

# The Legal Standing of the Papuan People's Assembly on Local Government System in the Province of Papua

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## Abstract

Legal standing of Papuan People's Assembly (hereinafter referred to MRP) in the local government system in Indonesia is an auxiliary state organ, which has the same position with the local government and the Papuan House of Representative (hereinafter referred to DPRP), but differentiate in terms of duties, functions, and authorities. MRP basically is the spirit of the Papua Special Autonomy. In the context of power-sharing system, the Government has authorities to implement the provision of services, community development, and implementation of development. It has also the authority to carry out the functions of coordination, guidance, and supervision of the administration of the local government in the level of regency / municipality in the area of the province of Papua. DPRP as a legislative body has been authorized to exercise the functions of: ( a) legislation; (b) budgeting; and (c) controlling. MRP furthermore has the authority to carry out the functions of protection of the rights of indigenous people (Papuan), which is based on respect for local customs and culture, empowerment of women, and strengthening religious life in harmony. To find a legal and institutional harmonization of the Local Government, DPRP and MRP, in achieving the law (rechts idea), the Law No. 21 of 2001 on Special Autonomy and the Law No. 64 of 2008 on the Papua People's Assembly have the cornerstone of the Special Autonomy. However, in terms of institutional formation of MRP, there are some articles to be revised due to they are not in accordance with the actualization of the implementation of the special autonomy in Papua.

**Keywords:** Legal Standing, the Papuan People's Assembly, the Local Government, Papua.

## 1. Introduction

The system of Government of the Republic of Indonesia (hereinafter referred to NRI) in accordance with the Constitution of the Year 1945 (the Indonesian Constitution 1945) recognizes and respects to the local government either the special of the local government or the extraordinary of the local government.<sup>1</sup> Momentum of reform in Indonesia gave the opportunity for the emergence of new thinking and awareness to solve various problems in the area of political, economic, socio-cultural, defense and security in Indonesia in order to organize the better national life including how to implement decentralization and local autonomy.

In the context of law enforcement, harmonization of institutional and community participation is often a debate in the implementation of Special Autonomy in the province of Papua. First, the enforcement of the Law No. 21 of 2001 on Special Autonomy for Papua Province had only become a draft due to in the level of implementation, it can not be enforced appropriately. Another problem of the Law is the essence or spirit of the Law also does not correspond to the factual conditions of Papua and West Papua today. On the ambiguity of the Law No. 21, 2001, the friction is taking place between the interests of the Local Government, DPRP, and MRP. On the one hand, the local government and DPRP castrate MRP institution as an institution that is only present to spend money of the Local Autonomy, as stated by Yan Mandenas the member of DPRP, from Hanura Party.<sup>2</sup>

The Local Government of Papua has authority to running the decentralization of local autonomy, specifically the

<sup>1</sup> Chapter IV on title "Regional Authorities", Article 18 of the Indonesian Constitution 1945 states that (1) the Unitary State of the Republic of Indonesia shall be divided into provisions and those provinces shall be divided into regencies and municipalities, each of which shall have regional authorities which shall be regulated by law; (2) the regional authorities of the provinces, regencies, and municipalities shall administer and manage their own affairs according to the principles of regional autonomy and the duty of assistance.

<sup>2</sup> Yan Mandenas, the member of DPRP from Hanura Party and the chief of the Hanura Party in the Provincial level.

policies of the special autonomy that represented the spirit of the emergence of MRP. Article 5 (2) of the Law No. 21 of 2001 on Special Autonomy states that "... In the framework of the implementation of the special autonomy in Papua province, it has been formed MRP who represents the culture of the Papuan people who have certain authorities to protection of the rights of indigenous Papuans based on respect for local customs and culture, empowerment of women, and strengthening religious life in harmony ... ". MRP as the spirit of the local autonomy sometimes is squeezed by policies of the special autonomy on the one hand, but on the other hand the policies of the special autonomy are also squeezed by the general policy of decentralization that it does not only regulate the Papuan people but also the entire people of Indonesia who live in the land of Papua. The autonomy's spirit also feels often as part of a regional hegemonic paradigm that actually reduces the unity of a plural society that looks as Indonesia. The concept of asymmetrical autonomy as part of a policy of positive discrimination can minimize the elements of affirmation of the asymmetrical concept to become an umbrella for the local government to build its territory at the level of the local government in accordance with the prevailing wisdom on the level of the local governance.

