Chapter VI

Papua Special Autonomy:
Impact of General Election and Direct Local-Head Elections

by

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1. INTRODUCTION

The existence of Papua Province as a part of the Unitary State of Republic of Indonesia (NKRI) has a history different from other provinces. Papua Province was reinstated to the motherland (integrated with NKRI) after going through a long struggle, which even involved the United Nations (UN), under the New York Agreement signed by the Netherlands and Indonesia, and recorded by the UN General Council based on its resolution No. 1757 (XVII) on September 21, 1962. As a consequence of the resolution, on October 1, 1962, the delegation of power from the Government of the Netherlands to the UN temporary acting government or known as the United Nations Temporary Executive Authority (UNTEA), was executed. UNTEA handed over the authority to Indonesia on May 1, 1963, under the condition that a referendum, known as the People's Referendum (PEPERA), was to be held from July 14 to August 2, 1969. The result of the PEPERA showed that the people of West Irian (now Papua) supported the existence of West Irian Province (now Papua Province) as a part of NKRI. This PEPERA's result was ratified by the UN through Resolution No. 2504 (XXIV), on November 19, 1969.

In its development, however, Papua as the largest province (± 421,981 km2) in NKRI with the potential of abundant natural resources has developed slowly. Those resources have been utilized by the centralistic government for the interest of the nation only, without respecting the rights of the local society. This condition has caused an inequality between Papua Province and other provinces in Indonesia. The people in Papua have endured various impediments (in terms of transportation, communication,

education, health, and so on), which as a whole became the main factor of Papuans' backwardness and isolation.

The accumulation of various problems burdening the people in Papua Province has stirred low trust towards the intention and seriousness of the government to advance the people of Papua Province. Some particular parties have taken advantage of such skepticism by provoking the people's distrust towards the legitimate government. There has been much political propaganda that triggered hostile relations between the Papuan people and the NKRI Government. If this is not anticipated well, it surely will become a threat for the country's integrity.

The commitment of the Government and the Indonesian people to reform has invoked new awareness and brought in ideas in handling various issues in Indonesia as a nation and as a country. The new way of thinking and awareness are marked by a shift of the paradigm in facing many issues – such as security/stability approach to social/welfare approach- by promoting equality and various local socio-cultural life.

The policy on appointing Papua as a special autonomy region can be considered as one of the actual forms of the paradigm shift. The political decision of integrating West Irian (now Papua) as part of NKRI is essentially based on a noble purpose for the advancement of the Papuan people. However, in reality, the various policies applied to run the government and to implement the development programs in Papua Province have not quite facilitated the people's welfare and justice. On the contrary, there are discrimination and negligence of human rights and basic rights of the native people of Papua. This condition has aroused grievances leading to the low trust of the people, especially the trust from the Papua native people towards the government. The feeling of distrust has been expressed in various forms, including the wish to be free and independent from NKRI.

The political will of the Government of the Republic of Indonesia to seriously manage problems in Papua Province just started in 1999, marked by the designation of Papua Province as a Special Autonomous Region (*Otsus*). It is explicitly written in the Resolution of the People's Consultative Assembly (MPR) of the Republic of Indonesia No IV/MPR/1999 on National Policy Guidelines (GBHN) 1999-2004[1]. As the follow-up of the mandate of that MPR Resolution, on November 21, 2001, Law No. 21/2001 on Special Autonomy for Papua Province (Papua *Otsus* Law) was enacted, and later it was placed in State Gazette No.135/2001 and Additional State Gazette No.4151/2001.

Through the enactment of the Papua *Otsus* Law, it is expected that the disparity

[1] Resolution of MPR-RI No. IV/MPR/1999 on GBHN 1999-2004, Chapter IV point G, point 2, mentions that: "….in order to develop the regional autonomy within NKRI, and to settle the problems fairly and thoroughly in the region which requires to be handled immediately and seriously, it is necessary to do these following steps: (a) to maintain the nation integrity in NKRI by acknowledging equality and the diverse socio-cultural life of the society in Irian Jaya under the special autonomy region arranged by the law; (b) to settle the cases of human rights violation in Irian Jaya through a fair and dignified court process…".

between Papua Province and other provinces will be reduced and it will give a chance for the people in Papua Province, especially the Papua native people, to participate in their own land as a subject as well as an object of development. In reality, after the fifth year (2001-2006), the Papua *Otsus* Law apparently could not be implemented effectively. The ratification of this policy has not yet given a significant change towards the performance of government functions in public service, development, and empowerment.

Based on the report by Central Bureau of Statistics (BPS), National Development Planning Agency (Bappenas) and UNDP about the Development of Indonesian Human Resources 2004[2], or based on the report of Papua Province BP[3], it shows that the Human Development Index (HDI) of Papua in 2002 only reached 60.1, having a position of number 29 out of 30 provinces in Indonesia. This rank was lower compared to the position in 1999, which was number 25. The decrease is especially due to the additional number of provinces from 29 to 33. In 2004, the HDI of Papua increased to 62.5. This achievement was even smaller than the HDI of some newly-formed provinces (as a result of region division).

Similarly, the Human Poverty Index (HPI) of Papua reached a score of 30.9. This score was much higher compared to the average score of the Indonesian HPI, which was 22.7. However, the HPI rank in Papua Province was higher from number 22 in 1999 to number 28 in 2002.

Table 1: Human Development Index (HDI) of Papua in 1999, 2002, and 2004

NO	INDICATOR HDI / HPI	1999	2002	2004
1.	Life Expectancy (Year)	4.5	5.2	6.1
2.	Adult Literacy Rate (%)	1.2	4.4	4.2
3.	Average number of years people going to school (Year)	5.6	6.0	7.0
4.	Expenses per capita (Rp 000)	79.9	578.2	593.9
5.	Human Development Index (HDI)	58.8	0.1	2.5
6.	Human Poverty Index (HPI)	1.3	0.9	

(Sources) BPS,BAPPENAS, & UNDP (2004: 97-101) & BPS of Papua Province (2004:195).

Besides using the HDI and HPI as indicators, the traditional-customary society

[2] BPS, Bappenas, and UNDP [2005] *The Economic of democacy: Financing Human Development in Indonesia*.
[3] BPS of Papua Province [2005] *Papua dalam Angka 2004/2005 (Papua in Number 2004/2005).*

group in evaluating the implementation of Papua *Otsus* Policy considers this policy as not giving any significant benefit for the Papuan society. With this evaluation, the Papua Customary Board (DAP) in August 2004 on behalf of the customary society stated that they refused to have the Papua Special Autonomy and handed it back to the central government, through the Papuan People's Representative Council (DPRP). Not only that, in early 2006, there were some cases of hunger found in several areas in Papua. This condition was very ironic if we relate it to the condition of Papua having abundant natural resources. In contrast, the revenue and allocation of funds have continued to increase from central government in line with the Papua Special Autonomy policy since 2002.

Table 2: Fund Revenue and Allocation of Province and District/Municipality in Special Autonomy (Budget Year 2002-2005)

No	BUDGET YEAR	AMOUNT OF FUND (Rp.)	DIVISION ALLOCATION			
			PROVINCE		DISTRICT/MUNICIPAL	
			SUM (Rp.)	(%)	SUM (Rp.)	(%)
1	2002	1,382,300,000,000	829,380,000,000	60%	552,920,000,000	40%
2	2003	1,539,560,000,000	934,047,614,000	60%	605,512,386,000	40%
3	2004	1,642,617,943,000	657,417,943,000	40%	985,200,000,000	60%
4	2005	1,775,312,000,000	920,312,000,000	40%	855,000,000,000	60%
	TOTAL	6,339,789,943,000	3,341,157,557,000		2,998,632,386,000	

(Source) Financial Bureau of Papua Province.

