

**PRINCIPAL THOUGHTS CONCERNING  
DEVELOPMENT POLICIES IN PAPUA PROVINCE**

**Critical Considerations on Implementation and Implications:  
“The Validity of Undang-Undang No. 45/1999, Undang-Undang No. 21/2001 and  
Inpres No. 1/2003”**

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## **FIRST PART**

### **INTRODUCTION**

The issuing of Inpres No. 1/2003 concerning the Acceleration of the Implementation of UU No. 45/99 concerning the Formation of the Provinces of Irian Jaya Tengah and Irian Jaya Barat, Kabupaten Paniai, Mimika, Puncak Jaya and the City of Sorong, appears to have had a paradoxical response from the community in the local, national, as well as international, context.

One part of the community has responded with enthusiasm and optimism to the presence of Inpres No. 1/2003, which orders a number of state officials to conduct the total agenda for implementing the formation of the Provinces of Irian Jaya Barat and Irian Jaya Tengah according to UU No. 45/99, because it is judged to be a policy with strategic value for equitably raising services, empowering the community and accelerating development in Papua Province.

On the other hand another part of the community has responded with apathy and pessimism to this policy, because it is regarded as an unpopular policy and because it reveals that the Government is not serious in implementing Special Autonomy (Otsus). If this policy is enforced it will have negative implications for the implementation of Otsus, which will worsen the living conditions of the community and simultaneously justify the community's mistrust of the Government. The second paradoxical condition is that this situation will affect the dynamics of community life in Papua Province from this moment onwards.

A solution to this paradoxical condition must be searched for so that the Papua community is not trapped in an ongoing conflict of perceptions which could lead to vertical and horizontal conflict, because if that conflict occurs, it will result in the remarginalisation of the Papua community and other negative consequences.

In this context a comprehensive, integrated and holistic study, conducted objectively and proportionally becomes important and necessary. Through this study it is hoped to introduce different appropriate arguments as alternative solutions. Based on these alternative solutions Papua Province can develop towards a better future, through a

process and mechanism which is compatible with the life dynamics of the Papua community.

This study is designed in two stages and each stage concludes with a research results document. This document constitutes the results of the initial research stage, and only contains principal thoughts concerning the Development of Papua Province. The core of this study is the research results of different social-political-community phenomenon which affect the dynamics of life in the community of Papua Province. This study will holistically and comprehensively continue to the second stage.

This study is presented in three parts, that is: First Part: introduction which contains an outline of the social, political and community phenomenon which affect the dynamics of governance and community life in Papua Province, before and after the issuing of Inpres No. 1/2003; Second Part: The Development Policy of Papua Province, which consists of (1) General - containing a general Study of the different development policies of Papua Province which are formulated by the Government within the framework of NKRI [*Negara Kesatuan Republik Indonesia* – Unitary State of the Republic of Indonesia]; (2) Specific - containing a partial study of different development policies in Papua Province which covers the enactment, implementation and implications of UU No. 45/99, UU No. 21/2001 and Inpres No. 1/2003, which are reviewed from aspects of: Law, Ideology, Politics, Government, Economy and Development, and Social and Culture; Third Part: Conclusion and Recommendations, containing different suggestions of alternative solutions within the context of development in Papua Province, which is given Special Autonomy within the framework of NKRI.

**SECOND PART**  
**DEVELOPMENT POLICY IN PAPUA PROVINCE WITHIN THE**  
**FRAMEWORK OF NKRI**

**GENERAL**

**(Philosophy and Orientation of the Validity of UU No. 45/99, UU No. 21/2001  
and INPRES No. 1/2003)**

The national leadership succession which was marked by the transfer of national leadership from Soeharto to B.J Habibie as the Third President of the Republic of Indonesia can be viewed as providing momentum for change (reformasi) in every aspect of national and state life. The selection of B.J. Habibie as the Third President of the Republic of Indonesia had significant implications for the national political constellation. It was hoped that the presence of B.J. Habibie as President would change the appearance of NKRI from being centralised to becoming decentralised, which is the democratic and participatory orientation.

The leadership of President B.J. Habibie lasted for less than two years, but a number of agendas for change were conducted. All these agendas directed their efforts towards creating democratic and participatory conditions in the nation and the state. In the context of the community's interests in Irian Jaya Province (now Papua Province), three political agendas were born during the leadership era of B.J. Habibie. The political agendas referred to were designed within the context of the development of Irian Jaya Province (now Papua Province) and led to efforts to accommodate the aspirations of the community in Irian Jaya Province (now Papua Province) and within the framework of strengthening the territorial integrity of NKRI and accelerating the development of Papua Province. The background to and essence of the three political agendas referred to can, in detail, be explained as follows:

- a. On 26 February 1999, B.J. Habibie as President of the Republic of Indonesia received a delegation of different components of the Papua community totalling 100 persons, which then became known as the "Team 100", in the State Palace in Jakarta. During this meeting, for the first time, the Papua community directly and openly faced the President of the Republic of

Indonesia and submitted their desire to separate themselves ('merdeka') from NKRI. This meeting was initially planned to search for a solution within the framework of strengthening the territorial integrity of NKRI, but, in fact, this forum was viewed as an entry point for the struggle of the Papua populace to separate themselves from NKRI.

- b. In response to the demands of the Team 100 the Government designed alternative strategies which were regarded as capable of stemming the desires of the Papua populace for separation from NKRI. One of these strategies was the policy of "Pemekaran (splitting/dividing) of the Area of Irian Jaya Province (now Papua Province)";
- c. Different documents prove that the policy of pemekaran of the area of Irian Jaya Province (now Papua Province) actually constituted a policy which had been planned since 1984. This policy plan originated as an aspiration from a small group of the Papua community who wanted pemekaran. Research was then conducted by the Department Dalam Negeri (Home Affairs) concerning the possibility of pemekaran of the area of Level I Region of Irian Jaya Province (now Papua Province). Based on that research, Decision of Menteri Dalam Negeri No. 174 of 1986 established 3 Territorial Assistant Governors, who would be the embryo for the formation of new Level I Provinces in Irian Jaya Province (now Papua Province). In its development, over more than a decade, the plan for pemekaran of the Level I Region of Irian Jaya Province (now Papua Province) was never realised, with the prime reason for this being limitations of the state budget.
- d. The pemekaran policy appears to have re-emerged after the meeting of the Team 100 with President B.J. Habibie. Although the issue is the same, that is, pemekaran of the Level I Region of Irian Jaya Province (now Papua Province), the background and orientation is different. The policy of pemekaran of the Area of the Level I Region of Irian Jaya Province (now Papua Province) in the years 1984-1986 was instigated by the findings of a research team from the Department Dalam Negeri, which was intended to accelerate development in Irian Jaya Province (now Papua Province). This