The spirit of the asymmetrical decentralization offers type of positive discrimination to address how to assist the government in carrying out the function of distribution (delivery of political goods). The positive discrimination is recognizing of the diversity or privileges of each region to develop the rationality between the government and the provincial government including the village in order to create a space for the provinces / regencies / municipalities to establish its authority in accordance with the "local capacity".<sup>1</sup>

In connection with it, the People's Consultative Assembly of the Republic of Indonesia (hereinafter referred to MPR) in 1999 and 2000 established the need for granting special autonomy status to the province of Irian Jaya;<sup>2</sup> so in 2001, the Law No. 21 of 2001 on Special Autonomy for Papua Province was enacted (State Gazette 2001 No. 135, Supplement to State Gazette No. 4151) as amended by the regulation in Lieu of Law No. 1 of 2008 (State Gazette 2008 No. 57 and Supplement to State Gazette No. 4843, hereinafter referred to as the Special Autonomy Law). This is a positive first step in order to build public confidence of Papua community to the government. This is also a strategic movement to lay the solid foundation for the efforts that need to be done for the completion of the settlement of the problems in Papua province.<sup>3</sup>

It should be noted that the granting of special autonomy to Papua Province is a long historical process, which starts from the history of the formation of the Province of West Irian (Papua now) established under the Presidential Decree No. 1 of 1963. The establishment of the Government in the West Irian was putting tasks to provincial government to implement such activities of governance, growth, and community development in the region. Historical perspective notes that before the implementation of the Law of the Council of the Popular Consultation (hereinafter referred to PEPERA), the Government and Parliament re-established the Law No. 12 of 1969 on the Establishment of the Province of West Irian and its regencies as autonomous regions. The Presidential Decree and the Law were specific to the province of West Irian while for the implementation of government applying across Indonesia still used the Law No. 18 Year 1965 on the Principles of Local Government. The Law No. 18 Year 1965 had been replaced by the Law No. 5 of 1974 on Principles of Local Government that apply across Indonesia on July 23, 1974; while in West Irian came into force January 2, 1975 by the Instruction of the Minister of Internal Affairs No. 26 of 1974.

Along the establishment of the Local Government of Irian Jaya, it also formed the House of Representatives in the Province of West Irian at that time known as the Regional Council of the Mutual Cooperation

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<sup>1</sup> Anonim, *the IMF and Civil Society Engagement at the 2008 Annual Meeting*, 23 October 2008, accessed <http://www.imf.org/external/np/ext/cs/news/2008/102308.htm>, 12 December 2013.

<sup>2</sup> The political decision of Unity of Papua "Netherland New Guinea" (prior called West Papua, then replaced to be Irian Jaya) becoming part of the Unitary State of the Republic of Indonesia has an essential as the idea to put forward Papua in National Development Program.

<sup>3</sup> The development of the existence of the special autonomy in Papua is not ended by the form of the regulation in Lieu of Law No. 1 of 2008. In the End of May 2013, the Government stated to replace the special autonomy law with the Law on Papua Governance. According to Felix Wanggai, the special staff of the President on the Local Autonomy, the purpose to the Law on the Papua Governance is to strengthen the identity and the dignity of the Papua's people; to accelerate development in Papua; and to see the social and political problems reconciliatively.

Representatives (hereinafter referred to DPRD-GR), which lasted from 1963 to 1971. Despite the presence of the DPRD-GR was not too long but the contribution through participation and the pursuit of the development and existence of this area were very large. Some its contribution are: Firstly, the successful implementation of PEPERA that produced a political consensus that West Irian remain part of the State Unitary Republic of Indonesia (NKRI) and ratified by its Decree No. 6 / DPRDGR-1969 dated August 5, 1969 on Support and Results Act of Assembly. Secondly, the Governments of West Irian acquired Autonomy in accordance with the Law No. 12 of 1969 dated September 16, 1969. Finally, the emergence of a young generation of indigenous Papuans in the stage of the National Politics and Government of the Republic of Indonesia.

The historical record towards granting special autonomy to Papua Province suggests that the government has very high expectation to the Papua Province to exercise certain powers as mandated by the Law No. 21 of 2001. This is an effort to create positive relationships and mutual support between the government and the local government through the mechanism of checks and balances.

Related to it, Aminuddin Ilmar<sup>1</sup> mentions that the wave of reform in 1998 has led the escalation of changes in the level of implementation of governmental tasks. The changing pattern of management or governance does not only occur at the level of central government only through the implementation of the mechanism of checks and balances, but also at the level of local government through the implementation of local autonomy. The changes concern the perspectives and paradigms that are used to encourage the implementation of democratic governance through the application of good governance and good government.

To create a good governance, it is necessary to strengthen the system of checks and balances in the implementation of special autonomy in Papua. The strengthening is done through the establishment of certain institutions that reflect the "sovereignty" of indigenous Papuans. In the institutional system in the province of Papua, based on the Special Autonomy Law, is divided into several local institutions, namely the government (hereinafter referred to executive), the parliament (hereinafter referred to legislative), the judiciary (hereinafter referred to judicative) and MRP.