In analyzing this breakdown of funding, there is a problem in implementing the Papua Special Autonomy policy. Therefore, it is necessary to have an integrated design and simultaneous anticipatory steps with strong commitment from all stakeholders. This means to save Papua Special Autonomy policy implementation as the solution to resolve the many problems in Papua. The various justification as mentioned above are still partial, but at least this shows that the implementation of the Papua Special Autonomy policy is not yet optimum. The aspects that affect this condition are: (1) government officers of all levels do not comprehensively understand the substance of Papua Special Autonomy; (2) central government was late to issue Ordinance which legitimates the existence of Papuan People's Council (MRP)[4]; (3) Inpres (Presidential

[4] Government and Papuan Society's commitment to immediately function MRP, marked by submitting a proposal of Ordinance on requirements, the number, and procedures of electing MRP members, on 15 July 2002, was not supported by the Government. The fact that the Ordinance on MRP has not been enacted is the evidence of how unsuppportive the Government is, although the Ordinance is proposed by the Governor and DPRD, based on Article 72 Clause (2) Papua *Otsus* Law stating that the Government shall finish that Ordinance the latest one month since it was proposed.

Instruction) No. 1/2003[5] was issued; (4) the settlement of two election areas (Papua and West Irian Jaya[6]) by General Election Committee (KPU) in the General Election 2004 to select members of House of Representative (DPR), Regional Representative Council (DPD), Provincial Parliament (DPRD), and District/Municipal Parliament (DPRD), and this was followed by the settlement of seat quota in DPR for Papua and West Irian Jaya, and seat quota in Papuan People's Representative Council (DPRP) and West Irian Jaya Provincial Parliament; (5) the execution of direct local elections in Papua and West Irian Jaya is not based on consistent rules of law.

It is realized that the report about HDI and HPI, the decree of DAP in 2004, a number of edema cases, inconsistent policies, and national elections (2004 General Election and 2005 direct Local-Head Elections) which still leave some problems can be the reasons for justification that it turns out Papua Special Autonomy policy has not yet given a significant change for the people in Papua. However, the idea of returning the Special Autonomy is not a good option, either. Papua Special Autonomy is not a gift from the central government. It is not also like "political bon-bon" given so that Papuan people are silent and no longer ask to be freed from NKRI. On the contrary, Papua Special Autonomy is a "struggle"[7].

Based on the explanation as the background, some questions raised as the focus are, such as: (1) what is the true essence of Papua Special Autonomy that differentiates from usual regional autonomy?; (2) what is the implication of the Inpres No 1/2003 towards Papua Special Autonomy?; and (3) what is the implication of the 2004 General Election and 2005 direct Local-Head Elections toward Papua Special Autonomy?

This analysis is aimed to: (1) describe comprehensively about the essence of Papua Special Autonomy which differentiates it from regional autonomy based on Law No. 32/2004[8]; (2) describe the implication of Inpres No. 1/2003 towards Papua Special

[5] Inpres No. 1/2003, issued on January 27, 2003, among others stating: instruct the Minister of Home Affairs, the Minister of Finance, the Governor of Papua, and the District-Heads of Papua Province to take steps to speed the formation of West and Central Irian Jaya Provinces based on Law No.45/1999 and activate the governors.

[6] The name of West Irian Jaya Province based on Law No 45/1999 was changed into West Papua Province in 2007.

[7] It is mentioned that Papua Special Autonomy is the result of struggle since its imposition went through a long process, such as: (1) struggle in MPR, struggling to put Papua Special Autonomy as the formulation in Resolution of MPR No. IV/MPR/2004, which previously did not exist in the draft resolution of MPR; (2) struggle going against the current, which is struggling to convince all components of Papuan society, especially Papuan native people, who at the time wanted "I" (read: to be independent or free from NKRI), that Special Autonomy is the solution to accelerate the development and protection of society's rights; (3) struggle in DPR, which is struggle to make draft law proposed by regions become initiative proposal and main reference in the discussion; on the other hand, the Government had first submitted/proposed the Draft Law of Papua Special Autonomy to DPR (according to the Rules of Order of DPR, the first proposed draft is the one that becomes the main reference); and (4) struggle to rationalize the content material of initiative proposal of Papua Special Autonomy Draft Law, which according to the Government's inventory there were 471 problems.

[8] Law No. 32/2004 on Local Government is the operational basis to perform regional autonomy in Indonesia.

Autonomy; (3) describe the implication of the 2004 general election and 2005 direct local-head elections execution towards Papua Special Autonomy; (4) recognize the concept as an alternative solution so that the implementation of Special Autonomy policy is effective; and (5) use this concept as a reference for those who wish to conduct research with the same object and focus.

The author believes that this analysis will not be able to answer all questions or give a complete and final understanding to the readers. However, at least it can be useful as an enlightenment and a stimulant for the readers to discover other documents/reading passages related to the focus of this study to establish a similar perception towards Papua Special Autonomy policy in a holistic and integrated manner.

2. PERSPECTIVE OF PAPUA SPECIAL AUTONOMY

2.1. Understanding the Essence of Papua Special Autonomy

The establishment of a government is basically meant to create a system to guarantee public order. The public order guarantee is the prerequisite to carry on the process of life. It means that the substance of a government is to provide service for the people. Rasyid [1996:10] points that the government is not established to serve itself, but to serve the people and create conditions enabling each person to develop his/her capability and creativity to enhance together.

This concept requires the government to take sides for the people. In this context, Osborne & Gaebler [1996:283] introduced the concept that the government needs to become closer to the people so that it can give a quick response toward needs of the people dynamically. The concept is based on the assumption that if the government is near the people, the service given will be fast, responsive, accommodative, innovative, productive, and economical.

One of the strategies in order to get the government closer to the people is through decentralization. In managing its government normatively and conceptually, Indonesia has chosen decentralization as principle. As the result, the government must realize the national interest harmoniously with the aspiration that grows and develops in various regions. The application of decentralization must guarantee the continuity of government administration, both nationally and locally, by keeping with its dynamics and development efforts, and by harmonizing each other among various interests in national, provincial and local levels.

Political aspiration contained in this option is implicitly written in the 1945 Constitution article 18, and, based on the result of the second amendment of the 1945 Constitution, it was changed and even developed to become three articles (article 18 consisting of 7 verses, article 18 A consisting of 2 verses, and article 18 B consisting of

2 verses)[9].

As a follow up on the mandate of the 1945 Constitution, from the Independence Day in 1945 up to now, central government has imposed seven laws[10], which regulate on how to run the local government. These seven laws are the operational basis to run the local government that follows the principle of regional autonomy. In addition, central government also imposes some other laws that legitimize the existence of the Special Regions[11]. One of the Special Regions is Papua Province. Papua Special Autonomy policy has some differences from the regional autonomy policy for other provinces in Indonesia that are not categorized as special regions, in the frame of running the local government. The differences viewed from some dimensions are as follows.

2.1.1. Dimension of Papua Special Autonomy Law Arrangement Process

Papua Special Autonomy law has specialties in the drafting process. First, in the early process, the Papua Provincial Government took the initiatives of drafting the law by involving all components of society, consisting of academicians, public figures, customary figures, religious figures, young people and students, woman figures, people working for NGO, ex-political prisoners, businessmen, and others. Second, after drafting the law, the provincial government consulted to the public in 12 districts and two municipalities in Papua Province.

Third, after the public consultation process in Papua, the provincial government proposed the draft to DPR. However, DPR discussed the draft based on its own initiatives, not one from the provincial government. Fourth, the discussion was done through Special Committee Meeting (Pansus), Working Committee (Panja) and Formulator Team (Timus) of DPR, and DPR finally discussed it with central government. DPR always involved the delegation from Papua Province Government as "assistance team".

2.1.2. Dimension of Papua Special Autonomy Definition

Law No. 32/2004 defines regional autonomy as the rights, authority, and obligation of an autonomous region to govern and take care of the government matters and the local

[9] Formulation of articles 18, 18A, and 18B, the second change of the 1945 Constitution, gives direction that the government must carry out decentralization politics in pertaining to constitutional law which is realized through the formation of autonomous regions (provinces and Districts/Cities), and pay attention to special regions.

[10] Those seven laws are: (1) Law No. 1/1945 on Regional National Committee (KND); (2) Law No. 22/1948 on Local Government; (3) Law No. 1/1957 on Principles of Local Government; (4) Law No. 18/1965 on Principles of Local Government; (5) Law No. 5 /1974 on Principles of Local Government; (6) Law No. 22/1999 on Local Government; (7) Law No. 32/2004 on Local Government.

