of *uti possidetis iuris*, basically, when the Indonesian state declared its independence, all regions under Dutch control and their territorial boundaries automatically transferred to the new entity, namely Indonesia. Furthermore, self-determination as stated by OPM on behalf of the people of Papua is unjustified. Bear in mind, the right of self-determination is collective, which means that the right applies to a group of people in an area as one entity and is under colonial authority and therefore only applies once. If it applied to this issue, Papua was not under colonial rule. Thus, it is safe to claim that Papuans are included in the category of non-colonised people so that the self-determination referred to is only limited to the internal scope.

In addition, with regard to Self-determination relating to human rights, the Government of Indonesia does not discriminate or obstruct political, economic, social and cultural rights. This is evidenced by the Government promulgating Law Number 21 Year 2001 concerning Special Autonomy for Papua Province as amended by the Government Regulation in Lieu of Law Number 1 Year 2008 concerning Amendment to Law Number 21 Year 2001 concerning Special Autonomy for the Province of Papua. Thus, local residents or local Papuans determine and regulate the affairs of their regional government. These things indicate that the state guarantees the right of Papuans to carry out internal self-determination in ruling regional governments for their political, economic, social and cultural development.

## **Conclusion**

Papua is also part of the Netherland's occupation, along with other Indonesian regions. On one hand, if they argue to secede from Indonesia due to their distinction of skin colour or ethnicity, it is not acceptable to justify it in exercising its right. According to my analysis, the

people who colonised West Papua are not separated entities from those who were colonised in the regions of Java, Sumatra, and so on. Therefore, these Papuans are categorised as *Peoples* as a whole of Indonesia territory along with other ethnicities. They constitute non-colonised people, thus they are not entitled the right of self-determination.

Based on the analysis and explanation in the previous sections, this paper draws several conclusions. Peoples or groups of people entitled to self-determination are all people or communities under colonial rule entitled to self-determination, in accordance with the provisions of the 1960 Declaration on Granting Independence, 1970 Friendly Relations Declaration, ICCPR, ICESCR, and other related international instruments. The right of self-determination belongs to the people as a whole, who live in a certain colony or in other words are collective. Thus, if within the territory of the colony there are different ethnic groups, the right of self-determination must be exercised as a whole.

In practice, residents or groups of people who want the right to self-determination with the aim of separating themselves from the parent state or parent state perpetrate by taking a referendum or poll. However, in the context of secession by colonised peoples, it does not have to go through a referendum. This is similar to the case of Western Sahara, where the people lost the opportunity to express their wishes and opinions and which caused unclear status until now. Colonised peoples have only one chance to exercise the right of self-determination. Self-determination in the paradigm of decolonisation is about the formation of new states which take over their territories from the colonial state. In contrast, non-colonised peoples do not have the right to become an independent state.

Non-colonised peoples have the right to self-determination limited only within the scope of their parent country, specifically given special autonomy. The right for indigenous peoples and minority rights based on UNDRIP does not mean obtaining the right of independence to become a sovereign state. The two categories of rights are the same as non-colonised peoples, the context of self-determination in question is limited to building political, economic, social and cultural status in the region or in the sense of being given a self-government policy or autonomy from the local government.

This paper concludes that in accordance with the self-determination criterion as explained in the previous section, Papua is not entitled the right of self-determination because it does not meet the criteria as colonised peoples. Their demands to secede on behalf of self-determination are outside the context of decolonisation. With the existence of international legal principles *uti possidetis iuris*, the territorial borders of Indonesia adhere to the boundaries of when the Dutch controlled the territory of Indonesia, thus, this includes Papua.



In addition, Papua is granted special autonomy based on Law Number 21 of 2001 concerning Special Autonomy for Papua Province as amended by the Government Regulation in Lieu of Law Number 1 of 2008 concerning Amendment to Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua. By giving Papua special autonomy it also shows that Regional Government of Papua has a chance to rule their regional government, which reveals the form of internal self-determination. Lastly, the Act of Free Choice or PEPERA held in 1969 through the Consultative Council for the Determination of the People's Opinion based on a sense of full awareness, a sense of unity and unity with other regional people and trust in the Indonesian state has absolutely determined that the West Irian region is part of territory of the Unitary Republic of Indonesia. The Constitutional Court Decision No. 35 / PUU-XVII / 2019 reaffirms that the Decision of the Consultative Council for the Determination of the People's Opinion is final.

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