matter is different from the pemekaran policy in 1999 as although the structuring of governmental management and the acceleration of development are claimed as the justificatory reasons, the primary justificatory reason is within the context of preventing national disintegration. The pemekaran policy is also viewed as a learned and wise response to the demands of a section of the Papua community (Team 100), following their meeting with the President of RI on 26 February 1999. Consequently, it is hoped to strengthen the territorial integrity of NKRI through the pemekaran. Several reasons justifying this are firmly and clearly stated in the Governor's letter, as Head of the Level I Region of Irian Jaya No. 125/803/Z, concerning the proposed pemekaran of the area of the Level I Region of Irian Jaya Province (now Papua Province) dated 26 March 1999;

- e. The plan for pemekaran of the Level I Region of Irian Jaya Province (now Papua Province) was realised on 4 October 1999, with the validation, by President B.J. Habibie, of UU No. 45/99 concerning the Formation of the Provinces of Irian Jaya Tengah and Irian Jaya Barat, the Kabupatens of Paniai, Mimika and Puncak Jaya and the City of Sorong. This policy was followed by the appointment of Doctor Herman Monim to the Governorship of Irian Jaya Tengah and Brigjen. Mar. (Ret'd. TNI) Abraham Atururi to the Governorship of Irian Jaya Barat, based on Decision Letter of President RI No. 327/M/1999, of 5 October 1999.
- f. The policy of pemekaran of the Level I Region of Irian Jaya Province (now Papua Province), particularly that concerned with the formation of the Provinces of Irian Jaya Tengah and Irian Jaya Barat, was rejected by different community groups in Papua, who showed this with a large demonstration, including a sit-in, at the DPRD Irian Jaya Province building and the Governor's Office in Dok II, Jayapura on 14-15 October 1999. The DPRD Irian Jaya Province (now Papua Province) responded to, and legitimised, this rejection with Decision No. 11/DPRD/1999, Concerning the Declaration of Opinion of the DPRD of Irian Jaya Province to the Central Government Rejecting the Pemekaran of Irian Jaya Province and Proposing the Withdrawal of Presidential Decision Letter No. 327/M/1999 dated 5 October 1999;

- g. This rejection was based on several reasons: (1) the policy of pemekaran of the area of the Level I Region of Irian Jaya Province was conducted without any community consultation; (2) the policy of pemekaran of the area of the Level I Region of Irian Jaya Province was not in accordance with the recommendations submitted by the Government of Irian Jaya, which, *inter alia* stated that the pemekaran should be into 2 Provinces, that is: (a) the Level I Region of Irian Jaya Timur Province, with its capital city in Jayapura, covering: Kabupaten Jayapura, Capital City of Jayapura and the Kabupatens of Merauke, Jayawijaya and Puncak Jaya; (b) the Level I region of Irian Jaya Barat, with its capital city in Manokwari, covering: the Kabupatens of Sorong, Manokwari, Fakfak, Nabire, Biak Numfor, Paniai, Mimika and the Administrative City of Sorong; and (3) the policy of pemekaran of the Level I Region of Irian Jaya Province was more intended as a strategy for strengthening the territorial integrity of NKRI, rather than aiming to raise the level and status of Papuans through accelerated, and equitable, development. This point is evidenced from the format of the division of the area which pays little attention to social-cultural unity, readiness of human resources, and economic capability;
- h. The Government and DPR RI responded with a serious and learned attitude to the demands of the Papua community. This point was proved during the implementation of UU No. 45/99, particularly when the articles concerning the formation of the Provinces of Irian Jaya Tengah and Irian Jaya Barat were postponed. Meanwhile, several articles in this UU that regulated the formation of the Kabupatens of Paniai, Mimika and Puncak Jaya and the City of Sorong, were implemented effectively;
- i. On 19 October 1999, in a General Meeting of the 12<sup>th</sup> Session of the MPR, there was stipulated MPR Resolution No. IV/MPR/1999 concerning the Basic Guidelines of State Policy ('GBHN') for 1999-2004, and Chapter IV, Letter G, Item 2 *inter alia* contained the policy of Special Autonomy for Aceh and Irian Jaya. The complete policy formula is: "...within the framework of developing regional autonomy in the context of NKRI, and resolving, fairly

and completely, the problems in the regions, requires immediate and serious handling, and requires the taking of the following steps: (a) defending the national integrity in the context of NKRI and respecting the variety and diversity of social and cultural life within the community of Irian Jaya, through the stipulation of special regional autonomy, which shall be regulated with an UU; and (b) resolving cases of Human Rights violations in Irian Jaya through a court process which is honest and has status...”;

- j. The formula in MPR Resolution No. IV/MPR/1999 concerning GBHN 1999-2004, Chapter IV, Letter G, Item 2 only mentions Irian Jaya (not Irian Jaya Tengah, Irian Jaya Barat and Irian Jaya Timur) and, politically, the contents of UU No. 45/99 were reduced, particularly those articles concerning the formation of the Provinces of Irian Jaya Tengah and Irian Jaya Barat;
- k. Towards the conclusion of the 1999 Annual Meeting of the MPR, a succession to the national leadership occurred. B.J. Habibie was replaced by K.H Abdurahman Wahid as President of RI. One of the political agendas relating to Irian Jaya Province (now Papua Province), which had to be conducted by the Government of President K.H Abdurahman Wahid, was formulating the Draft UU concerning Special Autonomy for Papua Province. However, after one year of governance by President K.H Abdurahman Wahid, this agenda had not been carried out;

Following an evaluation of Government activity in implementing Regional Autonomy in general and Special Autonomy for Aceh and Irian Jaya, there was then stipulated, during the 2000 Annual Meeting of the MPR RI, Resolution No. IV/MPR/2000 concerning Policy Recommendations in Implementing Regional Autonomy, which was directed to the Government and DPR. One of the parts of this Resolution stated; “...UU Otsus for the Extraordinary Regions of Aceh and Irian Jaya, according to the mandate of MPR Resolution No. IV/MPR/1999 concerning Basic Guidelines of State Policy for 1999-2004, so that there shall be issued, not later than 1 May 2001, with close attention to relevant regional community aspirations...”.