[11] Special Regions are such as: Special Region of Jakarta as the Capital City, Special Region of Yogyakarta, Special Region of Aceh, and Special Region of Papua, each of which is governed in the laws.

people's interest in line with the laws and regulations. This definition is different from the definition of the Special Autonomy. The Special Autonomy in Law No. 21/2001 is defined as "special authority which is acknowledged and given" to Papua Province to govern and to take care of the local people's interest according to 'their own initiative based on the aspiration and basic rights of Papuan people'. It means that the authority in the Special Autonomy framework is only limited to what the central government has given or transferred but also is the result of acknowledgement on a number of things which are believed as the exclusive rights by the people, especially the customary community.

With the reference to this understanding, we can say that Papua Special Autonomy gives a wider authority for the province and Papuan people inside NKRI. That is the authority to arrange the use of natural resources in the Papua Province as much as possible for the welfare of the people, to empower its own economic, social, and cultural potentials. Also, the authority to give significant roles to Papuan people through their representatives (customary, religious, and woman representatives) to get involved in the process of regional policy formulation, and to determine the development strategy by still appreciating the equality and variety of people's life in Papua Province.

Based on the definition of this Special Autonomy, there may be a different treatment given by central government to Papua Province. It means there are some fundamental matters applied only in Papua Province and not in other provinces in Indonesia. In addition, there are things applied only in other regions, but not applied in Papua Province.

2.2. Papua Special Autonomy Law Construction

Analysis toward Papua Special Autonomy Law shows that this law is established with the content material sources from two elements, (1) the 1945 Constitution and other laws and regulation and (2) crystallization of aspiration from the people in Papua Province that becomes the special character and priority needs for the Papuan society.

The content derived from other laws and regulations is the content material based on the experiences of running regional autonomy. It is just the reaffirmation toward things already arranged previously through stipulated laws and regulations. This means that the regulation is the same as in other provinces in NKRI. On the other hand, the content derived from the aspiration of the Papuan people becomes the specific character and priority for Papua to run the Papua Special Autonomy. This content material treats issues only relevant in Papua Province. Through this construction, the Papua Special Autonomy Law should be comprehensive and integrated law.

Papua Special Autonomy Law consists of XXIV Chapters and 79 Articles, which start with the preamble and end with general explanation and explanation of each article. The analysis toward the content material contained in this law shows that its

construction consists of the 'symbolic' content material and 'substance' content material. The 'symbolic' content is basically the acknowledgement of the great true identity of the Papuan native people, while the 'substance content' is acknowledgment of the needs and the effort to fulfill rights and obligations of the people of Papua Province, especially Papua native people as citizens. Based on this construction, the philosophy and substance or essence of Papua Special Autonomy Law generally can be described as follows.

2.2.1. The Philosophy of Papua Special Autonomy Law

To discover and understand the philosophy of Papua Special Autonomy Law, we can read the preamble part. In the preamble of the Law, there are several statements with philosophical meanings. Those statements can basically be categorized into two aspects, "acknowledgement[12] and commitment[13]", from the central government and NKRI in viewing the existence of Papua Province in the past, present and future.

2.2.2. The Principal Part/Content of Papua Special Autonomy Law

The basic issues in the content of the Papua Special Autonomy Law, that is elaborated in XXIV Chapters and 79 Articles, and as described in the general explanation of the law, generally include the following aspects.

First, the arrangement of the authority between the central government and the Papua Province Government, and the implementation of the authority in Papua Province are done with specificity. The authority of Papua Province includes the authority in all

[12] What is meant by acknowledment is in the preamble of Papua Special Autonomy Law, which is: (1) the imposition of Special Autonomy Law is the effort to realize the ideals and the aim of NKRI based on Pancasila (the five principles) and the 1945 Constitution; (2) Papuan people are the living creation of God and part of civilized human kind. They uphold human rights, religious values, democracy, law, and cultural values living in customary law society, and have the right to enjoy the result of development naturally; (3) the system of the Republic of Indonesia Government according to the 1945 Constitution acknowledges and honours the existence of special regional government units, governed by the laws; (4) the native inhabitants of Papua Province are one family of Melanesia race and part of ethnics in Indonesia who have variety of cultures, histories, customs, and languages; (5) running the government and development in Papua Province so far has not completely fulfilled the sense of justice to possibly accomplish people's welfare and support the realization of law enforcement, and there has not been enough respect toward human rights of, particularly, Papuan people; (6) the management and utilization of natural resources results have not been used optimally to increase the standard living of the native people; and (7) there are disparity between Papua Province and other provinces in Indonesia, and negligence of Papuan native people's basic rights.

[13] The kind of commitment meant in the preamble of Papua Special Autonomy Law is: (1) to uphold human rights, religious values, democracy, law, and cultural values living in the custom-law community; (2) to respect equality and variety of Papuan people's socio-cultural life; (3) protection and appreciation toward ethics and morals; (4) protection of native people's basic rights and human rights; (5) law supremacy; (6) democracy enforcement; (7) appreciation toward pluralism; and (8) settlement of human rights violation problems.

aspects of government, except the authority in foreign affairs, security & defense, monetary and fiscal, religions, court, and certain authority in other fields stipulated in accordance with laws and regulations. Besides those authorities, in order to run the Special Autonomy, Papua Province is given special authority based on this law.

Second is the acknowledgement and respect of Papuan native people's basic rights, and their strategic and basic empowerment.

Table 3: Content of the Papua Special Autonomy Law

CHAPTER	TOPIC/ NAME OF THE CHAPTER	THE NUMBER OF ARTICLES
I	GENERAL PROVISION	1 (1)
II	SYMBOLS	1 (2)
III	REGION DIVISION	2 (3)
IV	REGIONAL AUTHORITY	1 (4)
V	GOVERNMENT FORMAT AND ARRANGEMENT	21 (5-25)
VI	APPARATUS AND CIVIL SERVANTS	2 (26-27)
VII	POLITICAL PARTIES	1 (28)
VIII	SPECIAL REGION REGULATIONS, PROVINCIAL REGION REGULATIONS, AND GOVERNOR DECREE	4 (29-32)
IX	FINANCE	5 (33-37)
X	ECONOMY	5 (38-42)
XI	PROTECTION OF CUSTOMARY COMMUNITY'S RIGHTS	2 (43-44)
XII	HUMAN RIGHTS	3 (45-47)
XIII	PAPUA PROVINCIAL REGION POLICE	2 (48-49)
XIV	COURT AUTHORITY	3 (50-52)
XV	RELIGION	3 (53-55)
XVI	EDUCATION AND CULTURE	3 (56-58)
XVII	HEALTH	2 (59-60)
XVIII	POPULATION AND MANPOWER	2 (61-62)
XIX	SUSTAINABLE DEVELOPMENT AND LIVING ENVIRONMENT	2 (63-64)
XX	SOCIAL AFFAIRS	2 (65-66)
XXI	SUPERVISION	2 (67-68)
XXII	COOPERATION AND DISPUTE SETTLEMENT	2 (69-70)
XXIII	TRANSITIONAL PROVISION	5 (71-75)
XXIV	CLOSING PROVISION	4 (76-79)

Third is to realize a good governance, which has the characteristics as follows: (1) people's participation as much as possible in planning, running, and supervising, in

carrying out the government and development through the participation of the customary, religion, and woman representatives; (2) the development execution is directed to fulfill as much as possible the basic needs of Papuan native people's in particular and the inhabitants of Papua Province in general by firmly holding on to the principles of environment conservation, and sustainable & fair development which gives direct benefit to the society; (3) a transparent and accountable government and responsible development for the people; (4) a firm and clear division of authority, obligations, and responsibility among legislative, executive, and judicative councils, as well as MRP as the cultural representative of Papuan native inhabitants and which is given certain authority.