The Papua's legislative power shall be exercised by DPRP, which is the political representation of all Papuans, both indigenous and immigrants. The number of DPRP is 1 1/4 (one fourth) times the number of members of the DPRP of Papua Province as stipulated in article 6 (4) of the Law No. 21 of 2001. The article 6 (4) states that the number of DPRP is 1/4 (one-fourth) times the number of members of DPRP of Papua Province as stipulated in that Law, jo article 51 (1) of the Law No. 32 of 2004 that states "the Provincial Parliament is consisting of 35 (thirty five) to 75 (seventy-five) people to form four (4) commission. If the number of the members is more than 75 (seventy five) people, they shall form 5 (five) commission.

The Papua Provincial Government furthermore is headed by a Regional Head as the Executive Head called Governor. It is assisted by the Deputy Governor. The election procedures of the Governor and his Deputy are governed by the Special of Local Government (hereinafter referred to Perdasus) to define in accordance with the regulation. In contrast to other provinces in Indonesia, the selection and election of the Governor and the Deputy Governor of Papua requires special conditions such as: he/she is a citizen of the Republic of Indonesia with the requirements that must be Papuan people (natives); faithful to the Republic of Indonesia and to serve the people of Papua province; have never been imprisoned for a crime unless imprisoned for political reasons; and not being deprived of their right to vote by a court decision that has been legally binding, unless imprisoned for political reasons.

The judicial power in Papua itself shall be exercised by the Courts in accordance with the regulations. Beside the judicial power, it is acknowledged also the adat court in the customary law society.<sup>2</sup> The adat court is peaceful

<sup>1</sup> Aminuddin Ilmar, *Connection between the Central and the Local Government and Democracy Constellation in Indonesia: Legal Understanding From its Construction to Implementation*, Paper Collection in Commemorating the 40th Anniversary of Satya Arianto, p. 327.

<sup>2</sup> The adat is a custom that has been recognized, ordered, instituted, and maintained by the adat community hereditary. In this context, the Government of Papua Province shall exercise it also.

court surrounding customary law communities<sup>1</sup>, which has the authority to examine and adjudicate civil and criminal disputes/cases amongst the people of the customary law communities. The court is formed under the provisions of indigenous customary law of the customary law community.

Related to those institutions as stipulated above, in the context of the implementation of special autonomy in Papua province and based on the Special Autonomy Law, it established MRP. Article 1 (g) the Special Autonomy Law confirms that MRP is the cultural representation of Papuans to have certain authorities to protect the rights of the Papuan people, based on respect for local customs and culture, empowerment of women, and strengthening religious life in harmony. Article 19 of the Special Autonomy Law confirmed also that the MRP shall be Papua natives comprising representatives of adat, religious, and women whose numbers each third of the total members of MRP.<sup>2</sup> Moreover, the article also states that the membership and the number of members of MRP designated by Perdatus and MRP membership period is five (5) years.

MRP is formed as representative of cultural Papuan people (natives) that consists of 7 (seven) region of big tribes - namely Tribe of Mamta / Tabi (Jayapura), Tribe of Saireri (Cenderawasih bay), Tribe of Domberai (Sorong), Tribe of Bomberai (Fakfak), Ha-Anim tribe (Merauke), Spare La Pago (Central Mountains of the East), and Spare Me Pago (Central Highlands of the West). The representative was breakdown by the Netherlands government of New Guinea. The existence of those tribes in MRP as a cultural representation of indigenous Papuans (natives) is intended to give considerations against the Local Government policy in the acceleration of development in Papua.

According to Agus Sumule<sup>3</sup>, there are at least three issues underlying the formation of the MRP. First, the presence of indigenous people of Papua have not been considered importantly in institutions or government institutions during the New Order and also they have not been get involved in policy making in Papua. Second, the participation and political rights of indigenous Papuans continue to be ignored, even after the reform. Third, the rights and participation of women in Papua also continue to be ignored, including in terms of public policy making. Therefore, to bridge such those issues as mentioned, according to Jakarta and Papua perspective, MRP is deemed as one way out to build commitment to protect the rights of indigenous Papuans (natives) and the women's empowerment in Papua.

## **2. The Legal Standing of MRP in the Local Government System in Indonesia**

### **2.1 The Legal Standing of MRP in Centralization-decentralization of the Local Government System in Indonesia**

Discussion about the position of the MRP in the local government system in Indonesia could not be separated from discussions about the history of political and legal system of the country in setting an ideal form of relationship between the government and the local government. According to Cornelys Lay, the form of political arrangement involving the central authorities in Jakarta and the local authorities is one of the most serious struggles that has been draining the social, economic, political and cultural in the history of the Republic of Indonesia.<sup>4</sup>

The struggle undoubtedly takes place throughout history remember of the basic constitution of the Republic of Indonesia, the 1945. Article 18 of the Constitution and its explanatory has included the principle of local autonomy from an early age, the day after the eight provinces were formed as the local government of NRI. The series of laws next during the reign of Sukarno even directly made towards achieving format ideal of relationship

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<sup>1</sup> The customary law communities mean the Papuan Natives who live and bind to the certain customary law with highly solidarity amongst the community.

