

CONSTITUTIONAL COURT AS MEDIATOR: A MODELS AND SOLUTIONS TO ARMED CONFLICT AND THE RULE OF LAW IN PAPUA, INDONESIA

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Abstract: Conflicts and tensions in Papua that have occurred for a long time, continue to escalate in 2021 until until April 2023 with quite complex problems. This study analyses the concept of the Constitutional Court as a mediator which is used as a model and solution for armed conflict and the rule of law in Papua, Indonesia. Using a normative legal research approach by collecting primary, secondary and tertiary legal materials. In order to get answers to research problems, the four models of problem solving approaches are used statute approach, conceptual approach, comparative approach, historical approach. This research uses descriptive-prescriptive and content analysis. The result of this research is the granting of new authority to the Constitutional Court through amendments to the 1945 Constitution, because it sees the opportunity for the Constitutional Court to become a mediator in resolving armed conflicts carried out by the government and KKB/KSB/OPM in Papua, thereby creating security, order & peace.

Keywords: *Constitutional Court; Mediator; Armed Conflict; Rule of Law; Papua.*

INTRODUCTION

Historically, before being labeled as a terrorist by the government of the Republic of Indonesia, acts of violence committed by a group of people in Papua received different names, the Indonesian National Police called the Armed Criminal Group (Kelompok Kriminal Bersenjata/ KKB) while the Indonesian National Army used the term Armed Separatist Group (Kelompok Separatis Bersenjata/KSB), but for the Free Papua Organization (Organisasi Papua Merdeka/ OPM), group is a fighter who wants to separate themselves from the State of Indonesia. Various attacks carried out by KKB/KSB/OPM against law enforcement officers assigned to Papua, forced the government to firmly define actions and groups that commit violence in Papua as terrorist crimes. (Tolib & Panjaitan, 2021) Conflicts and tensions that occur in Papua continue to escalate in 2021 to mid-2022 with complex issues. (Hafiz & Pratama, 2021) The main problem with the Papuan conflict lies in the implementation of the 1969 Election Law and the development process that is taking place in Papua itself. Regarding the Act of Free Choice, different historical narratives live in society. The dominant narrative conveyed by the Government of Indonesia is that the political status of Papua as part of the Unitary State of the Republic of Indonesia is legal because it goes through an official process and UN resolutions. On the other hand, the Papuan people have a different narrative. The Act of Free Choice held in August 1969 was invalid because it was characterized by the practice of intimidation and violence, while the implementation of the 1962 New York Agreement was deemed inappropriate. (Anugerah, 2019) Since the Declaration of the Republic of Indonesia on August 17, 1945, the independence of ownership after the *Konferensi Meja Bundar (KMB)* on December 27, 1949, until Papua returned to Indonesia on May 1, 1963, Papua has never stopped turbulent. (Fadrik Aziz Firdausi, 2019)

KKB/KSB/OPM continues to carry out massacres and killings. Not only members of the Indonesian National Army (TNI) and the Indonesian National Police (POLRI), civilians are also victims. Most

recently, eight (8) East Palapa Telematics (PTT) workers died after being shot by KKB/KSB/OPM (March 2, 2022). Previously, there were many victims, and there was 1 (one) member of the Indonesian National Army (TNI) named Miskel Rumbiak killed in Maybrat (January 20, 2022), Three (3) members of the Indonesian National Army (TNI) named Muhammad Rizal Maulana Arifin, Tupel Alomoan Baraza, and Rahman Tomilawa, died while on duty at the Gome Post in Gome District (January 27, 2021), less than three months in 2022, there have been 12 (twelve) people killed by the KKB/KSB/OPM. Meanwhile, throughout 2021, at least 18 (eighteen) people died due to the actions of the KKB/KSB/OPM, namely 1 (one) elementary school teacher named Oktovianus Rayo in Julukoma Village, Beoga District, Puncak Regency (April 8, 2021), 1 (one) person A junior high school teacher named Yonathan Raden was shot dead in Puncak Regency (April 9, 2021), 1 (one) civilian in Puncak Regency, precisely in Eromaga Village, Omukia District (April 14, 2021), 1 (one) high school student in Uloni Village, Ilaga District (April 15 2021), Head of the State Intelligence Agency (BIN) Brigadier General Gusti Putu Danny Nugraha died in Beoga District, Puncak Regency (April 25 2021), 1 (one) Police in Oksamol District, Pengunungan Bintang Regency named Mario Sanoy (May 28, 2021), 2 (two) workers who are building a bridge on the Brazza River, Kribun Village, Dekai District, Yahukimo Regency (August 22, 2021), 4 (four) a member of the Indonesian National Army (TNI) was killed at the Kisor Military District Post, Kisor Village, South Aifat District, Maybrat Regency (September 2, 2021). In Kiwirok District, Bintang Mountains Regency (September 13, 2021), KKB/KSB/OPM burned several public facilities, including the Kiwirok Health Center, attacking six health workers. (Tribunnews.com, 2022) Then there was the shooting of a member of the Indonesian National Army Platoon III Kipan A Yonif PR 431/SSP named Beryl Kholif Al Rohman, died in Kiwirok District, Bintang Mountains Regency, Papua. (Nadia Riso, 2022) Violence continues until the case that occurred in 2023, Four soldiers of the TNI Yonif R 321 / GT Task Force who had disappeared after being involved in a shootout with KKB / KSB / OPM in Mugi-Mam, Nduga Regency, Papua on a mission to rescue Susi Airlines pilots who were held hostage by KKB / KSB / OPM. How long will this conflict occur and take casualties from the Indonesian government and KKB/KSB/OPM?