Fourth is the optimalization of development and people's empowerment acceleration through the fund provision for Special Autonomy which consists of: (1) profit sharing of natural resources, especially oil and natural gas, with a ratio of 30% for Central and 70% for the region for 25 years (in the 26th year ratio becomes 50% for each); (2) a block grant from the central government as much as 2% which is equal to the General Allocation Fund (DAU), and this will be given for 20 years (no longer given in the 21st year and so on); (3) the fund to develop infrastructure which amount is based on the needs proposed by the Papua Province Government and through the deliberation between the central government and DPR.

3. CONTRADICTIVE POLICY

Presidential Instruction (Inpres) No. 1/2003 is a controversial policy. This has caused the emergence of paradoxical social response in the local, national, and international context. Some people of Papua responded enthusiastically and optimistically to this Inpres since they considered it was a strategic policy in order to improve public service to people and fair regional development acceleration. On the other hand, some people responded apathetically and pessimistically because this is unpopular and it could become obstacles in implementing the Special Autonomy. The latter group considers that if the government forced this policy, there would be significantly negative impact toward the implementation of Special Autonomy, leading to a worse condition of people's life and justification of people's distrust toward the government. Both of these paradoxical conditions have become apparent the dynamic life of Papuan people.

This Inpres was issued because of several reasons as written in the preamble, such as: (1) to execute Law No. 45/1999 on the Formation of Central Irian Jaya Province, West Irian Jaya Province, Paniai District, Mimika District, Puncak Jaya District, and Sorong City, it was considered necessary to accelerate the preparation of facilities and infrastructure, to form organizations as the regional apparatus, and to carry out the local government activities; and (2) in accordance with the demand, people's aspiration

development, and conducive national political condition nowadays, the local government execution in West Irian Jaya Province must be realized in direction, integratedly, in coordination, and sustainably.

To follow up on the Inpres, the Minister of Home Affairs issued Radiogram No 134/221/SJ[14], on February 3, 2003, which was addressed to the Papua Province Governor, all District-Heads/Mayors in Papua Province, and all officers of echelon I of the Ministry of Home Affairs.

Presidential Instruction No. 1/2003 and Radiogram from the Minister of Home Affairs No. 134/221/SJ was intended to enhance the prosperity of the Papuan people, on the other hand, caused normative conflicts to emerge between the provision of Law No. 45/1999 and the provision of Law No. 21/2001. This condition led to the emergence of law uncertainty, and the confusion of the provincial and district/municipality government officers in Papua to run the government, especially in carrying out the Papua Special Autonomy Law. The implication of imposing the Inpres No. 1/2003 toward Papua Special Autonomy implementation is viewed from several dimensions.

3.1. Dimension of Law Validity

Based on the law validity aspect, Law No. 45/1999 is categorized as a general regulation, while Papua Special Autonomy Law is a special regulation. Because of its specificity, the principle of *Legs specialis derogath legie generalis* (special regulation sets aside general regulation) is applied.

Based on this legal principle, the content of Law No. 45/1999, especially the one related to the formation of West and Central Irian Jaya Provinces, should be disregarded. In reality, the President issued the Inpres to strengthen the execution of Law No. 45/1999, especially the one related to the formation of the new provinces. This certainly gave an implication towards the effectiveness of the Papua Special Autonomy Law execution. This condition has also caused legal ambiguity between Law No. 45/1999 and the Papua Special Autonomy Law.

3.2. Dimension of Integrity

Integrity is one of the characteristics in policy formulation. A good policy is consistently strengthened by other policies regulating the same object. It means the policy formulation toward certain objects must be an integral and interconnected with

[14] Radiogram from the Minister of Home Affairs No. 134/221/SJ consists of: (1) all lines of the Central Government and Regional (Provincial/District/Municipal) Governments immediately take relevant operational steps; (2) it is affirmative that the Presidential Instruction No. 1/2003 is executed in line with its operational Law No. 21/2001 on Special Autonomy in Papua Province; (3) Local Governments give full support to do those things; (4) Secretary General and Governors/District-Heads shall report to the Minister of Home Affairs on the preparation of those steps in at least two weeks time.

the former policies. Law No. 45/1999 and Papua Special Autonomy Law are not integral and interconnected. These are several reasons for the justification of the issues.

First, Law No. 45/1999 was enacted on October 4, 1999. Since this law was rejected by the Papuan people through the Decree of Provincial Parliament of Irian Jaya No. 11/DPRD/1999, for more than four years the articles governing the formulation of Central Irian Jaya and West Irian Jaya Provinces were not carried out. Even the Governor never executed his duty based on the Presidential Decree No. 327/M/1999.

Second, on October 19, 1999 in the 12th plenary session of MPR, Resolution/IV/MPR/1999 on GBHN 1999-2004 was stipulated. In Chapter IV point (g) point 2 the Resolution of the MPR gave a mandate on the importance of giving Special Autonomy status to Irian Jaya Province and the settlement of human rights violation problems (not regarding the formulation of Central, West, and East Irian Jaya Provinces, as mentioned in Law No. 45/1999).

Third, in 2000, the Resolution of MPR No. IV/MPR/2000 on Recommendation of MPR for DPR and President was stipulated in order to carry out Regional Autonomy. In this Resolution, it was firmly and clearly mandated that the latest on May 1, 2001, Special Autonomy for Aceh and Irian Jaya had to be executed. This Resolution firmly restated that it refers to the one Irian Jaya Province (not Central, West, and East Irian Jaya Provinces, as mentioned in Law No. 45/1999).

Fourth, on November 21, 2001, central government stipulated and enacted Law No. 21/2001 on Special Autonomy for Papua Province. This Law also reconfirmed the one Irian Jaya Province, which is known as Papua[15].

Fifth, on December 11, 2002, central government enacted Law No. 26/2002[16] on the formation of a number of Districts (including Sarmi, Kerom, and Teluk Wondama), and in this law it is also mentioned that these districts are under Papua Province based on Papua Special Autonomy Law. This law mentioned in Article 1 that Papua Province is Irian Jaya Province having Special Autonomy under NKRI.

Sixth, on January 27, 2003, the President issued the Inpres No. 1/2003. One of the contents is: (1) to order the Minister of Home Affairs, the Minister of Finance, Papua Governor, and all District-Heads to take steps to speed up the formation of West and

[15] Chapter I Article 1 point a The Special Autonomy Law says: Papua Province is the Irian Jaya Province given special autonomy within the NKRI. Further more in general explanation, it is said that Papua Province currently consists of 12 Districts and 2 Municipalities, i.e.: District of Jayapura, Merauke, Biak Numfor, Mimika, Jayawijaya, Puncak Jaya, Paniai, Nabire, Sorong, Fakfak, Yapen Waropen, and Manokwari, Jayapura City, and Sorong City. Papua Province has an area of 421.981 km^2 with a diverse topography, from swampy plains to snowy mountains. The north border is the Pacific Ocean, in the south is Maluku Province and Arafura Sea, the west border is Maluku and North Maluku Province, and in the east is Papua New Guinea.

[16] Law No. 26/2002 on the Formation of Sarmi District, Keerom District, South Sorong District, Raja Ampat District, Pegunungan Bintang District, Yahukimo District, Tolikara District, Waropen District, Kaimana District, Boven Digoel District, Mappi District, Asmat District, Teluk Bintuni District, and Teluk Wondama District in Papua Province.

Central Irian Jaya Provinces based on Law No. 45/1999 and activate the governors of those provinces.

3.3. Dimension of the Contents and the Structure

The contents and the structure of both these laws show that there are some different principles. The first issue is the name and the territorial border. In Law No. 45/1999, the formation of Central and West Irian Jaya Provinces is clearly mentioned. Furthermore in Chapter II, it is mentioned that Central Irian Jaya Province derived from the Irian Jaya Province region consists of Biak Numfor District, Yapen Waropen District, Nabire District, Paniai District, and Mimika District (article 3). West Irian Jaya Province derived from the Irian Jaya Province area consists of Sorong District, Manokwari District, Fak-Fak District, and Sorong City. Meanwhile, in the Papua Special Autonomy Law, it states the Special Autonomy for Papua Province. Moreover, in Chapter I Article 1 point a., it states that Papua Province is Irian Jaya Province having special autonomy under NKRI[17]. The name and the territorial border of the province arranged in Law No. 45/1999 are completely different from those in the Papua Special Autonomy Law.