However, the UU which became the operational basis for implementing Otsus in Irian Jaya Province was not enacted within the time limit clearly mandated by this MPR RI Resolution. This delay was caused by *inter alia*: (1) political escalation in Irian Jaya Province before and after the Second Papuan People's Congress in Jayapura in 2000; and (2) the desire of the Government of K.H Abdurahman Wahid to be attentive to the aspirations of the Papua populace.

This Government commitment was responded to by different community groups, primarily academics and LSM (*Lembaga Swasta Masyarakat* – Community Based Institutions) activists, in Irian Jaya Province (now Papua Province) who started to make Otsus a topic of discussion in different study forums. This matter is evidenced by the existence of a number of concepts/drafts/principal thoughts concerning the contents of the Draft UU on Otsus for Irian Jaya Province (now Papua Province), which were proposed by different institutions in Irian Jaya/Papua. However, because the situation in Irian Jaya Province (now Papua Province) was less conducive, as a result of the heightened political escalation before and after the Second Papuan People's Congress, one of whose demands was separation from NKRI, this issue (Otsus) was merely a matter of internal discourse within certain institutions. At around the same time, the then Governor of Irian Jaya Province, Freddy Numberi was appointed to become a Minister in the Cabinet of President K.H Abdurahman Wahid, resulting in Musiran being appointed caretaker Governor. Musiran did not feel that he possessed sufficient authority to prepare a Rancangan UU on Otsus for Irian Jaya Province (now Papua Province). The situation was again serious with certain groups contrasting autonomy and merdeka. These two concepts constitute the options which must be chosen.

Discussions concerning the possibilities for a RUU on Otsus for Irian Jaya Province (now Papua Province) were re-started seriously when Dr J.P. Solossa, M.Si was inaugurated as Governor and Dr Constan Karma as Deputy Governor of Irian Jaya Province (now Papua Province), at the end of 2000. On the Governor's initiative a Study Forum Implementation Committee was formed, which was followed with the formation of an Aspirations Trawling Team, and an Assistance Team which was supported by different components of the community and, through an extensive

mechanism, the RUU Otsus for Papua Province entitled “Special Autonomy for Papua Province in Forming a Self-Governing Territory” was then prepared.

The RUU proposed by the Regional Government and DPRD of Papua Province was received and adopted by the DPR RI as the initial proposal for the RUU, following an evaluation process. There were discussions between the DPR and the Central Government because of the existence of two RUU about Special Autonomy for Irian Jaya Province (now Papua Province), that is, the RUU proposed by the DPR RI and the RUU proposed by the Government. But finally it was agreed that the RUU that was to become the primary reference was the RUU proposed by the Regional Government and the DPRD of Papua Province which had been adopted, as the proposed RUU, by the DPR RI.

Implementing the mandate in the second MPR Resolution, and after a discussion of around 5 months, the DPR RI on 22 October 2001 agreed and stipulated that the RUU on Special Autonomy for Papua Province would become an UU. The result of this DPR RI Decision was then submitted to the Government (President) for validation. On 21 November 2001, the President of the Republic of Indonesia, according to the authority she possesses, brought into effect UU Republic of Indonesia No. 21 of 2001, Concerning Special Autonomy for Papua Province, which was inserted into the Statute Book of the Republic of Indonesia of 2001 No. 135 and Supplement to the Statute Book of 2001 No. 4151.

UU No. 21/2001 concerning Special Autonomy for Papua Province is a policy which has a strategic value within the context of raising services and accelerating the development and empowerment of the whole populace in Papua Province, particularly indigenous Papuans. Through this policy it is hoped to lessen the disparity between Papua Province and other provinces within NKRI, and provide an opportunity for indigenous Papuans to progress in their land as the instigators and beneficiaries of development.

Otsus for Papua Province is basically the granting of wide authority to the Provincial/Kabupaten/City Governments and the populace of Papua to regulate and order themselves within the framework of NKRI. This wide authority includes the

power to regulate the benefits of natural wealth in the area of Papua Province, as much as possible for the prosperity of the Papua populace and to empower the economic, social and cultural potential possessed, including giving a significant role to indigenous Papuans, through their representatives, to become involved in the formulation of regional policy and choosing development strategies by respecting the variety and diversity of community life in Papua Province. As a consequence of Otsus, the Government will treat Papua Province differently. In other words, there shall be matters which are only valid in Papua Province and invalid in other provinces in Indonesia, as well as matters which are valid in other regions, but invalid in Papua Province.

UU No. 21/2001 which constitutes the juridical basis for the implementation of Otsus for Papua Province consists of XXIV Chapters and 79 Articles, and commences with a preamble and concludes with a general elucidation and an article-by-article elucidation. Philosophically, UU No. 21/2001 contains a number of acknowledgements and commitments by the Government of NKRI. The acknowledgements are as follows: (1) this UU is made within the framework of shaping the aims and objectives of NKRI; (2) the Papua community is God's creation and is part of civilised humanity; (3) there is a unit of regional government which is special; (4) the indigenous inhabitants of Papua are one of the groups of the Melanesian race and constitute one of Indonesia's ethnic groups and possess a variety of cultures, histories, adat traditions and languages; (5) governmental administration and development in Papua Province has not yet fully fulfilled the sense of justice, achieved prosperity for the populace, supported the establishment of legal enforcement, and has not yet shown full respect for Human Rights; (6) the management and benefits of natural wealth in Papua Province has not been used optimally for raising the living standard of the indigenous community; (7) acknowledgement of the disparity between Papua Province and other provinces in Indonesia. On the other hand there are also a number of commitments, *inter alia*: (1) to honour Human Rights, religious values, democracy, law and cultural values existing within the adat law community; (2) to respect the variety and diversity of social-cultural life in the Papua community; (3) to protect and respect ethics and morals; (4) to protect the fundamental rights of the indigenous inhabitants and Human Rights; (5) to ensure the supremacy of law; (6) to maintain democracy; (7) to respect

pluralism; and (8) to resolve the problems of human rights violations of the indigenous inhabitants of Papua.