<sup>2</sup> Every native as a member of MRP is a representative of the customary law community, religion, and women. It consists of 42 people of representative of the customary law community, 14 people of the religion community (2 Islamic people, 4 Catholic people, and 8 protestant people), 14 people of the women community. Those elections (the customary community and the women community) are started from the district level until to the regencies level. The religion community will be decided by the religion institution respectively.

<sup>3</sup> Agus Sumule, *MRP and its Limited Authority*, Paper, the Center of Democracy Study of University Cenderawasih, Jayapura, 2011, p. 9

<sup>4</sup> Cornelys Lay, *the Local Autonomy and Indonesia-ness*, in Abdul Gaffar (ed), *Complexity of the Local Autonomy Issues in Indonesia*, Department of Governmental Science, GadjahMada University and Pustaka Pelajar, Yogyakarta, p. 3.

between the government and the local government such as the enactment of the Law No. 22 of 1948, the Law No. 32 of 1959, the Law No. 1 of 1957, the Decree No. 6 of 1959 and the Perpu No. 5 of 1960. There are also many other legal products in addition to various principle which is intended to facilitate the harmonious relationship between the government and the local government.<sup>1</sup>

The historical fact of the Republic of Indonesia shows that there are separatist movements throughout the Soekarno government. In liberal democracy and guided democracy in the 1950s, there were several separatist movements significantly such as in West Sumatra, South Sulawesi (PRRI-Permesta) and the Free Aceh Movement. In the early 1960s, there were also a separatist movements in such areas in West Java which aimed to establish an Islamic state and in West Kalimantan associated with ethnic Chinese.

At least there are four pillars explanation of the causes of the separatist movements in the era of Sukarno. First, the movement in areas outside Java motivated by striking economic imbalances between Java and outside Java. The economic structure inherited from the Dutch colonial government was far more profitable than outside Java. Java at time was heavily emphasized manufacturing activity and acted as a "net importer" while outside Java became the mainstay of export interest. The outside Java disappointment in economics compounded by the political conditions were monopolized by Java and diluted the expectation of the outside Java to influence the national political process.

Second, a regional rebellion was driven by dissatisfaction with the system of centralized government that was not providing sufficient scope to the local autonomy. The politicians in the beginning of independence believed that the local autonomy was a minimum requirement which allowed the local government to maintain its interests. However, until late 1957, the governments tended to be centralized. These conditions lead to high frustration among local politicians.

Third, there was the problem of regionalism that was non military organization which coincided with the civic organization even into one unit. The military leadership in the region had areas coincident with the civilian leadership so that between them easily blend in the name of regionalism. Then professionalization and rationalization of the military by the educated military from European was more detrimental to local military that have low level of formal education. Therefore, the regional rebellions also was driven by army internal conflict that was fused with civil leadership and cultural solidarity.

Fourth, in terms of regionalism, there were a debate concerning the basis of the country. It also triggered the rebellion in the region. When PPKI set Pancasila as the basis ideology of Indonesia, the number of local groups refused it. The rebellion of Darul Islam proved those reasons. Since the early 1950s, furthermore, it was a conflict between the nationalist (Sukarno) who firmly supports "Pancasila" and Masjumi was supported "Islam" as the state ideology. The conflict did not only take place in Jakarta, but also took place in some other place in regions.

Based on those various contradictions as mentioned above, it can be understood that the various laws that made the era of Sukarno intended to answer the question of the relation of Jakarta and the regions to be more ideal in the framework of the unity of the Republic of Indonesia. However, the history of state administration with the spirit of the local autonomy law ended up in the hands of the New Order regime that practiced over-centralized.<sup>2</sup> The enactment of the Law No. 5 of 1974 on the Principles of Government, the Soeharto government imposed a centralized and uniformed government. The local governments were arranged hierarchically to give the position as Dati I (province) that was in charge of Dati II (regencies).

The fall of Soeharto by the Reform pressure drove Indonesia to re-formulate the constitutional system in the

<sup>1</sup> Ibid.p.4.

<sup>2</sup> See Cornelys Lay , loc.cit. see also Pratikno, *Decentralization: the Choice that never Final*, in A Abdul Gaffar (ed), *Complexity of the Local Autonomy Issues in Indonesia*, Department of Governmental Science, GadjahMada University and Pustaka Pelajar, Yogyakarta, p. 3.

spirit of local autonomy. The enactment of the Law No. 22 Year 1999 on Local Government and the Law No. 25 on the Central and Regional Financial Balance during B.J Habibie government were being "anti-thesis" of the Law No. 5 of 1974 as products of Soeharto regime.<sup>1</sup> According to Fadillah Putra<sup>2</sup>, a major argument politically from the concept of constitutional nature of decentralization is a decentralized system should guarantee or accommodate 4 (four) of the most sensitive things in political world - namely the sharing of power, the sharing of revenue, the local empowering, and the recognition and respect for local identity.