The second issue is the format and system of the government. In Chapter IV of Law No. 45/1999, with the formation of Central and West Irian Jaya Provinces, Provincial Parliament (DPRD) will be established in each Province, in accordance with the laws and regulations (Article 17). Furthermore, to lead the government in Central and West Irian Jaya Provinces, the Governor and Vice Governor of each Province are selected and appointed under the laws and regulations (Article 18 clause 1). The formulation of those articles provides the direction that the system of government in those two provinces consists of provincial DPRD as the legislatives and the provincial government as the executives. This is different from the government format and system based on Papua Special Autonomy Law. In Chapter V, the First Part, General, the Government of Papua Province consists of provincial DPRD as the legislatives and the provincial government as the executives. Moreover, in order to carry out the special autonomy in Papua Province, the Papuan People's Council (MRP) shall be established. The MRP has certain authority to protect the rights of Papuan native people, and it is the political representation of Papuan native people, respecting custom and culture, women empowerment, and consolidation of harmonious religious life. This means that there are three institutions involved in running the Papua provincial government.

3.4. Dimension of Financing

Since the Papua Special Autonomy Law was enacted, all parties agreed that the Papua

[17] For detailed explanation, please see footnote 15.

Province area is exactly the same as before when it was Irian Jaya Province. This is in accordance with the provision of Papua Special Autonomy Law. Based on this, Papua Special Autonomy funding is divided fairly among provinces and districts/ municipalities in Papua. Since 2002, all districts/municipalities in Papua have their share of the Papua Special Autonomy funding. This was certainly not a problem when the Inpres No. 1/2003 had not been issued yet at that time, and there was no government execution in West Irian Jaya Province.

Table 4: Allocation of Special Autonomy Fund for Districts/Municipalities in Papua from Provincial Budget of Papua Province (2002-2005)

(Rp.)

No	Districts/Municipalities	Fund Allocation			
		2002	2003[1)]	2004[2)]	2005
1	Jayapura District	44,211,223,000	46,896,453,200	35,948,360,000	28,300,000,000
2	Yapen Waropen District	42,178,711,000	39,690,430,400	32,972,330,000	27,500,000,000
3	Biak Numfor District	40,061,008,000	32,569,163,400	35,191,760,000	28,500,000,000
4	Nabire District	41,915,130,000	35,676,506,200	35,667,790,000	29,000,000,000
5	*Manokwari District**	46,705,447,000	34,294,802,200	32,448,360,000	28,300,000,000
6	*Sorong District**	48,754,557,000	37,956,002,000	30,927,980,000	29,000,000,000
7	*Fakfak District**	30,692,465,000	32,030,539,400	32,712,140,000	28,200,000,000
8	Merauke District	33,829,019,000	38,300,244,200	33,931,570,000	28,500,000,000
9	Jayawijaya District	40,991,242,000	33,998,110,000	36,280,460,000	29,000,000,000
10	Paniai District	37,995,981,000	33,648,926,200	36,496,300,000	30,300,000,000
11	Puncak Jaya District	47,100,779,000	56,301,018,600	38,715,730,000	30,300,000,000
12	Mimika District	25,562,455,000	37,051,774,200	37,191,760,000	28,600,000,000
13	Jayapura City	37,060,652,000	33,852,196,400	33,407,600,000	27,100,000,000
14	*Sorong City**	35,711,331,000	43,246,219,600	33,407,600,000	27,100,000,000
15	Waropen District		5,000,000,000	30,927,980,000	30,100,000,000
16	*Teluk Wondama District**		5,000,000,000	33,232,520,000	30,000,000,000
17	*Teluk Bintuni District*		5,000,000,000	32,191,760,000	30,000,000,000
18	Asmat District		5,000,000,000	38,845,190,000	31,500,000,000
19	Bovendigoel District		5,000,000,000	32,972,330,000	30,100,000,000
20	Mappi District		5,000,000,000	32,972,330,000	30,100,000,000
21	Sarmi District		5,000,000,000	33,232,520,000	30,250,000,000
22	Keerom District		5,000,000,000	31,411,190,000	30,000,000,000
23	*Raja Ampat District**		5,000,000,000	32,191,760,000	30,750,000,000
24	*Sorong Selatan District **		5,000,000,000	33,715,730,000	29,500,000,000
25	*Kaimana District **		5,000,000,000	32,191,760,000	30,000,000,000
26	Tolikara District		5,000,000,000	34,050,260,000	31,000,000,000
27	Peg. Bintang District		5,000,000,000	34,050,260,000	31,000,000,000
28	Yahukimo District		5,000,000,000	38,622,170,000	31,500,000,000
29	Supiori District			29,292,500,000	29,500,000,000
TOTAL		***552,920,000,000***	***605,512,386,000***	***985,200,000,000***	***855,000,000,000***

(Source) Financial Bureau of Papua Province. 1) Tentative Figures, 2) Very tentative figures.
(Notes) * Districts/Cities in the area of West Irian Jaya/West Papua Province.

This condition would certainly be different if the existence of West Irian Jaya Province was more definite with the establishment of the Provincial DPRD as the result of 2004 General Election and with the presence of the elected Governor and the Vice Governor as the result of 2005 Direct Local-Head Elections. This would create new

problems due to the allocation of Papua Provincial Budget, especially the one that comes from Papua Special Autonomy Fund to finance the development program of Districts/Municipalities under the coordination and supervision of West Irian Jaya Province Government. One of the principles in the regional autonomy is "territorial border", as the locus. An autonomous region has an area border, and it cannot exceed its border, except for cooperation. Thus, the current program-activity and fund provision for the Districts/Municipalities in West Irian Jaya Province in Provincial Budget of Papua Province are absolutely have violated the current regulations and created ambiguity in carrying out the government administration.

4. PAPUA SPECIAL AUTONOMY AFTER 2004 GENERAL ELECTION AND 2005 DIRECT LOCAL-HEAD ELECTIONS

4.1. Implication of 2004 General Election toward Papua Special Autonomy

The General Election is a tool to achieve the people's sovereignty in NKRI Government based on Pancasila (the Five Basic Principles), in accordance with the 1945 Constitution. At least there are four meanings in the execution of the General Election: (1) as the tool for partial delegation of the people's sovereignty handed to the administrators of the state (legislative and executive in Centre/Region) through the procedure and mechanism under the laws and regulations; (2) as the tool for transferring the aspirations and interests from people to state institutes to be processed in a civilized way and legitimate for public interest; (3) as a tool for periodic political changes, such as the rotation or political elite (the rulers) substitution or direction and pattern of public policy; and (4) as the tool for reengineering a political system to accomplish a better and more established political system, followed by political behavior changes.

This explanation is reasonable to make all parties aware that the general election is a very meaningful agenda. Therefore, it is natural if all components have the concern and the commitment and firm determination to run a successful 2004 General Election. The determination and commitment were proven, with the success of the 2004 General Election in selecting the members of DPR, Provincial DPRD, District/Municipal DPRD, DPD, as well as the President and Vice President.

In the context of Papua, the success of the 2004 General Election turned out to generate a number of problems and implications toward the execution of Papua Special Autonomy. Several problems emerging in the process of the 2004 General Election can be described as follows.

The General Election Committee (KPU) divided the election areas in Papua into two areas, the Papua and the West Irian Jaya. This decision of KPU was absolutely against

the Papua Special Autonomy Law, because, based on the Law, Papua Province includes all areas belonging to a province recognized as Irian Jaya before.

As a follow up the decision in designating the election area, KPU also determined the seat quota for the respective election area. Based on the decision of KPU, the number of seats for the candidate members of DPR for Papua is 10 seats, while for West Irian Jaya is three seats. This decision does not only violate the Papua Special Autonomy Law but also violates Law No. 12/2003 on General Election. In the explanation of Article 48, clause 1 point b., "the number of seats for the members of DPR in every province is allocated not fewer than the number of seats for provinces in accordance with the 1999 General Election". If KPU had been consistent in carrying out this provision, the number of seats for the members of DPR for Papua should have been 13, not 10 seats (in the 1999 General Election the number of seats for the members of DPR for Irian Jaya was 13 seats).