The ideals of the Indonesian nation as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia are to protect the entire Indonesian nation and the entire homeland of Indonesia and promote public welfare, educate the nation's life and participate in carrying out world order based on independence, eternal peace, and social justice. By seeing that the Papuan conflict continues, drags on and even has taken many casualties, the Constitutional Court should have taken a role in efforts to resolve problems in Papua because the Constitutional Court is the guardian of the constitution and also the guardian of Pancasila as the ideology of Indonesia. (Wiguna, 2021) It is known that the existence of the Constitutional Court in the Indonesian legal system is intended to strengthen the system of checks and balances in order to realize and guarantee democracy so as to create security and comfort for the people, including in the Papua region. (Wulandari et al., 2021)

METHODS

This paper examines analyzing a concept in which the Constitutional Court acts as a mediator which is a model and solution for armed conflict and the rule of law in Papua, Indonesia. This research uses normative legal research or library research, (Soekanto & Mamudji, 2001) by collecting legal materials either primary, secondary or tertiary. (Zico Junius Fernando et al, 2022) In order to find a solution to the research problem, thus the statute approach, conceptual approach, comparative approach, historical approach are used. (Peter Mahmud Marzuki, 2005) The nature of the research used in this study is descriptive-prescriptive. (Fernando, 2022) In connection with the study of library materials, it is also necessary to know how to write quotations, footnotes, and bibliography because in the analysis of library materials and in writing proposals and reports on research results, content analysis is used. (Fernando, 2020)

RESULTS AND DISCUSSION

1. Constitutional Court Position and Authority in Indonesia



The Constitutional Court is domiciled as a state institution with independent judicial power to administer justice to uphold law and justice. (Torres & Casas, 2022). The Constitutional Court has the authority to adjudicate at the first and final levels whose decisions are mandatory for the following points:

- a. Examine the law against the Constitution;
- b. Decide on disputes over the authority of state institutions whose authority is granted by the Constitution;
- c. Decide on the dissolution of political parties, and
- d. Deciding on disputes about the general election results. (Mahkamah Konstitusi, 2011).

The Constitutional Court is obliged to give a decision on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the Constitution. (Titik Triwulan Tutik, 2010). The violation referred to and regulated in Article 7A of the 1945 Constitution is committing a violation of the law in the form of betrayal of the state, corruption, bribery, other criminal acts, or disgraceful acts, and/or no longer fulfils the requirements as President and/or Vice President as referred to in Article 7A of the 1945 Constitution of the Republic of Indonesia. (Mahkamah Konstitusi, 2011).

The decision of the Constitutional Court is final and binding, after being loaded and announced in the State Gazette. (Lembcke, 2022). Thus, by being published in the State Gazette, all state administrators and citizens are bound not to apply and carry out any more legal norms that have been declared unconstitutional, either in whole or in part, because they do not have binding legal force. (Wulandari *et al.*, 2021).

The authority of the Constitutional Court can be increased and decreased by amending the 1945 Constitution, which as it is known that the 1945 Constitution has been amended four times, as described by:

- a. The First Amendment to the 1945 Constitution was carried out in the General Session of the People's Consultative Assembly on 14-21 October 1999;
- b. The Second Amendment to the 1945 Constitution was carried out at the Annual Session of the People's Consultative Assembly on August 7-18, 2000;
- c. The Third Amendment to the 1945 Constitution was carried out at the Annual Session of the People's Consultative Assembly on November 1-9, 2001;
- d. The Fourth Amendment to the 1945 Constitution was carried out at the Annual Session of the People's Consultative Assembly on August 1-11, 2002. (Raditya, 2020).