Normatively, the validity of this UU has entered its second year (since 21 November 2001) but its implementation has just entered its 15<sup>th</sup> month (since 1 January 2002). Reflections on the implementation of the UU illustrate that it is not yet effective, and this is because of several factors, *inter alia*: (1) regulations in the form of Provincial Regional Regulations (PERDASI) and Special Regional Regulations (PERDASUS), which are the operational basis of Otsus, do not yet exist. The delay in formulating PERDASI and PERDASUS is because the institutions with the competence to enact these two regulations are incomplete. PERDASI are made by the DPRP together with the Governor, but until now the DPRD Papua Province has not been changed into the DPRP, so regional legal instruments in the form of PERDASI cannot be made. With the validity of UU No. 21/2001 the legislative function in Papua Province is conducted by the DPRP. Draft PERDASUS are made by the DPRP together with the Governor and are stipulated as PERDASUS after getting the consideration and agreement of the MRP. Because the DPRP and MRP do not yet exist, legal instruments in the form of PERDASUS can also not be made; (2) the division of revenue within the framework of Otsus is considered to have been conducted inequitably during its first year, and this is because legal instruments in the form of PERDASUS containing relevant factors for deciding the division of that revenue do not exist; and (3) the Government Regulation concerning the MRP, which constitutes the legal foundation for the MRP's activities, has not yet been stipulated, without a clear reason. The Draft Government Regulation concerning the MRP was proposed by the Regional Government and the DPRD Papua Province on 15 July 2002 and ought to, according to article 72, have been enacted, at the latest, one month after its receipt by the Government.

As a consequence of this situation, different materials contained within UU No. 21/2001 cannot be conducted effectively. Even in the first year the Regional Government and DPRD Papua Province still uses the old model or paradigm in governmental administration and the conduct of development. Using the APBD (Regional Budget) format as an indicator, some components of the community consider that Otsus, as a policy to deal equitably with community interests in Papua

Province, remains far from their hopes. This situation has caused a 'negative image' that Otsus merely transfers the centralist tradition from Jakarta to Jayapura. Different views and judgements concerning the implementation of Otsus must be articulated in a learned and wise manner. Regarding this, a format for strategic governmental administration and the conduct of development based upon the philosophy and contents of UU No. 21/2001 is required.

Entering the second year of implementation of the Otsus policy and in response to the 'negative image' from different groups concerning the implementation of this policy, the Regional Government and other components are attempting to introduce different alternatives which are capable of positioning Otsus as one of the solutions to resolve various problems in Papua Province.

The Regional Government and different components of the community in Papua Province were surprised at the issuing of INPRES No. 1/2003 on 27 January 2003. The contents of this INPRES are *inter alia*: commands to the Minister Dalam Negeri, Minister of Finance, Governor of Papua and All Bupatis in Papua Province to take steps to accelerate the formation of the Provinces of Irian Jaya Barat and Irian Jaya Tengah according to UU No. 45/99 and to activate their governorships. The issuing of this INPRES was motivated by several reasons stated in its preamble, *inter alia*: (1) to implement UU No. 45/99 concerning the Formation of the Provinces of Irian Jaya Tengah and Irian Jaya Barat, the Kabupatens of Paniai, Mimika, and Puncak Jaya and the City of Sorong and, as necessary, accelerate the preparation of activities and establish the structure of Regional apparatus in order to implement Regional Governance; (2) according to the demands and the development of community aspirations and the national political condition which is conducive at this time, the implementation of regional governance in the Province of Irian Jaya Barat requires to be realised in a manner which is direct, integrated, coordinated and progressive.

Following on from this INPRES, the Minister Dalam Negeri published a Radiogram directed to the Governor of Papua Province, Bupati/Walikota all over Papua Province, and all echelon I officials in the Department Dalam Negeri. Radiogram No. 134/221/SJ, dated 3 February 2003 *inter alia* said: (1) all levels of Government and Regional Government in the Province/Kabupaten/City must immediately take relevant

operational steps; (2) INPRES No. 1/2003 is to proceed together with the operation of UU No. 21/2001 concerning Otsus in Papua Province; (3) the Regional Government shall provide full support in order to implement these matters; and (4) the Sekjen and Governor/Bupati shall report to Minister Dalam Negeri on the preparatory steps within two weeks.

The explanation above suggests that, for reasons of the effectiveness of governmental administration, the acceleration of development, the strengthening of the integrity of NKRI, and attentiveness to the aspirations of the Papua community, there was formulated this set of policies: (1) UU No. 45/99 concerning the Formation of the Provinces of Irian Jaya Tengah and Irian Jaya Barat, the Kabupatens of Paniai, Mimika and Puncak Jaya and the City of Sorong; (2) UU No. 21/2001 concerning Otsus for Papua Province; (3) UU No. 26/2002 concerning the Formation of the Kabupatens of Sarmi, Keerom, Sorong Selatan, Raja Ampat, Pegunungan Bintang, Yahukimo, Tolikara, Waropen, Kaimana, Boven Digoel, Mappi, Asmat, Teluk Bintuni, and Teluk Wondama in Papua Province; and (4) INPRES No. 1/2003 concerning the Acceleration of the Implementation of UU No. 45/99 concerning the Formation of the Provinces of Irian Jaya Tengah and Irian Jaya Barat, the Kabupatens of Paniai, Mimika, Puncak Jaya and the City of Sorong.

According to reasons concerning the effectiveness of governmental administration, the acceleration of development, the strengthening of the integrity of NKRI, and attentiveness to the aspirations of the Papua community, the policies formulated for the above interests ought to be mutually compatible. In order to see the correlation between these policies, the following will examine them from the perspective of law, politics and government, economy and finance and social-cultural.

## **SPECIAL**

### **Implementation and Implications of Development Policy in Papua Province: According to UU No. 45/99, INPRES No. 1/2003 and UU No. 21/2001 (Consideration of Legal, Political, Economic and Social-Cultural Aspects)**

#### **Legal Aspects**

Based on the hierarchy of statutory regulations in Indonesia, according to MPR RI Resolution No. III/MPR/2000, UU No. 45/99 constitutes an instrument of the highest statutory regulation beneath the Constitution 1945 and an MPR Resolution. According to its title this UU concerns the formation of the Provinces of Irian Jaya Tengah and Irian Jaya Barat, the Kabupatens of Paniai, Mimika, Puncak Jaya and the City of Sorong. UU No. 45/99 was validated and enacted on 4 October 1999 in Statute Book of RI 1999, No. 173, and consists of VI Chapters, and 29 articles. Chapter I - General provisions, article 1; Chapter II - Formation, Borders of Areas and Capital City of the new Provinces and Kabupatens/City which are formed, articles 2–14; Chapter III - Regional Authority, articles 15-16; Chapter IV - Regional Government, articles 17-19; Chapter V - Transitional Provisions, articles 20-26; and Chapter VI - Concluding Provisions, articles 27-29. In its development UU No. 45/99 was changed by UU No. 5/2000.