The presence of the Papua Special Autonomy Law historically and politically is part of the political dynamics of the central-local government and even to accommodate the idea of independence of Papua in order to maintain the unity and sovereignty of the NKRI. The history context of the drafting of the Papua Special Autonomy Law clearly showed that the Law was the best solution (win-win) between demands for independence by the people of Papua and the political will of the NKRI.

The political decision to unite the Papua's land (then known as the Nederlands Nieuw Guinea) to be part of the Unitary Republic of Indonesia since 1969 has not resulted welfare, prosperity, and state recognition of the basic rights of the people of Papua. Conditions Papuan community in the fields of education, economy, culture and socio-politic look still far comparing to conditions in other provinces in Indonesia. Issues of human rights violations often occur in the administration of development in Papua. This causes the Papuans want to break away from the NKRI as an alternative to improve their welfare. Therefore, since the 1960s, it has grown various movements in Papua to demand specificity status of Papua or independence of Papua.<sup>3</sup> The growth of Pro-Democracy groups in Jayapura and Timika was to oppose the military dominance. The developing networks with NGOs either in level of local, national, and international proved their struggle to end the military dominance. Discourse on human rights, environment, and gender were widespread in Papua both in a urban and inlands areas. The full support silently from the Catholic Church and an alliance of various community were able to provide significant pressure and control significantly to the practice of political and economic bureaucracy that economically was exploitative and politically was repressive. The situation as achievement was reached only to 1998.

In the perspective of state official particularly the military, the fact as mentioned above is the real threat to the objective circumstances that give privilege to the military. They respond quickly to a trend that threatens the continuity of the network and political practices and military's economy. Meanwhile, the Pro-Democracy movement is still undeveloped and no widespread, except in Jayapura and Timika. Therefore, when other elements of the Papuan people raises the issue of independence and held a Papua's flag (Morning Star), the Pro-Democracy can not anticipate the sinking of democracy and human rights issues. Even some pro-democracy activists also immersed themselves in trance of religious movements of Papua movement. Broadly support and emotional independence aspirations of Papuan suppress any group that tries to rationalize these aspirations. In some case even, they will be accused of being a supporter of the idea of autonomy.

At the level of discourse, the intellectuals of Pro-Democracy was eliminated. This situation could be seen when the National Dialogue 1999 was conducted. The People's Forum for the Reconciliation of Irian Jaya (hereinafter referred to FORERI) was established to facilitate some debates related to Autonomy (O), Federation (F), and Merdeka (M). The possibility to do Autonomy (O), Federation (F), and Independence (M) at that time was still opened. However, after the National Dialogue 1999 and the group "M" that was driven by a few elite team of 100 delegates from Papua in the National Dialogue between the representatives of the people of Papua and the Indonesian President B.J. Habibie, the idea of "M" became dominant. Self-criticism from fellow Papua against euphoria "M" were always suspected. Every effort was given to the stigma of "autonomy." Most of the Pro-

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<sup>1</sup> Tri Ratnawati, *Decentralization in Concept and its implementation in Indonesia: Transition Time the Case of the Law No.22 of 1999 Concerning the Local Government* in Abdul Gaffar (ed), *Complexity of the Local Autonomy Issues in Indonesia*, Department of Governmental Science, GadjahMada University and Pustaka Pelajar, Yogyakarta, p. 3.

<sup>2</sup> Cornelys Lay, loc.cit.

<sup>3</sup> See Muridan S. Widjojo, *Amongst Democracy Needs and Victory of Violation Politic: Papua's Conflict Post New Regime*, Paper, LP3ES – The Ford Foundation, Jakarta, 2001.

Democracy then try to adjust and support the aspirations of the "M." Some others tried to keep quiet and keep distance. As a consequence of it, the community that supports "M" was very dominant. Other symbols "O" and "F" blurred and sunk.

Before the "National Dialogue" between the President Habibie and the representatives of the people of Papua, Papuans had already convinced that Habibie would provide for independence as Habibie "gave" for East Timor (now Timor Leste). Therefore, when the time comes, on February 26th, 1999, Tim 100 as representatives of the people of Papua in the Presidential Palace stated their aspirations to secede from the NKRI. The President Habibie asked to recognize the sovereignty of West Papua as already proclaimed on December 1, 1961. In addition, the delegation also said not to participate in the 1999 elections. Habibie could only reply that the request was necessary in re-contemplated.<sup>1</sup> The results of "re-contemplation" was the government offered special autonomy for Papua. The Papua Special Autonomy basically was not an answer or political deals that suit for their demands "an independence." Nevertheless, the substance of the draft Law on Special Autonomy for Papua compiled by the Papuans was "middle way" between the demands for independence on the one hand and on the other was the expansion of the region.<sup>2</sup> Through the Special Autonomy, Papua has broad authority to cover all areas of government such as finance, economy, human rights, regional police of Province of Papua, the judicial power, religion, health, education and culture, population and employment, environment, cooperation, and dispute resolution. The exception of its authority was foreign policy, national security, monetary and fiscal.