The determination of the number of seats for Papuan People's Representative Council (DPRP), which is 56 seats (45 seats based on General Election Law and 11 seats based on Papua Special Autonomy Law), is already in accordance with the prevailing laws and regulations. This is different from the determination of 44 seats for Provincial DPRD of West Irian Jaya (35 seats based on General Election Law and 9 seats based on Papua Special Autonomy Law). The determination of this seat quota is obviously against Papua Special Autonomy Law since based on the provision of Article 6 clause (4) of Papua Special Autonomy Law, "the number of the DPRP members is 1¼ times the number of Papua Provincial DPRD members as governed in the laws and regulations". This article shows that the figure 1¼ times is only applied in DPRP and not in Provincial DPRD of West Irian Jaya. It means that the additional number of the seat quota (9 seats) for Provincial DPRD of West Irian Jaya is obviously not in accordance with the provision of Papua Special Autonomy Law.

There were also problems in the verification of the participants of general election for political parties in selecting the members of DPR, Provincial DPRD, District/Municipal DPRD, and the individual participants for the members of DPD. In the election area of West Irian Jaya, the verification of the participants of general election was not done because KPU of West Irian Jaya Province was just established for the stage of determining the result of the general election. Particularly for the individual participants who are require to get support from electing citizens, the candidates living in Papua or West Irian Jaya election area were supported by the eligible residents in those two election areas. This means there would be candidates residing in the Papua who were supported by the eligible voters from West Irian Jaya, and vice versa. Legally, this cannot be justified, but this was a reality, and in the end the candidate members of the DPR were elected under this approach.

4.2. Implication of Direct Local-Head Elections towards Papua Special Autonomy

In executing the government, the NKRI normatively and conceptually acknowledges and legitimizes the existence of the local governments. The acknowledgement and legitimation are explicitly written in the 1945 Constitution articles 18, 18A, and 18B.

Those three articles provided directions that: (1) NKRI is divided into provincial regions, and the provincial regions are divided into districts and municipalities, each of which has its own local government; (2) the local government in this context has the authority to govern and handle its own government matters under the principles of autonomy and assistance task; (3) the local government consists of the head of government selected democratically and DPRD whose members are elected through the general election; (4) wider autonomy to the regions is directed to accelerate the achievement of society welfare through the improved service, empowerment, participation of the people, and competitiveness; (5) wider autonomy to the regions is done by promoting the principles of democracy, equality, fairness, acknowledgement, and respect towards the government units of a special region and custom law community with their traditional rights as long as these traditional values are still up held and in accordance with the development of the people and the principles of NKRI.

To follow up the mandate of the 1945 Constitution, central government and DPR on September 29, 2004 agreed on the law draft on the local government to be stipulated as Law. This stipulation was followed up by its enactment by the President on October 15, 2004 as Law No. 32/2004 and has been recorded in the State Gazette No. 125 and in Additional State Gazette No. 4437.

As a manifestation of the commitment of the whole people to reform various aspects, the DPR has amended the 1945 Constitution in 4 phases. The changes covered several aspects, including the local-head (Governors, District-Heads and Mayors) election [18]. As a logical consequence of this amendment, it is necessary to adjust a number of ordinances under the 1945 Constitution, which are no longer relevant, because of the change of Law on Local Government from Law No. 22/1999 into Law No.32/2004.

Law No. 32/2004 includes subjects related to a holistic and integrated execution of the local government. One of them having strategic value is the direct local-head election [19]. Through the direct local-head elections, it is expected to encourage the democratization spirit in the regions, which will cumulatively give a positive contribution toward the development of the national democracy.

In 2005, for the first time the local-head elections were carried out directly. This

[18] Article 18 clause (4) in the 1945 Constitution states that " Governors, District-Heads, and Mayors are the Head of the Regions elected democratically in the province, District, and municipalities consecutively".

[19] Article 24 clause (5) in Law No. 32/2004 states that the head and deputy of the region as mentioned in clauses (2) and (3) are elected as a pair directly by the people in the concerned area.

election is one of the main tasks in the national agenda. The direct local-head elections are basically a tool towards the people's sovereignty. At least there are 4 meanings in the execution of direct local-head elections: (1) as a tool in partial delegation of the people's sovereignty handed to the local government administration (the local-head and the vice local-head) through the procedures and mechanism in accordance with the laws and regulations; (2) as a tool to transfer the aspiration and interest from people to the local government to be processed in a civilized and legitimate way for public interest; (3) as the tool for periodic political changes, such as the succession of political elite (the rulers) or direction and pattern of public policy; and (4) as the tool for reengineering a political system to accomplish a better and more established political system, followed by political behavior changes.

4.2.1. Local-Head Election in Papua Province

By paying attention to article 18B[20] of the 1945 Constitution, in Law No. 32/2004[21] the special regions, such as Nanggroe Aceh Darussalam Province, Papua Province, the Greater Jakarta Special Capital Region, and Yogyakarta Special Regional Province, are also acknowledged and respected.

The subject material in Law No. 32/2004, Articles 225 and 226 clause (1), allows the content material of Law No. 32/2004 to be also applied to Jakarta, Aceh, Papua, and Yogyakarta. Law No. 32/2004 can be applied if the provisions are not specifically arranged in Law No. 34/1999 on the Greater Jakarta Special Capital Region, Law No 44/1999 on the Execution of Aceh Special Regional Province, Law No. 18/2001 on Special Autonomy for Aceh Special Region as Darussalam Aceh Nanggroe Province, Law No. 11/2006 on Aceh Government, and Law No.21/2001 on Papua Province.

Based on this conceptual thought, it is urgent and certain to determine the subject material categorized as a specialty for each province in a limited context. This is to give room for the content material of Law No. 32/2004 and the laws governing the following specialties.

4.2.1.1. Local-Head Election Based on Papua Special Autonomy Law

The regulation of the local-head (Governor and Vice Governor) election based on Papua Special Autonomy Law is stated in several articles, which are:

[20] Article 18B in the 1945 Constitution states that "the State acknowledges and respects the government units of a special region",

[21] Article 225 in Law No. 32/2004 states that "the special regions which are given special autonomy are governed both under this law and in the special provision arranged in other laws". Furthermore, in article 226 clause (1) it is stated that "the provision in this law is applicable in the Greater Jakarta Special Capital Region, Nanggroe Aceh Darussalam Province, Papua Province, and Yogyakarta Special Regional Province provided that it is not specifically arranged in a separate law".

(1) Article 7 clause (1) point a: DPRP has the duty and authority to select Governor and Vice Governor;

(2) Article 11 clause (3)**:** The procedure of selecting Governor and Vice Governor is stipulated with Special Regional Ordinance (Perdasus) in accordance with the laws and regulations;

(3) Article 12: Eligible candidates for Governor and Vice Governor are the citizens of the Republic of Indonesia with the following requirements: (a) Papuan native people; (b) religious and faithful to the One God; (c) well-educated, at least graduating from undergraduate program or the similar program; (d) at least 30 years old; (e) physically and mentally healthy; (f) loyal to the NKRI and dedicated to the people of Papua Province; (g) never been sentenced to jail due to criminal offence, except for political reasons (or as a political convict); and (h) not having revoked their voting rights based on a court verdict which is final and conclusive, except being imprisoned due to political reasons;

(4) Article 13: the requirements and the procedure of preparation, the election execution, and the appointment and inauguration of Governor and Vice Governor are further regulated under the laws and ordinance;

(5) Article 20 clause (1): MRP has the duty and authority to consider and approve the prospective candidates of Governor and Vice Governor proposed by DPRP;

(6) Article 28 clause (3)**:** political recruitment by political parties in Papua Province should prioritize Papuan native people;

(7) Article 28 clause (4): political parties are obligated to request MRP to take part in considering the political selection and recruitment of each party.