According to the perspective of legal validity, UU No. 45/99 was legally valid from its enactment. This is because it was made by an authorised institution, through the formal procedure and mechanism for creating UU, and within the correct framework of the hierarchy system of statutory regulations. However, as a legal instrument, this UU was invalid in a society with values. This is because it was factually validated in Irian Jaya Province (now Papua Province), by the community, which was the target of UU No. 45/99.

In fact, the application of UU No. 45/99 was connected with the formation of Kabupatens/City as ordered in article 2 and the division of the area for each Kabupaten/City as referred to in articles 5-8. These provisions were, in fact, already

effective. Their meaning is not a problem from the perspective of juridical legal validity or sociology. This is because, in a concrete manner, the community approved of the formation of each new Kabupaten/City as necessary for their development and prosperity.

On the contrary, the application of UU No. 45/99 concerning the provisions of article 2 on the formation of the Provinces of Irian Jaya Tengah and Irian Jaya Barat, with areas stated in articles 3 and 4, followed by the appointment and inauguration of Governors for both the new provinces, according to Keppres RI No. 327/M of 1999, clearly received a serious and widespread rejection from different components of the community in Irian Jaya Province (now Papua Province). However, according to the Central Government, the policy of pemekaran of Irian Jaya Province (now Papua Province) was enacted because of the wishes of a certain part of the community in Irian Jaya Province (now Papua Province).

This rejection by different components of the community in Irian Jaya Province (now Papua Province) was strengthened by the Decision of DPRD Irian Jaya Province No. 11/DPRD/1999, of 16 October 1999 Concerning a Declaration of the Opinion of DPRD Irian Jaya Province to the Central Government rejecting the Pemekaran of Irian Jaya Province and Proposing the Withdrawal of Decision Letter of President RI No. 327/M of 1999 concerning the Appointments to the Governorships of the Provinces of Irian Jaya Tengah and Irian Jaya Barat. This rejection was implemented with a Letter from the Governor of Irian Jaya Province to MENDAGRI. Surjadi Soedirdja as MENDAGRI issued Letter No. 125/2714/SJ, of 18 November 1999, which essentially said that he understood the attitude of the community of Irian Jaya and would take further action according to the DPRD Decision.

The rejection by different components of the community in Irian Jaya Province (now Papua Province) of the pemekaran showed that, from the perspective of legal validity, the provisions of UU No. 45/99, concerning the formation of the provinces of Irian Jaya Tengah and Irian Jaya Barat were not effective, so there was a loss of socio-legal capacity, although these provisions still possess valid juridical capacity.

On 21 November 2001, the President, together with the DPR RI, enacted UU No. 21/2001 concerning Otsus for Papua Province, stipulated in Statute Book of RI 2001 No. 135 and Supplement to the Statute Book 2001 No. 4151. This UU constitutes a legal instrument which was formed in the reform era and whose essence constitutes the political will of the Central Government in improving objective conditions in the social, political, economic, cultural, education, health, defence and security sectors in Papua Province. UU No. 21/2001 also possesses a special position because it was established based on a mandate in MPR RI Resolution No. IV/MPR/1999 and MPR RI Resolution No. IV/MPR/2000.

Hierarchically, in statutory regulations, UU No. 21/2001, is equal with UU No. 45/99, that is, it is the highest statutory regulation beneath the Constitution of 1945 and MPR Resolutions. However, UU No. 21/2001 possesses a special characteristic (*specialis*), within the regulation of regional autonomy compared with UU No. 22/99 on Regional Autonomy and UU No. 25/99 on Financial Balance between the Centre and the Regions, and there is also a difference in the procedure for pemekaran of provinces compared with UU No. 45/99 concerning the Formation of the Provinces of Irian Jaya Tengah and Irian Jaya Barat, the Kabupatens of Paniai, Mimika, Puncak Jaya and the City of Sorong. According to this special characteristic, the validity of a basic legal regulation which is special nullifies a regulation which is general (*lex specialis derogat legi generali*).

According to the hierarchy of statutory regulations, an MPR RI Resolution constitutes the superior legal instrument compared with an UU. This means, according to the legal principle which says that the superior regulation nullifies an inferior regulation (*lex superiori derogat legi inferior*), that every UU whose essence conflicts with or is incompatible with an MPR Resolution must be nullified. In this regard, clearly MPR RI Resolution No. IV/MPR/1999 and MPR RI Resolution No. IV/MPR/2000 command the formation of UU Otsus for the Provinces of Irian Jaya and Aceh. This command was for one Province, not the Provinces of Irian Jaya Tengah and Irian Jaya Barat. Therefore the pemekaran of the Province as regulated in the Articles of UU No. 45/99 must be nullified.

UU No. 21/2001 also regulates the pemekaran of Papua Province to become more than 1 Province in Chapter XXIV, Concluding Provisions, Article 76 which states that: “The pemekaran of Papua Province to become Provinces shall be conducted with the approval of the MRP and DPRP after giving close and serious attention to the social-cultural unity, readiness of human resources and economic capability and development in the future.”

This is different from the regulation of pemekaran of the province according to the provisions of UU No. 45/99 which directly stipulates the division of the area into 3 new Provincial areas. The regulation of the pemekaran of the province according to the provisions of UU No. 21/2001 does not stipulate the number of divisions of the provincial area, but for pemekaran of the provincial area into 2 or more areas, the following conditions must be fulfilled: 1) consideration of social-cultural unity; 2) readiness of human resources; and 3) future economic capability. Furthermore, it is confirmed that the DPRP and MRP constitute the competent political institutions to evaluate the fulfilment of the 3 elements as conditions of any pemekaran. However, both UU possess a similarity, that is, to regulate the pemekaran of Papua Province or Irian Jaya into 2 or more provinces. Thus, if the contents regulating the pemekaran of the Province from both UU are confronted with the legal principle which says that the later regulation nullifies the earlier regulation (*lex posterior derogat lex priori*) then the materials concerning “pemekaran provinsi” which must be given effect are those contained within Otsus, because it was issued more recently, that is, in 2001 as compared with UU No. 45/99 which was issued in 1999. Therefore, INPRES No. 1/2003 has emerged from the contents of an UU which already does not possess legal validity.