Constitutionally, the special autonomy is guaranteed by the Law No. 21 of 2001 on Special Autonomy for Papua Province. Granting special autonomy to Papua was a way out to create a win-win solution between Papuans who want independence and secede from NKRI and the Government of Indonesia was still sturdy and strong to maintain the integrity and sovereignty of NKRI. On the one hand, it was clear that the desire of many people in Papua was full independence from Indonesia, as stated in the Second Papuan Congress in Jayapura (May 29 to June 3, 2000). On the other hand, it was also very clear that the Indonesian authorities have reacted negatively or rejected such demands-a view which was shared by many countries in the West.

Reform in 1999 has provided opportunities for changes in Papua. On the basis of the Guidelines in 1999 Chapter IV (g) point 2, MPR established the need to give special autonomy status to Irian Jaya. Granting special autonomy to the Papuan people was the first step to build the confidence of the people of Papua to the Central Government.

Opportunities to create change for the people of Papua were getting bigger with the enactment of the Law No. 21 of 2001 on Special Autonomy for Papua Province and effectively enforced on 1 January 2002. The Special Autonomy for Papua Province was basically giving wider powers to the Provincial and Papuans to organize and take care of themselves in the framework of NKRI. The greater authority also meant greater responsibility for the province and the people of Papua to govern and regulate the use of natural resources in Papua province to the greater prosperity of the people of Papua as part of the people of Indonesia in accordance with the legislation.

This authority also meant authority to empower the potential socio-cultural and economic Papuan society, including providing adequate role for the indigenous people of Papua through traditional leaders, religious and women. The role of it was to participate in formulating regional policy, determining the development strategy by respecting equality and diversity of life of the people of Papua, and preserving cultural and natural environment of Papua, which was reflected through changes in the name of Irian Jaya into Papua; the symbol of the Papua in the form of the local flag and hymn as forms of self-actualization people of Papua; and the recognition of the existence of customary land rights, indigenous peoples, and the customary law.

In the Special Autonomy Law, the existence of MRP recognized as one of the organizers of the specificity of

<sup>1</sup> See Anonim, *Memoria Passionis in Papua: Human Rights Condition and Aspiration Movement of Independence in 1999*, SKP and LSPP, Jakarta, 2001, p.7.

<sup>2</sup> Habel Way, et.al., *The Legal Standing of MRP in the Law no. 21 of 2001 Concerning Special Autonomy for Papua Province*, E-journal, Hasanuddin University, accessed <http://pasca.unhas.ac.id/jurnal/files/ec58a82bdd385761ab3aa14c28cb3ec3.pdf>.

local administration. In fact, MRP is the center of the specificity of local government system in Papua. One of the peculiarities of the Papua Special Autonomy is the establishment of MRP. Although its formation is late, MRP could finally be embodied basing on the Presidential Decree (PP) No. 54, 2004. The delay is due to the concern of the Government that MRP will be a super body to prepare for independence.<sup>1</sup>

## **2.2. The Position of MRP in the Local Government System in Papua Province: between the Executive and Legislative**

The position of MRP will be discussed in terms of finding out the connection amongst MRP, executive, DPRD either in the constitutional context or their tasks. It is also to elaborate further the authorities' function amongst them. To explain it, article 18 of the 1945 Constitution contains a new paradigm, the political direction of the new government, and the position/the role clearly in maintaining NKRI. Chapter IV on title "Regional Authorities", Article 18 of the Indonesian Constitution 1945 states that (1) the Unitary State of the Republic of Indonesia shall be divided into provinces and those provinces shall be divided into regencies and municipalities, each of which shall have regional authorities which shall be regulated by law.

It explicitly shows that:

- (1) The principle of the region (the provinces, regencies, and municipalities) to administer and manage their own affairs according to the principles of local autonomy and the duty of assistance (Article 18 (2)). The article 18 (2) confirms that the local government is an autonomous government in the Republic of Indonesia.
- (2) The principle of wide-ranging autonomy (Article 18 (5)). The region has the right to regulate and manage all matters and functions of government that by law is not determined as the center government.
- (3) The principle of particularities and diversity of the regions (Article 18A (1)). This article implies that the form and content of regional autonomy should not be uniformed. The form and content of the regional autonomy is determined by a variety of special circumstances and the diversity of each region.
- (4) The principles of recognition and respect to the customary law community along with their traditional rights (Article 18 B (2)). This customary law community is a community of law based on customary laws or customs such as villages, clans, villages, and others. The community law is the unity of the people territorially or genealogically has a wealth of its own. It can act in or out as a single entity (legal subjects) independently. The units of society has the right to live equally and importantly to the government regencies and cities. It has a right to be treated and is given the opportunity to develop itself as a subsystem of the NKRI.
- (5) The principle of representative bodies are directly elected in a general election (Article 18 paragraph (3)). This article gives legal implications that membership of Parliament does not appointed.
- (6) The principle of recognitions and respects to the regional government that are special and distinct (Article 18 B (1)). The definition of " special and distinct " is the original rule or the rule of "bumiputera". In Article 18b, the word "special" have a broad scope as possible to form a government with a special autonomous region.<sup>2</sup>