The 1945 Constitution is an important document/text of Indonesia which was formed as a result of the long and tiring hard work of the Founding Fathers. The preamble in paragraph IV contains Pancasila as the highest legal basis (staatsfundamentalnorm) and the basic ideology of Indonesia. Moreover, after experiencing oppression and various kinds of injustice for 3.5 centuries from an authoritarian colonialism regime, the 1945 Constitution is a material form of Indonesian independence, namely the freedom to make, implement and enforce laws based on the noble values of Indonesia which during the era of colonialism was thrown out and under the shadow of the arrogance of the colonial legal system. This certainly gives legitimacy to the enactment of the 1945 Constitution as a guide and reference point. (Kompasiana, 2017).

Amendments began to be discussed at the time of the reformation. This is motivated by the people's demands for the government to create the life of the nation and state in accordance with the basic values of Indonesia. The 1945 Constitution before the amendment was deemed to have failed to accommodate the interests of the people. Therefore, the people through the reform demanded to amend the 1945 Constitution. These demands continued, in and 1999, the 1945 Constitution was amended. More than fifty percent of the articles were amended by the People's Consultative Assembly. (Hukum Online, 2021). The Constitutional Court is one of the products of reform, amendments to the 1945 Constitution can add new authority to the Constitutional Court to take on a wider role and function. The latest developing idea is that the Constitutional Court is proposed as a

mediator in resolving problems or conflicts. This idea, model or concept is indeed said to be "out of the box" but that does not mean it is impossible, because the role as a mediator can be used by the Constitutional Court as a guardian of the constitution and Pancasila for resolving conflicts or cases that exist and occur protractedly such as conflict in Papua, which is carried out by KKB/KSB/OPM as well as other cases or conflicts that require a good and effective resolution.

2. The anatomy of conflict in Papua, Indonesia

The constitution occupies the highest hierarchy in the order of legislation of a country. As a basic law, the Constitution becomes the guideline for citizens in the life of society and the state. Where the Constitution does not only contain the highest norms but is also a constitutional guideline for citizens (the people) in life. (Fatkhurohman dkk, 2004). Therefore, the Constitution must be implemented in the behaviour of social and state life for the people as the holder of sovereignty. In accordance with Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which contains two meanings, the phrase "sovereignty is in the hands of the people" contains an acknowledgment of the existence of a sovereign people's government, and the phrase "implemented according to the constitution" contains the principle of constitutionalism. In exercising their sovereignty, the people are bound and obey the rules of the constitution. There should be no sovereignty in the hands of the people that is contrary to the constitution. All power in the Country is derived from the sovereign power of the people. (Triningsih *et al.*, 2022).

Apart from being a democratic country, the 1945 Constitution also states Indonesia as a state of law. (Asemki *et al.*, 2023). The concept of the rule of law is closely related to human rights. According to Jimly Asshiddiqie, Indonesia as a legal state has "rechtsstaat" characteristics, including (Etra, 2022):

- a. The existence of a Basic Law or Constitution which contains written provisions regarding the relationship between the authorities and the people;
- b. There is a separation of state powers, which includes the power to make laws that are in the parliament, judicial power that is free and independent, and the government bases its actions on the law (*wetmatig bestuur*);
- c. The recognition and protection of people's rights is often called "*vrijheidsrechten van burger*".

Law enforcers in Indonesia, often met with the sentence, "The purpose of the law must meet three aspects, Justice, Certainty, and Benefit". (Etra, 2022) Thomas Hobbes, in *Leviathan*, stated (Pratiwi, 2022):

"The salvation of the people requires further than him or those with sovereign power. Justice is given equally to all levels of society, that is, so that the rich and powerful as well as the poor and unknown can be taken care of from the losses they experience. Great people have no hope of greater impunity, when they commit violence, disgrace, or even more heinous crimes among themselves because in this there are similarities as the teachings of natural law where a ruler is as subservient as the worst of the people".

Jimly Ashhidiqie revealed the 13 main principles of the rule of law that apply today (Sinaga & Claudia, 2022):

- a. The rule of law;
- b. Equality in law;
- c. The principle of legality (due process of law);
- d. Limitation of power;
- e. Independent executive organs;
- f. The judiciary is free and impartial;
- g. State administrative court;
- h. Constitutional Court;
- i. Protection of human rights;
- j. Democratic in nature;
- k. Functioning as a means of realizing the goals of the state (Welfare Rechtsstaat);
- l. Transparency and social control;



m. Belief in the One Supreme God.