UU No. 21/2001 which became effective in Papua Province on 1 January 2002, continues the mandate of MPR Resolution No. IV/MPR/1999 which says: “Defending the national integrity in the context of NKRI and still respecting the variety and diversity of social and cultural life of the community of Irian Jaya through the stipulation of special regional autonomy which is regulated with an UU.” In fact, this UU is also viewed by sections of the international community, nationally and locally in Papua as the permanent legal basis for governmental administration, development and services which are sensitive to the position of indigenous Papuans, through the

existence of the cultural representative body known as the MRP, but without marginalising respect for the totality of mankind.

From 4 October 1999 until 26 January 2003 the provisions of articles within UU No. 45/99 were not applied clearly (*in concreto*). On 27 January 2003, the President RI issued INPRES No. 1/2003 concerning the Acceleration of the Implementation of UU No. 45/99 concerning the Formation of the Provinces of Irian Jaya Tengah and Irian Jaya Barat, the Kabupatens of Paniai, Mimika, Puncak Jaya and the City of Sorong.

INPRES No. 1/2003 was directed: *Firstly* to MENDAGRI to accelerate the implementation of UU No. 45/99 concerning the Formation of the Provinces of Irian Jaya Tengah and Irian Jaya Barat etc; one of whose contents is letter e ordering: the activation of the designated Governors, officials, and government structure and apparatus of the Provinces of Irian Jaya Barat and Irian Jaya Tengah; *Secondly* to the Minister of Finance to prepare a special budget which is necessary but is not provided for within the APBD; *Thirdly* to the Governor of Papua Province to give support to the formation of the Provinces of Irian Jaya Tengah and Irian Jaya Barat, by transferring personnel, financing and assets and by supervising and supporting the establishment and structuring of the organisation of governance in the new autonomous regions; *Fourthly* to Bupati/Walikota to support the implementation of the UU on the pemekaran of Irian Jaya Province.

To implement this INPRES, MENDAGRI issued Radiogram No. 134/221/SJ, of 3 February 2003, with the classification “immediate”, directed to the Governor of Papua Province, Bupati/Walikota across Papua Province, and all echelon I officials in DEPDAGRI, and which contains 5 commands as follows: (1) all levels of Government and Regional Government in the Province/Kabupaten/City Regional Government must immediately take relevant operational steps; (2) INPRES No. 1/2003 is to proceed together with the operation of UU No. 21/2001 concerning Otsus in Papua Province; (3) the Regional Government shall provide full support in order to implement these matters; (4) Sekjen DEPDAGRI and relevant echelon I officials in DEPDAGRI and INTERDEP must finalise a work agenda and stages of implementation; and (5) Sekjen/Governor/Bupati shall report to MENDAGRI on these preparatory steps within 2 weeks.

According to the structure of statutory regulations in Indonesia as stated in MPR RI Resolution No. III/MPR/2000, the INPRES and Radiogram are not categorised as statutory regulations. These two ‘legal instruments’ are really policy instruments which regulate the internal institutional organisation of government. In practical state governance the INPRES, radiogram, circular and their type, are categorised as policy regulations (*beleids regels*). In order to examine a policy regulation correctly, in the context of the free authority (*Freis Ermessen*) of the Government, state principles based on law must be employed, according to the protection of the community and the general principles of appropriate governmental administration. If a policy regulation is not made in accordance with these principles it will be uncertain if that policy regulation will be able to support competent governmental actions.

According to statutory regulations Bupati and Walikota, as Regional Heads, implement the principle of decentralisation and not the principle of centralisation. Because of that, the instruction to Bupati/Walikota to proceed with INPRES No. 1/2003 and to support the implementation of the pemekaran of Papua Province is imprecise. Therefore the contents of INPRES No. 1/2003 and MENDAGRI Radiogram No. 134/221/SJ have caused a serious juridical problem. Several matters which have arisen are: (1) their contents are not in accordance with MPR Resolution No. IV of 2000 concerning the Policy of Special Autonomy for Papua Province and UU No. 21/2001 concerning Otsus for Papua. Therefore it is difficult to continue with the INPRES according to the provisions of UU No. 21/2001; (2) the provision of INPRES No. 1/2003 which orders, in dictum First (e), MENDAGRI to activate the designated Governors provoked the appointment of the Governor of the Province of Irian Jaya Barat, without any coordination with the Governor of Papua Province, as the home province; and (3) MENDAGRI Radiogram which states that the INPRES must be conducted along with UU No. 21/2001, is also difficult to implement because that UU has a procedure for pemekaran of the province which is different from UU No. 45/99. In fact, this shows that INPRES No. 1/2003 and MENDAGRI Radiogram No. 134/221/SJ were made by ignoring the general principles for appropriate governmental administration.

According to the study above, it is clear that the pemekaran policy of Papua Province through INPRES No. 1/2003 and MENDAGRI Radiogram No. 134/221/SJ, which ought to have as its objective raising the prosperity of the community in Papua, has resulted in a conflict of norms between the provisions of UU No. 45/99 and article 76 of UU No. 21/2001 concerning the pemekaran of the province, causing legal uncertainty and confusion for public officials in the provincial, kabupaten/city governments in Papua, primarily in continuing with UU No. 21/2001.

## **Political and Governance Aspects**

The core of governance is providing services to the community. The Government does not exist to serve itself or to be served, but to serve the community and to achieve conditions which enable every member of the community to develop their capability and creativity in order to achieve progress together. This concept suggests that the government must be on the same side as the community. The Government must be close to the community so that it can provide a rapid response to the needs of a dynamic community. The assumption on which this concept is based is that if governance reaches the community, the services which are provided will become more rapid, responsive, innovative, productive and economic. In this context actions which repeatedly re-engineer the structure and function (restructuralisation, revitalisation and refunctionalisation) of the system of governance in the region become impediments to development, especially after the enactment of Otsus for Papua Province.