The analysis toward the articles of Papua Special Autonomy Law regulating the local-head election shows that DPRP has the authority to select Governor and Vice Governor in Papua Province. In the process later on, the prospective candidates of Governor and Vice Governor must be considered and approved by MRP. The involvement of the MRP is only for the sake of fulfilling the requirement as arranged in article 12 point “a” of Special Autonomy Law, stipulating that the prospective candidates of Governor and Vice Governor should be Papuan origins.

4.2.1.2. The Local-Head Election Process in Papua Province

Apparently, the local-head election held in Papua Province in 2005 to elect the Governor and Vice Governor was not completely based on the provisions of Papua Special Autonomy Law. If the local election in Papua Province had been held based on the provision as arranged in the Law, then it would have been DPRP that had the authority to carry out and conduct the Governor and Vice Governor election, under the provision of article 7 clause (1) point a of the Law. In reality, the local-head election in Papua Province in 2005 was carried out with direct election by the people.

The direct local-head elections in Papua Province was also not carried out completely based on the provision of Law No. 32/2004, as applied in other provinces in Indonesia. The provision of Law No. 32/2004, article 24 clause (5), states "the local-head and the vice as a pair are directly elected by the people in the concerned area". In article 57 clause (1) it further states that "the election is held by KPUD which is responsible to the DPRD[22]".

This explanation shows that the direct local-head elections based on Law No. 32/2004 are carried out directly under the control of KPUD as the organizer. In reality, the direct local-head elections in Papua Province did not apply this provision as arranged in Law No. 32/2004. The election was carried out with direct election by the people, but the candidates (the candidates of Governor and Vice Governor) had to be proposed by the political parties or the coalition of political parties. These candidates must meet the requirements and approved by DPRP. DPRP had the authority to screen the prospective candidates. The result of the screening would then be delivered to MRP to be considered and approved in terms of Papuan origins.

The mechanism of this Governor and Vice Governor's election shows that the process was also not in accordance with Law No. 32/2004. If the process of the direct local election had been based on the provision of Law No. 32/2004, then KPUD would have been the only and independent institute that carries out the election, without involving other parties, such as DPRP and MRP. In the local election in Papua Province to select Governor and Vice Governor, central government intended to integrate the provisions in the Papua Special Autonomy Law and in the Law No. 32/2004. This intention must be respected as long as it is not against the subject material of both laws. However, if both laws are really contradictive as explained above, then it must be corrected. If so, a critical question will emerge: what was the basis for the direct local-head election in 2005 in Papua Province to elect the Governor and Vice Governor?

The direct local-head election held in Papua Province was only based on the provision in Ordinance No. 6/2005. Ordinance No. 6/2005 Article 139 states that the election of the Governor and Vice Governor in Papua Province is elected directly by the people. The candidates are proposed through the DPRP by political parties or the coalition of political parties which have at least 15% number of seats in DPRP or 15% from the accumulation of the number of valid votes gained in the general election to select the members of DPRP.

Furthermore, DPRP does the screening of the prospective candidates of Governor and Vice Governor through several phases. The result of the screening is informed in writing to the leaders of the political parties or the coalition of political parties

[22] Based on the Ordinance as asubstitute of Law (Central Regulation) No. 3/2004, the provision of article 57 clause (1) Law No. 32/2004, has changed. The change is KPUD (Regional General Election Committee) which carries out the election of the Regional Head and Deputy is responsible to the people not to DPRD (Regional People's Representative Council).

proposing the prospective candidates within 7 days the latest since the day of submitting the names of the prospective candidates. If the prospective candidates are rejected because they do not fulfill the requirements, the political parties or the coalition will be given a chance to complete the requirements of the prospective candidates or to submit new names within 7 days the latest since the announcement of the screening result. After the rescreening of the newly proposed prospective candidates, DPRP informs the screening result within 7 days the latest to the leaders of political parties or the coalition. If, in this stage, the requirements of the prospective candidates are not fulfilled, and the prospective candidates are rejected by DPRP, political parties or the coalition of political parties can no longer propose prospective candidates.

Based on the screening result, DPRP determines at least two pairs of the prospective candidates and their names will be written in the Determination Official Report of the prospective candidates. Before determining the names, DPRP asks for consideration and approval from the MRP. The MRP particularly gives consideration and approval on the prospective candidates in terms of confirming the origins of native Papuan. The result of the consideration and approval as arranged in point g, is delivered in writing by MRP to DPRP within 7 days the latest after the submission of their proposal to the MRP. If within 7 days, the MRP does not give approval toward the prospective candidates proposed by DPRP, those prospective candidates will be eligible candidates proposed to the KPUD.

The prospective candidates who have been considered and approved by MRP will be designated by DPRP as candidates, and the names will be submitted to KPUD. DPRP and KPUD will hold the election for the Governor and Vice Governor using the name list submitted by DPRP. Before carrying out the election, KPUD will draw the number for the candidates of Governor and Vice Governor, and the result will be determined with the decree of KPUD of Papua Province and announced.

If the MRP as stipulated in clause (2) point f, has not been established, the prospective candidates of Governor and Vice Governor will be determined as candidates by DPRP. They are proposed by political parties or the coalition and will become the candidates in the provision of Ordinance.

The explanation above provides a clearer picture that the direct local-head elections in Papua Province were implemented only under the Ordinance No. 6/2005 as the legal basis. If various provisions in the Ordinance were in accordance with or were the explanation/interpretation of the provisions in a law, there would not be a problem. However, if the arrangement in the Ordinance is not in accordance with and/or not in the context to explain further the provision in a law, this will certainly be a problem. The direct local-head election held in Papua Province in 2005 to elect the Governor and Vice Governor, which was based on Ordinance No. 6/2005, is really not in accordance with the Papua Special Autonomy Law and Law No. 32/2004. As the implementation of Law No.32/2004, the Ordinance No. 6/2005 should only describe further the provisions

arranged in the law. The Ordinance No. 6/2005 must not make new rules that are not previously arranged in Law No. 32/2004, which is in contrast to the current situation.

4.2.1.3. Local-Head Elections in West Irian Jaya Province

Dispute on the existence and the legal status of West Irian Jaya Province so far has not been resolved. However, it is an undeniable fact that this province exists and becomes more definite with the establishment of the Provincial Parliament (Provincial DPRD) as the result of 2004 General Election and the election of the Governor and Vice Governor as the result of the 2005 direct local-head election. Although the direct local-head election was successful, marked with the definite Governor and Vice Governor elected, there have been some residual problems if we observe carefully.

The basic problem is that the local-head election was not based on the provision of the prevailing laws. The local election held in this province was not completely based on the Papua Special Autonomy Law, Law No. 32/2004, or Ordinance No. 6 /2005.

Just as discussed in the previous part that if the election is carried out based on the provision of Papua Special Autonomy Law, then the election of the Governor and Vice Governor must be held by the DPRP. This provision is obviously not applicable for West Irian Jaya Province since this province is not identical to the Papua Province, and Provincial DPRD of West Irian Jaya is not DPRP, even though in certain aspects, some people, due to their ignorance, consider that both provinces are just the same. One example is in the issue of determining the seat quota of Provincial Parliament.

The local election in West Irian Jaya Province was not based on the provision of Law No. 32/2004, either. As explained in 2.1.1 that the local election was held based on the provision of Law No. 32/2004, the election was held with direct election by the people and by KPUD acting as the sole and independent organizer. It means that all processes in the direct local-head election is the full responsibility of KPUD.

If the local-head election in West Irian Jaya had been based on Ordinance No. 6/2005, then the procedure and mechanism should have been in accordance with the provision of article 141 of the Ordinance. According to Article 141, the election of Governor and Vice Governor - as the result of the division of Papua Province before the Ordinance No. 54/2004[23] was issued - shall be held 4 months the latest after Article 73[24] of Ordinance No. 54/2004 was completed. The election of Governor and Vice Governor was held after MRP was established as set in Article 74 clause (1)[25] of Ordinance No.

[23] Ordinance No. 54/2004 on DPRP.