The issue of violence, conflict, and even human rights violations is an academic issue that has received wide attention. (Baidhowah, 2021). The 20th century is known as the century of genocide, which is the century in which mankind faced an astonishing phenomenon of civilization, namely the massacre of humans in enormous numbers by their own people. Even though humanity has stepped into the 21st century, it seems that the new world order has not changed much. Conflicts, violence, and massacres in the name of tribes, religions and races are not over yet. Humans have not learned enough from all the sorrow, suffering, and blood that has been shed in vain. The Indonesian nation as a large nation is inseparable from a long history involving conflicts, violence, and massacres of fellow nation's children for various reasons. The tragedy of 1965 is the biggest tragedy in the dark history of this nation. Furthermore, various conflicts, violence, and massacres continued to occur in various areas in the country, such as in Ambon, Poso, Aceh, Lombok, Probolinggo, and Papua. Papua, for example. All of these are still labelled as a conflict area, and are even listed as the longest violent conflict areas in Indonesia. According to Mukesh Kapila, who studies conflicts in several countries including Kyrgyzstan, Moldova, Uganda, and Sri Lanka, violent conflicts occur because of differences in understanding, interests, and ideologies among actors. (Taum, 2019) The conflict in Papua, based on the results of the Indonesian Institute of Sciences (LIPI) research, is caused by a fundamental difference between the conflicting parties, namely the Indonesian government and the KKB/KSB/OPM, both in understanding the root causes of problems in Papua, defending or fighting over certain interests (Taum, 2019).

Richard Chauvel, an expert on political history who has seen the Papuan conflict, also concludes that there are at least four basic issues that can be identified as sources of conflict (Anugerah, 2019):

- a. Disappointment because Papua is part of Indonesia;
- b. There is competition felt by the Papuan elite with officials from outside Papua who have dominated the government since the Dutch colonial era;
- c. Economic development and governance in the different lands of Papua, and
- d. Marginalization of indigenous Papuans due to the presence of migrants. These views become legitimacy for groups who are not satisfied, thus creating pro-independence groups in Papua.

The four basic problems mentioned above are also expanded into five (Mambraku, 2015):

- a. Policy factors and development failures. In general, conflicts occur due to development failures and demands for the division of political-economic authority between the centre and the regions through decentralization policies;
- b. Factors of religious, cultural, ethnic, and racial identity. Horizontal disputes between religions, ethnic groups, cultures, ethnicities, and races;
- c. Historical factor. Differences in the history of the formation of the Republic of Indonesia with certain regions;
- d. The factor of security forces violence. There are violent activities carried out by the police and the military against indigenous Papuans;
- e. Factors of corporate interests and international capitalism. There is a feud between the community and the interests of international capitalism in the form of corporations operating in the local area.

The Constitutional Court can take the role of following the development of society. For example, by giving the Constitutional Court the authority to become a mediator of major conflicts in Indonesia, especially Papua, whatever efforts are made to achieve peace and conflict resolution in Papua need to be carried out, including making a new model or concept in which the Constitutional Court mediates between the Indonesian government and KKB/KSB/OPM.

3. Constitutional court as mediator (model of armed conflict resolution in Papua, Indonesia)

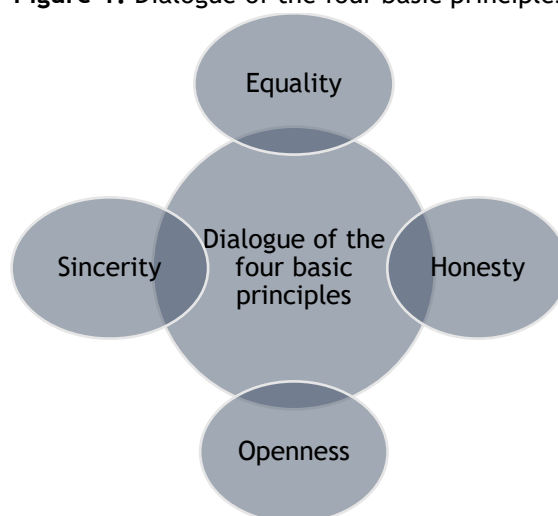
Conceptually, every person since before birth has the essential rights and obligations as a human being. These obligations are contained in Article 28J paragraph (1) of the 1945 Constitution, which stipulates that everyone is obliged to respect the human rights of others in the orderly life of society, nation and state. (Hendrianto, 2020). The obligation to respect the rights of others means that every