The structure and system of governance in Papua Province has been repeatedly engineered by a number of policies, *inter alia*: (1) UU No. 45/99; (2) UU No. 21/2001; and (3) UU No. 26/2002. Through these policies the structure and system of governance in Papua has experienced change. All these policies are the result of a political process which is the product of 2 institutional political superstructures (DPR and Government / President).

UU No. 45/99 substantially regulates different matters related to the policy of pemekaran of Irian Jaya Province, by forming 2 new provinces, 3 kabupatens and 1 city area. The selection of this policy was based on development needs and progress for Irian Jaya Province, the Administrative Kabupatens of Paniai, Mimika, and Puncak Jaya and the Administrative City of Sorong and aspirations which developed within the community, as revealed in the Preamble.

With regard to administrative governance, it was found that institutional governance in Irian Jaya at all levels (province to kelurahan/village/kampung) at the time this UU was made, was acknowledged to be imbalanced by extending over a vast area. The geographical area of Irian Jaya is 421,981 Km<sup>2</sup>, and it only contains 10 autonomous

kabupatens, 3 administrative kabupatens, 1 administrative city, 173 kecamatan and 2260 villages/kelurahan. This condition causes different structural or functional obstacles in the process of governmental administration. Several obstacles are *inter alia*: (1) the span of control becomes vast which causes coordination and supervision obstacles; (2) limitations, of quantity and quality, in resources and apparatus, which causes obstacles to the optimal actualisation and functioning of governmental administration; and (3) infrastructure limitations result in an imbalance between available financial resources and infrastructure requirements, the consequence of which is the emergence of obstacles in the transportation and communication sectors. Eventually this will cause the primary functions of administrative governance in terms of service, empowerment and development to become ineffective and inefficient.

The policy of pemekaran of Irian Jaya Province can be understood as a strategic policy which is capable of encouraging the improvement of services, empowering the community and accelerating development. It is also hoped that this policy can raise capability within the management and utilisation of the region's potential, in order to support the implementation of regional autonomy.

Although the policy of pemekaran of Irian Jaya Province, from the perspective of administrative governance, is viewed as one of the alternatives for creating effective and efficient governmental administration and conducting development, the format of the pemekaran as regulated in UU No. 45/99, is regarded as imprecise and as not providing significant advantages for raising services, empowering the community and accelerating development in the area of Irian Jaya. An analysis of the formulation process and the contents of this UU shows that it has a number of elements which justify this opinion, *inter alia*: (1) the momentum for the enactment of this policy is imprecise. This policy was validated when there was a culmination of political escalation in Irian Jaya Province, wherein several components of the community in Irian Jaya Province (now Papua Province) were conducting different efforts in struggling for the rights of the Papua community, even including the desire to separate themselves ("merdeka") from NKRI. Therefore this policy was merely viewed as a Government effort to divide the populace of Papua so that they would not have the political strength to influence the political bargaining process in struggling for the rights of the community in Irian Jaya Province; (2) the process of formulating this

policy was regarded as inappropriate because it did not involve the wider community (popular consultation) and did not accommodate the community's aspirations, primarily in the issue of dividing the area; and (3) the division of the area was not sensitive to the resource potential, social-cultural aspects and accessibility between regions.

Based on these various reasons the community of Irian Jaya, instigated by Students in Jayapura on 14 and 15 October 1999, held demonstrations rejecting this policy (UU No. 45/99). The DPRD Irian Jaya Province legitimised this rejection on 16 October 1999 with DPRD Irian Jaya Province Decision No. 11/DPRD/1999, Concerning the Declaration of Opinion of the DPRD of Irian Jaya Province to the Central Government Rejecting the Pemekaran of Irian Jaya Province and Proposing the Withdrawal of Presidential Decision Letter No. 327/M, 1999 dated 5 October 1999. This Decision of the DPRD Irian Jaya Province contained 3 things: (1) rejection of the pemekaran of Irian Jaya Province and a request to withdraw the articles of UU No. 45/99 which were related to the formation of the Provinces of Irian Jaya Tengah and Irian Jaya Barat; (2) proposal to withdraw the Decision Letter of President RI No. 327/M, 1999 dated 5 October 1999 concerning the appointment of designated Governors of the Level I Regions of Irian Jaya Tengah and Irian Jaya Barat with different pretexts and justifications; and (3) it was based on considerations of the development situation and Regional conditions especially regarding the different aspirations expressed rejecting the pemekaran of Irian Jaya Province and in the context of anticipating and avoiding a flare-up which could harm the community and the Regional Government.

The Government responded to the community's demands wisely. The contents of the articles of UU No. 45/99 which regulated the formation of the Provinces of Irian Jaya Tengah and Irian Jaya Barat had their implementation postponed. The same was also done for Decision Letter of President RI No. 327/M, 1999 concerning the Appointment of Designated Governors as Regional Heads of Irian Jaya Tengah and Irian Jaya Barat. This postponement was implicitly strengthened by the passing of MPR RI Resolution No. IV/MPR/1999, concerning GBHN 1999-2004, on 19 October 1999. This MPR RI Resolution, Chapter IV letter G item 2, contained the policy of

Otsus for Aceh and Irian Jaya (it did not mention Irian Jaya Tengah, Irian Jaya Barat and Irian Jaya Timur).

The strengthening of the ineffectiveness of the articles regulating the formation of the Provinces of Irian Jaya Tengah and Irian Jaya Barat occurred again during the Annual Session of the MPR in 2000. MPR RI Resolution No. IV/MPR/2000 concerned Policy Recommendations in the Implementation of Regional Autonomy and was directed to the Government and the DPR. One of the parts of this Resolution stated: "...UU Special Autonomy for the Extraordinary Regions of Aceh and Irian Jaya [not Irian Jaya Tengah, Irian Jaya Barat and Irian Jaya Timur] according to the mandate of MPR Resolution No. IV/MPR/1999 concerning GBHN for 1999-2004 must be issued by 1 May 2001, at the latest, with attentiveness to community aspirations in the relevant regions...."