At this time, Indonesia has 4 (four) regions are treated specifically and distinctly such as "Daerah Istimewa Aceh", Special Region of Jogjakarta, Special Region of Jakarta, and the Special Autonomous Region of Papua. Special Region of Jogjakarta in particular has been recognized since the Dutch East Indies government due to the political contract between the kingdoms and the Dutch government. State recognition of Aceh as a special region is caused by one of the distinctive character experienced in the history of the struggle of the people of Aceh. It means that the fighting spirit actually comes from the character of social and community with strongly Islamic culture. So that Aceh became the capital region for the struggle to seize and defend the independence of the NKRI.<sup>3</sup>

Granting broad authority to the Special Region of Aceh by the Central Government was marked by the issuance of the Law No. 18 of 2001 on Special Autonomy for Special Region of Aceh on August 9, 2001 and gave a new name to a region such as NAD. While in Papua, at the time of the old regime was called Irian Barat and during the New Order then was called Irian Jaya. During the reign of Gus Dur, it was re-converted to Papua under the

<sup>1</sup> Ibid.

<sup>2</sup> See Bagir Manan, *Breaking Down of the local Autonomy*, FSH UII Press, Yogyakarta, 2002.

<sup>3</sup> See Sarundayang, *Bureaucracy in Local Autonomy*, Kasta Hasta Pustaka, Jakarta, 2005.

Law No. 21 of 2001 on Special Autonomy for Papua Province as of January 1, 2002. The Law of No. 21 of 2001 mandates the establishment of MRP, which is the cultural representation of Papuans whose have certain authorities to protect the rights of indigenous Papuans based on respect for local customs and culture. Thus, MRP has a very important role and give it a special color or characteristic in the implementation of special autonomy in Papua compared with local governments elsewhere in Indonesia.

The first derivative of Article 18 of UUD 1945 as mentioned above in the arrangement of the local government system was the Law No. 22 Year 1999 on the Local Government is to give a clear limitation that only local government along with other regions. This Law changes before the Law No. 5 of 1974 which states that the Local Government consists of the Head of Region and Parliament. This repositioning and restructuring have implication clearly on the relationship between the executive and the legislative in which the legislative is now aligned with the Head of the Region with oversight of the Executive Board of the Head of Region and other Regions. The provisions of the Law No. 22 of 1999 are different to be deployed on the laws governing special autonomy including Papua. So, the question coming up is how the position, function and relationships between MRP and the executive or the legislative. If MRP is not an executive body or the legislative body, then where MRP position according to the Papua Special Autonomy Law?

If compared with the Law No. 22 Year 1999 on Local Government that put local autonomy at the regency / city, the Law No. 21 of 2001 on Special Autonomy put the local autonomy at the provincial level. Thus, in charge of policy, there are important differences between national policy and the Papua policy. However, if compared with the Law No. 32 of 2004 jo. the Law No. 9 of 2015, the second amendment of the Local Government. Those amandement basically has continuity ude to the policy is putting the power of autonomy at the provincial level, although it does not eliminate autonomy at the regency / city. In a comparison of policies, it is discovered that the basic things with regard to the character of the specificity of the Papua Special Autonomy policy is no different from autonomy for other regions in Indonesia.

There are 3 (three) elements of policy making ito become autonomy in Papua speciality.<sup>1</sup> First, Papua is formed an institution of cultural representation. In Papua province, there are MRP, which is understood as a cultural representative body of indigenous Papuans that have certain powers within the framework of the protection of the rights of the Papuan people based on respect for local customs and culture, empowerment of women, and strengthening of religious in harmony as stipulated in this Law. The cultural representation makes the customary laws as unwritten rule or norm that lives in the customary law community. The law regulates, binds, maintains, and bears sanctions, particularly those concerning the right to communal land.<sup>2</sup>