Indonesian citizen in exercising his rights and freedoms must pay attention to the rights and freedoms of others. It is impossible for every right to be exercised freely, because if these rights are exercised freely, there will be a violation of the rights of others. (Mujaddidi, 2022). However, it cannot be applied because the conflict that occurred in Papua, this conflict that has claimed many victims directly and indirectly has violated the rights and obligations of legal subjects in Indonesia in general and in Papua in particular, creating discomfort, disturbance public order to actions that lead to separatism and terrorism.

The conflict in Papua is an example of a conflict that should be resolved and reconciled, there are many ways that can be taken, including using the concept of mediation, where mediation is carried out by listening to the parties and producing a good decision between the two parties. In mediation, it is necessary to carry out four basic principles so that it can run well, including (Suropati, 2019):

- a. Equality
It can be interpreted that there is equality between the government of the Republic of Indonesia and the people of Papua considering the conflicts that have occurred so far. It is because, as we all know, equality has had a major place in modern thought, including conflict resolution.
- b. Honesty
Honesty is very important in opening mediation related to the Papua conflict because this will open up the extent of involvement and interest between the two parties, namely the Indonesian government and KKB/KSB/OPM in finding solutions to the conflict resolution that has been going on for a long time and dragged on and caused many casualties in both sides
- c. Openness
The openness here reflects something that is easy to understand, real, and clear for both parties, namely the Indonesian government and KKB/KSB/OPM. It is because openness is closer to humanitarian actions in various common problems. On the other hand, openness also contains dignity, namely the degree or value of humans both in front of other humans and before God Almighty.
- d. Sincerity
Values are also very important in resolving the Papua conflict. There is no lie that can harm one of the conflicting parties, especially in efforts to resolve the Papua conflict where there have been many interests, influences at play so that this conflict continues without resolution.

Figure 1. Dialogue of the four basic principles



Respect for the above principles reflects an acknowledgment of the problems in Papua and serves as the basis for a good solution. Recognition is a very important factor for achieving reconciliation in Papua. On the other hand, ignoring this principle will result in ineffective dialogue, even deadlock.



Given the complexity of the problem, the Papuan dialogue needs to be designed in stages and continuously, namely (Suropati, 2019):

- a. Informal dialogue between Papuan elites;
- b. Dialogue between Papuan community groups;
- c. National dialogue between the central government and representatives of the Papuan people;
- d. International dialogue between representatives of the Government of Indonesia and representatives of the Papuan people mediated by international parties

According to modern political experts, along with other branches of government, the courts participate in creating a moderate or balanced system of government. This is what Montesquieu calls “constitutional freedom” in *The Spirit of the Laws*. (Suropati, 2019). The involvement of a neutral and reputable mediator or facilitator who has no direct interest in the Papuan conflict is critical to the success of the dialogue. The Constitutional Court can take a role here as a mediator. The authority to resolve conflicts, in the practice of countries since the 20th century, is usually given to the Constitutional Court, because it is this state institution that has the function of being the guardian of the constitution. In fact, such authority must be considered to exist, even though the constitution does not expressly state it. (Suropati, 2019).

One of the main demands for making the Constitutional Court a mediator is the idea that judicial mediation is useful for addressing the informational causes that trigger conflict between the Indonesian government and KKB/KSB/OPM, given that the Constitutional Court has a privileged position to gather information to reach an acceptable solution. (Ríos-Figueroa, 2018). By collecting, converting, and conveying information in a credible manner, the Constitutional Court as a mediator facilitates the resolution of disputes around the scope of the conflict in a manner that is appropriate to the need to control public order and guarantee human rights. This form of judicial mediation can be characterized by two characteristics that distinguish it from traditional conflict resolution styles. (Ríos-Figueroa, 2018).

- a. First, it embodies a forward-looking perspective in which the Constitutional Court seeks to establish a long-term solution that goes beyond instant conflict, taking into account the preferences of the parties;
- b. Second, based on decisions that clearly use objective and acceptable constitutional principles to resolve the issues at stake. (Ríos-Figueroa, 2018)

According to Ríos-Figueroa, a successful mediator is a mediator who clarifies doubts of information by collecting, transforming, and conveying information to the disputing parties to reach a mutually acceptable solution. (Ríos-Figueroa, 2016) To achieve the concept or model of the Constitutional Court as a mediator in resolving the Papuan conflict, the following should be ensured:

- a. Widely accessible Constitutional Court so that the Constitutional Court can collect sufficient data;
- b. The Constitutional Court must have sufficient authority to conduct a judicial review so that it can creatively change the information it receives; and
- c. The Constitutional Court must be an independent institution. Independence is understood as impartiality providing credibility to convey processed information to the parties.