[24] Article 73 of Ordinance No. 54/2004 states that "MRP together with the Government of Papua Province and DPRP as the mother of the province has the duty and responsibility to help the Central Government to settle the problem of area division done before the Ordinance was issued by considering the reality and in accorandce with the laws and regulations 6 months the latest after the inauguration of the members of MRP".

[25] Article 74 clause (1) of Ordinance No. 54/2004 states that "In breaking up Papua Province into new

54/2004. In case the MRP has not been established, the designation of the prospective candidates of Governor and Vice Governor to become the candidates in the election will be held by the respective Provincial Parliament.

Apparently, the provisions of the Ordinance in the local election in West Irian Jaya Province was disregarded. The local-head election in West Irian Jaya was held by applying Law No. 32/2004 and Ordinance No. 6/2005 randomly and inconsistently. The election applied a simple mechanism as follows: (1) the election was held with direct election by the people, and the candidates were proposed through Provincial DPRD by political parties or the coalition of political parties which gained at least 15% out of the number of seats in the Provincial DPRD or 15% from the accumulation of the number of valid votes obtained in the general election to elect the members of DPRD; (2) the Provincial DPRD screened the prospective candidates of the Governor and Vice Governor; (3) the result of the screening was informed in writing to the leaders of political parties or the coalition of political parties proposing the prospective candidates within 7 days the latest since the day of submitting the names of the prospective candidates; (4) based on the screening result, the Provincial DPRD determined the candidates written in the Determination Official Report of the candidates; (5) the designated names of the candidates would be further delivered to the KPUD; (6) based on the proposed name of the candidates from the Provincial DPRD, KPUD will hold the election of Governor and Vice Governor; (7) before running the election to vote for the Governor and Vice Governor, KPUD draws the number for the candidates of Governor and Vice Governor, and the result was stipulated under the decree of KPUD and the numbers would be announced.

With carefully examining the mechanism of holding the local-head election in West Irian Jaya, then we can know that the process was not obviously done based on the provisions of the prevailing laws and regulations (Papua Special Autonomy Law, Regional Government Law, and Ordinance No. 6/2005).

5. CONCLUSION

The Papua Special Autonomy Policy, which was conceived through a long process and involved various components of the nation (central government and DPR, local governments, and Papuan people), is basically the result of the mutual commitment to settle all problems in Papua peacefully, thoroughly, and with dignity. Through this policy it is expected to encourage the initiative and creativity of the local government based on the aspiration and protection of Papuan people's rights. This policy is also viewed as the foundation for repositioning and reorientation of the government in Papua

provinces, MRP shall be established and exist in each of the provincial capital cities."

Province. Through this government repositioning and reorientation, it is expected to increase the functions carried out by the government in public service, development, and people's empowerment to achieve a prosperous society.

By observing closely the development of the Papua Special Autonomy policy implementation until the fifth year[26] (2002-2007), we can see that this policy has not been able to give a significant and meaningful change for the Papuan people. It turns out that this policy has been distorted because of government's inconsistency, lack of seriousness, and misunderstanding in applying it.

There are some reasons for this judgment, as follows. First, there were some policies imposed after the policy of Papua Special Autonomy was issued, and they are not in line with and/or contradict the policy, such as Inpres No. 1/2003 and Ordinance No. 6/2005. Second, the government has not effectively carried out its functions in guiding, facilitating, and supervising. Third, the Papua Special Autonomy has not yet been followed by a change of the structure and the authority of the local government. The present structure and authority are still the same as before the Papua Special Autonomy was imposed. Fourth, as the implementers of Papua Special Autonomy policy, the provincial government, provincial parliament, and MRP tend to prioritize some symbolic matters instead of the substantial ones. Some examples to justify this trend are the debate on whether the local-head and the vice, parliament members, regional officers, and civil servants must be Papuan natives or not, determining the regional symbols in a flag, the anthem, and the emblem, etc. As a result, the substantial matters, such as education, health, economy of people, are not seriously handled. Fifth, the provincial government, provincial parliament, and MRP have not been able to prepare the regulations for technical operations in the form of Provincial Ordinance (Perdasi) and Regulation of Special Region (Perdasus)[27]. Until August 2007, there have been only 4 Perdasi and 1 Perdasus stipulated. However, some of the content is not in line with the mandate of Papua Special Autonomy Law. This condition, of course, leads to the ineffectiveness of Papua Special Autonomy implementation.

General election and the local-head election are tools for the rotation or succession of the political elite (the rulers/government officers), tools for the indication of direction and pattern of public policy, and as tools for the reengineering process of a political system, in order to achieve a better and more established political order, followed by political behavior change. The 2004 General Election and the 2005 direct local-head

[26] Papua Special Autonomy Law was enacted on November 21, 2001, and the proclamation of the implementation was officially done on January 1, 2002 by the Governor of Papua Province J. P. Solossa in Jayapura, and it was attended by General Director of Regional Autonomy of Ministry of Home Affairs.
[27] In the general explanation of Special Autonomy Law, it states that "this law is elaborated and carried out proportionally in accorandce with the soul and spirit to live as a nation in the same country in the noble values of Papuan society, and it is further arranged in the Regulation of Special Region (Perdasus) and the Regulation of Provincial Region (Perdasi)". This law also directly mandates 17 Perdasi and 11 Perdasus.

election in Papua Province and in West Irian Jaya Province were carried out successfully. The success was marked with some officials elected, such as: (1) members of DPR from the election area of Papua and West Irian Jaya; (2) members of DPRP of Papua and members of Provincial DPRD of West Irian Jaya; (3) the Governor and Vice Governor of Papua and West Irian Jaya.

Despite the success of this national agenda, apparently there are still some residual problems in several aspects, among others: (1) determining the election area (Papua and West Irian Jaya); (2) allotment of seat quota (DPRP of Papua and Provincial DPRD of West Irian Jaya); and (3) the direct election of Governor and Vice Governor (Papua and West Irian Jaya). The analysis towards these issues shows that the main and dominant factor in this context is the incompatibility between the legal basis and its execution (*dassein* and *dassolen*).

What is necessary is the commitment from central government and provincial government to carry out the provisions of the Papua Special Autonomy Law consistently and consequently. This commitment would guarantee the effectiveness of the Papua Special Autonomy as the tool to settle problems comprehensively and in a peaceful manner, and with dignity, and to encourage the acceleration of development in Papua in order to enhance the welfare of the people. At the same time, it must be recognized that understanding the explicit and implicit messages in the Papua Special Autonomy policy is not enough just by reading the articles of Law No. 21/2001, but we must also understand the philosophy, vision, aims, and targets of the policy.

The political commitment from central government and all people of the NKRI to accelerate the development in Papua through the enactment of the Special Autonomy based on Law No. 21/2001 must be supported by other strategic policies as the tactical and technical foundation (Perdasi and Perdasus) in implementing the law. In this context, it is necessary to make effective the functions of guidance, facilitation, supervision, and evaluation from central government. On the other hand, it is also necessary to develop mutual trust among various components, in the central and local level, between government and the people.

Based on the constitutional mandate and in order to uphold the sovereignty of the people and regarding the Decree of Constitutional Court toward Case Number: 18/PUU-I/2003[28], then central government must take some steps immediately to settle the problems in Papua related to the disintegration of the province, general election, and direct local-head elections in Papua, by revising the laws and regulations within the

[28] Decree of Consitutional Court, Case No. 18/PUU-I/2003, states that (1) the plea of the Petitioner is granted; (2) by having Law No. 21/2001 on Special Autonomy for Papua Province (The State Gazette of the Republic of Indonesia No. 135/2001) the imposition of Law No. 45/1999 on the formation of Central Irian Jaya Province, West Irian Jaya Province, Paniai District, Mimika District, Puncak Jaya District, and Sorong City (The State Gazette of the Republic of Indonesia No. 173/1999 and Additional State Gazette of the Republic of Indonesia No. 3894/1999) is contradictive with the 1945 Constitution; (3) since the Decree was announced, Law No. 45/1999 no longer has a binding legal power.

Papua Special Autonomy Law or by issuing new laws.

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