Second, the specificity of revenues in Papua. As stipulated in the Law No. 33 of 2004 on Financial Balance between Central and Local Government, the Special Autonomous Region of Papua and other regions in Indonesia is no different in terms of local revenue source - namely in the form of income, balance funds, loan, and other legitimated income. The specificity of Papua is the amount of profit sharing funds for natural resources in the petroleum mining sector by 70% and mining of natural gas by 70%. This percentage is greater than the percentage that is set to other regions, where the petroleum mining results for the region is 15.5% and 30.05% for natural gas. The distinguishes of Papua with other regions is its "Special Acceptance" in the implementation of Special Autonomy in the amount equivalent to 2% of the National General Allocation Fund, which is primarily intended to finance education and health. It also covers additional funding for the implementation of the Special Autonomy as determined between the Government and the Parliament based on the proposal of the provincial budget every year, which is mainly intended to finance infrastructure development. As regulated in the Law No. 21, 2001, the revenues in the context of the Special Autonomy referred to in paragraph (3) letter b points 4) and 5) is valid for 25 years. Furthermore, starting the 26th year, revenues in the context of the Special

<sup>1</sup> See Agung Djojosekarto, et.al., *Performance of Special Autonomy in Papua*, Kemitraan, Jakarta, 2008, pp.33-35.

<sup>2</sup> The communal land means that the right of association controlled by certain adat community over a certain area which is the living environment of its citizens, which includes the right to use the land, forest, and water content in accordance with the legislation, was validated as a formal law.

Autonomy referred to in paragraph (4) reaches to 50% for mining oil and 50% for natural gas mining. Meanwhile, revenues in the context of the Special Autonomy is valid for 20 years.

Third, the use of terminology is semantically different, although it does not have significant differences in meaning. First, regarding to cultural existence. As stated that "Symbol of the region" is grandeur banners and cultural symbols for the greatness of the Papuans' identity in the form of the Regional Flag and Hymn that does not pose as sovereignty symbols. Second, naming the local legislative bodies, which does not recognize the Papuan House of Representative, but the Papuan Legislative Council (DPRP). DPRP is the Legislative Council of Papua Province which serves as the legislative body of the Papua Province. Third, the policy at the local level by naming different, namely the Special Regional Regulation (hereinafter referred to Perdasus) and the Provincial Regional Regulation (hereinafter referred to Perdasi). Perdasus is the Papua Provincial Regulation for the implementation of specific provisions in the Law No. 35 and Perdasi is Papua Provincial Regulation for the implementation of the authorities as stipulated in the legislation.

According to the Papua Special Autonomy Law, a key pillar in the regional administration in Papua province consists of 3 (three) components, namely DPRP, the local government (the Governor and other devices), and MRP. In this context, DPRP is positioned as a legislative body, the Provincial Government as the executive body, and the body of the MRP as cultural representation of indigenous Papuans. As a legislative body, DPRP is authorized to carry out the functions of the legislative field, which includes: (1) legislation; (2) budgeting; (3) supervision. The Provincial Government as the executive body authorizes to exercise the functions of service delivery and community development, as well as the implementation of the development. In addition, as the representative of the Central Government, the Governor also has the authority to carry out the functions of coordination, guidance, and supervision of the administration of regency / city in the province of Papua. MRP itself is the cultural representation of indigenous Papuans that has the authority to carry out certain functions in order to protect the rights of the Papuan people, based on respect for local customs and culture, empowerment of women, and strengthening religious life in harmony.

MRP is an institution of cultural representation of Papuans whose has certain authorities to protect the rights of the Papuan people, based on respect for local customs and culture, empowerment of women, and strengthening religious life in harmony. This means that MRP has limited authority. MRP basically is the indigenous people of Papua consisting of representatives of indigenous, religious representatives, and representatives of women. The composition of it is one third (1/3) of the total members of MRP. MRP membership period is five (5) years. The membership and the number of members of the MRP shall be stipulated by Perdasus. Under the Article 5 of the Special Autonomy Law, the Provincial Government of Papua comprises DPRP as a Legislative body, the Provincial Government as the executive body, as well as the MRP as a cultural representative body of the Papuan people whose has certain authorities to protect the rights of indigenous Papuans, based on respect for the customs and culture, empowerment of women, and strengthening religious life harmony established for the implementation of special autonomy in Papua province.

Shortly, it can be concluded that the legal standing of MRP according to the construction of the Special Autonomy Law is not a legislative body and not the executive body. However, the position of MRP can align the local government and DPRP, in the context of auxiliary state organ although the Special Autonomy Law construct the legal standing of the MRP as an institution cultural representation.

### 3. Conclusion

It can be concluded from those discussion as mentioned above that:

1. The legal status (legal standing / rechts positie) of MRP in the local government system in Indonesia based on tasks and authority of MRP. It can be said that MRP has the authority to protect the rights of indigenous people of Papua on the basis of respect for indigenous and culture, empowering women and strengthening the life of religious harmony. Therefore, MRP can be stipulated as the heart or the locomotive of Special Autonomy in Papua.

2. In the system of division of powers between the executive, DPRD, and DPRD in the local government system in Papua Province. The local Government power-sharing system in Papua, DPRD is placed together with the Government of Papua and DPRD as the regional administration of special autonomy in Papua. Notwithstanding the foregoing, DPRD does not have legislative and executive authority.

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