For conflict resolution in Papua, it is also necessary to adhere to the concept of the rule of law in accordance with Pancasila and the Constitution by the Constitutional Court as a mediator who carries out its activities by considering the elements (Nehal Bhuta, 2011):

- a. A requirement that people in positions of authority exercise their powers within a framework that limits public norms rather than their own preferences or ideology;
- b. The requirement that there are clearly defined general rules at the outset, where the general rules allow people to know what they should or should not do, what the legal consequences of such actions are, and how they can account for the actions of those in authority;
- c. The requirement that there be courts operating according to recognized standards based on procedural due process or natural justice, offer an impartial forum in which disputes can

be resolved, and allow people the opportunity to present evidence and make arguments before fair and independent adjudications against the legality of the actions of those in power, especially when those actions affect a vital interest in life, liberty, or economic well-being;

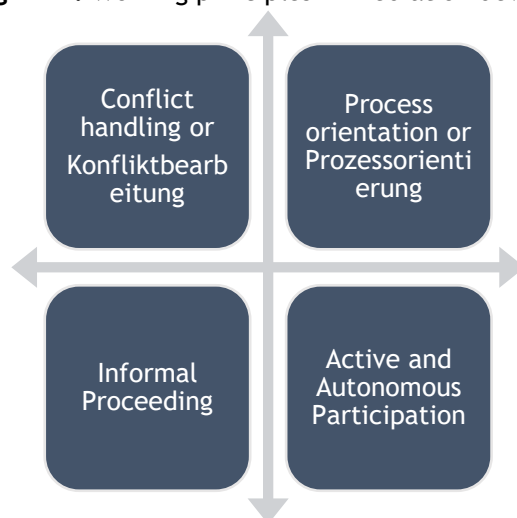
d. A principle of legal equality, which ensures that the law is the same for everyone.

This is also in line with Article 24 of the Constitution which states: "Judicial power is an independent power to administer justice to uphold law and justice" and also Article 5 Paragraph (1) of Law no. 48 of 2009 concerning Judicial Power which reads: "Judges and Constitutional Justices are obliged to explore, follow, and understand the legal values and sense of justice that live in society". These articles clearly want to say that judges and judicial institutions in Indonesia not only apply the law according to the law, but also seek, find and apply a fair law for the community. (Buana, 2020). This means that the paradigm of the Indonesian legal system has shifted from only prioritizing legal certainty or procedural justice, moving to prioritizing essential or substantive justice. (Bagus Surya Prabowo, 2022).

In the Papua conflict, bringing together two things, "obligations and rights" will lead to two diametrical perspectives. One views the obligation as an assumption, while the other views the problem of obligation in another part. The first assumption has the consequence that the issue of rights is more important than the issue of obligations. So that it is inherent in every individual's life and cannot be simply removed. What is meant by rights here is a human "special advantage" that cannot be contested. Obligations in this context arise as an implication of rights, which are more directed to efforts to fulfil (support) demands for rights that are human. The obligation in this case is an idea as well as an ideology to realize other things, one of which is in the form of rights. Henkin writes and in this context has in common that: "The idea of human rights, however, is a particular idea in moral, legal, and political philosophy, and a particular political ideology". (Hakim & Kurniawan, 2022) Through mediation, existing rights and obligations can be conveyed or even accommodated in the Papuan conflict.

Takdir Rahmadi argues that mediation is an activity to resolve cases or disputes between one party and another through a negotiation process or finding a way of deliberation with consensus assisted by a neutral party and does not have the authority to decide. (Khotibul Umam, 2010). Mediation is a form or method of settlement in alternative dispute resolution (ADR) which is possible in cases related to conflicts in Indonesia. (Lysa Angrayni, 2016). According to Stefanie Trankle quoted by Barda Nawawi Arief, the mediation being developed comes from ideas and working principles as described below (Lysa Angrayni, 2016):

Figure 2. Working principles in mediation development





1. Conflict handling or konfliktbearbeitung, on the Papua conflict, the task of the mediator is to make the parties forget about the legal framework or structure and try to get the parties to communicate in solving the problem;
2. Process orientation or prozessorientierung, It should be focused that mediation efforts are more focused on the quality of the process carried out rather than the results, for example by making the parties aware, the Indonesian government and KKB/KSB/OPM;
3. Prioritize informal proceeding, Mediation is an informal, non-bureaucratic activity, reducing strict legal processes;
4. There is active and autonomous participation of the parties, both parties, namely the Indonesian government and KKB/KSB/OPM, in this case they are not seen as objects of the legal process, but are seen as subjects who have a sense of personal responsibility and the ability to act. They are expected to do according to their own will.

After knowing the working principle of a mediation, the following describes several stages of the mediation process taken from several figures or experts, including the stages of the mediation process that are often used to be imitated by the Constitutional Court in an effort to become a conflict mediator in Papua (Desriza Ratman, 2012).

Table 1: Some examples of mediation process stages

FIGURE	STAGES OF THE MEDIATION PROCESS
Haley	The mediation process with four (4) stages according to Haley: <ol style="list-style-type: none"> a) The mediator conducts case selection; b) The mediator describes the mediation process and its role; c) The mediator assists the parties by exchanging information and bargaining; The mediator assists the parties in drafting an agreement
Riskin and Westbrook	The mediation process with five (5) stages according to Riskin and Westbrook <ol style="list-style-type: none"> a) Agreement to go through the mediation process; b) Understanding the problem; c) Presenting troubleshooting options; d) Reach an agreement; e) Execute the deal
Kovach	The mediation process with nine (9) stages according to Kovach: <ol style="list-style-type: none"> a) Setup and initial arrangement; b) Introduction or opening by the mediator; c) Statement or disclosure by the parties; d) Information gathering; e) Problem identification, agenda setting and caucuses; f) Presenting problem solving options; g) Make bargains; h) Agreement; i) Closing.

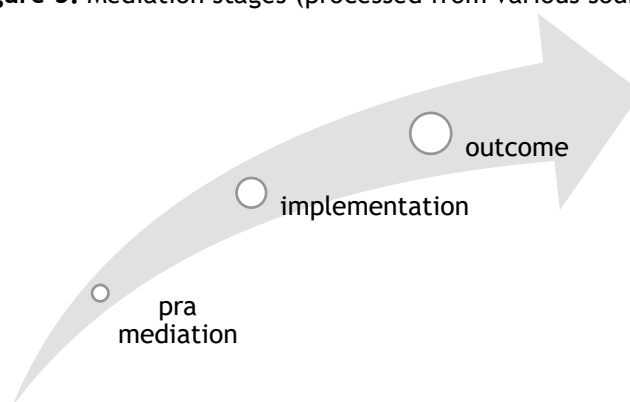
Moore

Mediation process with twelve stages (12) according to Moore:

- a) Establish relationships with the disputing parties;
- b) Choose a strategy to guide the mediation process; Collect and analyse background information on disputes; Develop a mediation plan; Building trust and cooperation between the parties Initiating mediation sessions; Formulate problems and develop an agenda;
- c) Disclosing the hidden interests of the parties;
- d) Presenting dispute resolution options;
- e) Assessing dispute resolution options;
- f) Final bargaining process;
- g) Reaching a formal settlement

The mediation stages above can be concluded in general starting with the pre-mediation stage, implementation stage, and outcome stage (Rahmadi, 2017):

Figure 3. Mediation stages (processed from various sources)



The characteristics of the Papuan conflict mediation process that can be carried out by the Constitutional Court are (Musahadi, 2007):

- a. The existence of a neutral and impartial third party (in this case the Constitutional Court), means that they are not involved or related to the disputed issue. Neutral and impartial in the sense of being impartial and unbiased;
- b. Third parties must be accepted by both parties (the Indonesian government and the KKB/KSB/OPM);
- c. The settlement is made by the conflicting parties (the Indonesian government and the KKB/KSB/OPM), and must be accepted without coercion from any party;
- d. The task of the mediator (the Constitutional Court) is primarily to keep the negotiation process running and running, helping to clarify what the real problems and interests of the conflicting parties are. In other words, the role of the mediator is to control the process, while the role of the conflicting parties is to control the content of the negotiation.

The mediator in this case is that the Constitutional Court is not authorized to decide on mediation, but only assists the parties to resolve the issues that are authorized. (Khotibul Umam, 2010). The Constitutional Court is also bound by the general principle of administering judicial power which is independent from the influence of the powers of other institutions in upholding law and justice. (Khotibul Umam, 2010). The advantages of conducting mediation if the concept or model of the Constitutional Court becomes a mediator in the Papua conflict are:

- a. Maintain good relations with the disputing parties including the Indonesian government and the KKB/KSB/OPM parties;
- b. reduce the tension between the parties (the Indonesian government and the KKB/KSB/OPM parties) in dispute or conflict;
- c. Faster process and Process can be controlled;
- d. The costs incurred are not much and cheap



- e. The options offered and generated in mediation are flexible because they listen to all parties to the conflict and dispute;
- f. The result is a win-win solution, meaning that all parties do not feel disadvantaged and jointly seek the best solution for the benefit of the community, the unity of the nation and the state.

CONCLUSION

The Constitutional Court is one of the state institutions that play an independent judicial power to administer justice to uphold law and justice. Authority The Constitutional Court has four powers and 1 one obligation as regulated in the 1945 Constitution. The Constitutional Court has the authority to adjudicate at the first and final levels whose decisions are mandatory for:

1. Examine the law against the Constitution;
2. Decide on disputes over the authority of state institutions whose authority is granted by the Constitution;
3. Decide on the dissolution of political parties, and
4. Deciding on disputes about the general election results.

The authority of the Constitutional Court can be increased and decreased by amending the 1945 Constitution, in which the 1945 Constitution has been amended 4 times, one of which is to increase the authority of the Constitutional Court as a mediator which is a model or concept as an effort to resolve armed conflicts in Indonesia, as for example in the Papuan conflict carried out by KKB/KSB/OPM and look at the context of the times.

The anatomy of the Papuan conflict starts from the basic issues that can be identified as the source of the conflict:

1. Disappointment because Papua is part of Indonesia;
2. There is competition felt by the Papuan elite with officials from outside Papua who have dominated the government since the Dutch colonial era;
3. Economic development and governance in the different lands of Papua, and
4. Marginalization of indigenous Papuans due to the presence of migrants. These views become legitimacy for groups who are not satisfied, thus creating pro-independence groups in Papua.

These four basic problems can also be expanded into factors of policy and development failure, factors of religious, cultural, ethnic and racial identity, historical factors, factors of security forces violence, factors of corporate interests and international capitalism.

According to modern political expert, along with other branches of government, the courts participate in creating a moderate or balanced system of government. This is what Montesquieu calls "constitutional freedom" in *The Spirit of the Laws*. The involvement of a neutral and reputable mediator or facilitator who has no direct interest in the Papuan conflict is critical to the success of the dialogue. The Constitutional Court can take a role here as a mediator. The Constitutional Court as Mediator is the idea that judicial mediation is useful to address the main causes that trigger conflict between the government and KKB/ KSB/ OPM, considering that the Constitutional Court has a privileged position to gather information to reach an acceptable solution to the parties to the dispute in this regard case in Papua. To achieve the concept or model of the Constitutional Court as a mediator in resolving the Papuan conflict, the following things are needed:

1. The Constitutional Court is widely accessible so that the Constitutional Court can collect sufficient data;
2. The Constitutional Court must have sufficient authority to conduct a judicial review so that it can creatively change the information it receives; and
3. The Constitutional Court must be an independent institution. Independence is understood as impartiality providing credibility to convey processed information to the parties.

The advantages of conducting mediation if the concept or model of the Constitutional Court becomes a mediator in the Papua conflict are:

1. Maintain good relations with the disputing parties including the Indonesian government and the KKB/KSB/OPM parties;

2. It is non-binding or carried out voluntarily by both parties to the dispute, namely the Indonesian government and the KKB/KSB/OPM;
3. Reduce the tension between the parties (the Indonesian government and the KKB/KSB/OPM parties) in dispute or conflict;
4. Faster process;
5. Process can be controlled;
6. The costs incurred are not much and cheap;
7. The options offered and generated in mediation are flexible because they listen to all parties involved.

The result is a win-win solution, meaning that all parties do not feel disadvantaged and together seek the best solution for the benefit of society and national unity.

RECOMMENDATION

The Constitutional Court is the guardian of the constitution and Pancasila for resolving existing and protracted conflicts or cases such as the conflict in Papua, carried out by KKB/KSB/OPM, and other cases or conflicts that require a good and effective resolution. Amendments to the 1945 Constitution can be an effort to add new authority for the Constitutional Court to take in a broader role and function, namely the latest developing idea that the Constitutional Court is proposed as a mediator in resolving problems or conflicts.

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