The strengthening of the position of Irian Jaya Province (now Papua Province) as one territorial unit occurred again when the Government of RI enacted UU No. 21/2001 concerning Otsus for Papua Province, which was inserted in Statute Book of the Republic of Indonesia 2001, No. 135 on 21 November 2001. This UU stated that Papua Province is Irian Jaya Province which is given special autonomy within the framework of the NKRI. Furthermore, the general elucidation of this UU states that Papua Province, at this time, consists of 14 kabupatens/city, with boundaries as follows: to the north with the Pacific Ocean, to the south with Maluku Province and the Arafura Sea, to the west with the Provinces of Maluku and North Maluku and to the east with the State of Papua New Guinea. Therefore, in this UU the government explicitly acknowledged that Papua Province is identical to Irian Jaya Province.

The same thing also occurred when the Government enacted UU No. 26/2002 concerning the formation of a number of Kabupatens (Sarmi, Keerom, Sorong Selatan, Raja Ampat, Pegunungan Bintang, Yahukimo, Tolikara, Waropen, Kaimana, Boven Digoel, Mappi, Asmat, Teluk Bintuni, and Teluk Wondama) on 11 December 2002. This UU also stated that these Kabupatens existed in Papua Province according to UU No. 21/2001. The enactment of a number of statutory regulations about Irian Jaya Province (now Papua Province) as shown, gives an indication that legally and

politically Irian Jaya Province (now Papua Province) constitutes one governmental administrative area, which consists of a number of Kabupatens/City.

On 27 January 2003, the President RI issued INPRES No. 1/2003 whose contents are, *inter alia*: instructions to Minister Dalam Negeri, Minister of Finance, Governor of Papua and all Bupati to take steps to accelerate the Formation of the Provinces of Irian Jaya Barat and Irian Jaya Tengah based on UU No. 45/99 and to activate their designated Governors. Even though INPRES No. 1/2003 is of an internal nature and only orders relevant office-holders to take steps to accelerate the implementation of UU No. 45/99, the very presence of this INPRES has caused administrative confusion in the conduct of governance in Papua Province. INPRES No. 1/2003 will have implications for governmental administration and the conduct of development in Papua Province according to UU No. 21/2001. Politically and administratively, UU No. 21/2001 legitimises the position of Papua Province as one unit. Whereas UU No. 45/99, conducted with INPRES No. 1/2003, divides Papua Province into 3.

INPRES No. 1/2003 was further implemented by MENDAGRI with the issuing of Radiogram No. 134/221/SJ, dated 3 February 2003, and classified 'immediate'. This Radiogram was directed to the Governor of Papua Province, Bupati/Walikota across Papua Province, and all echelon I officials in DEPDAGRI, and contains 5 instructions. The core of these 5 instructions is that officials to whom it was directed must immediately take operational steps to implement INPRES No. 1/2003, which shall operate together with UU No. 21/2001, and provide a report within 2 weeks.

The issuing of INPRES No. 1/2003 has already created different implications which have impacted on governmental administration in Papua Province. Several activities conducted after INPRES No. 1/2003 by the Government (in particular by DEPDAGRI) have caused uncertainty and administrative confusion. Several matters which have caused this uncertainty and administrative confusion are *inter alia*: (1) MENDAGRI Radiogram No. 134/221/SJ, states that the implementation of INPRES No. 1/2003 must be conducted together with the operation of Otsus for Papua Province, whereas the contents of UU No. 21/2001 are different in important ways from the contents of UU No. 45/99; (2) the designated Governor of Irian Jaya Barat, according to Presidential Decision Letter No. 327/M of 1999, who for 3 years and 4

months did not conduct any functions, following INPRES No. 1/2003 he directly installed himself and conducted functions as Governor.

Although MENDAGRI says that, at this time, he has not ordered the appointment of the designated Governor, DEPDAGRI has also not taken concrete steps to resolve the confusion caused by those involved; (3) DEPDAGRI has formed an Assistance Team with the task of conducting a study of the plan to accelerate the formation of the Province of Irian Jaya Barat. This Team consists of several echelon II officials in DEPDAGRI and has already visited Kabupaten Manokwari several times. However, this is to be deplored because this Team has not followed procedures because it has never held discussions with the Governor of Papua Province or the DPRD, as the responsible home administration, or with different parties in Papua Province. This Team has also, in its press statements, given rise to different interpretations which could cause a clash between components of the community in Papua; and (4) DEPDAGRI also provided a statement that this pemekaran policy is supported by different groups including several Bupati/Walikota in Papua Province.

It is acknowledged, as a matter of fact, that a number of Bupati support this policy, but it must also be acknowledged that support for this policy does not mean support for the format as contained within UU No. 45/99. The Bupati of Merauke wants the area of the Kabupaten of Merauke to become a Province. The Bupati of Serui wants the Kabupaten of Yapen Waropen to become a Province. The same has also been said by the Bupati of FakFak who wants a province with its capital city in Bombaray. According to this evidence, it is clear that the pemekaran policy based on UU No. 45/99 has also been criticised by different groups including these three Bupati.

## **Economic Aspects**

The enactment of UU No. 21/2001 concerning Otsus for Papua Province changed the revenue structure. The sources of revenue according to the provisions of Otsus are based on four components as follows: Original Regional Income; Balance Funds; Funds within the framework of Otsus; and Loans and Infrastructure Funds.

The sharing of revenue between Papua Province and the Central Government according to UU No. 21/2001 (Otsus) is proportioned as follows: for Land and Building Tax (90%: 10%); Excise for the acquisition of Right in Land and Buildings (80%: 20%); Individual Income Tax (80%: 20%); and for the income from natural resources – forestry (80%: 20%); fisheries (80%: 20%); mining (80%: 20%); oil (70%: 30%); and gas (70%: 30%).

The sources of revenue, according to UU No. 21/2001, increased the Balance Funds wherein the Otsus allocation funds for 2002 amounted to Rp.1, 382,300,000,000. Therefore, with the existence of Otsus, the revenue side was increased by an amount of Rp.776,667,966,364 from 2001 to 2002. For revenue sources in 2002, it can be seen that the Otsus funds make a significant contribution that is equal to 70.57% of the total APBD revenue.

The assumption under UU No. 45/99 and INPRES No. 1/2003 is that the division of sources of revenue will refer to UU No. 22/99. This UU basically divides revenue sources into three parts, that is, Original Regional Income, Balance Funds and Loans. Herein, the sharing of revenue between the Province and the Central Government is proportioned as follows: for Land and Building Tax (90%: 10%); Excise for the acquisition of Right in Land and Buildings (20%: 20%); Individual Income Tax (20%: 80%); and for the income from natural resources – contributions of rights on forestry management revenues (16%: 20%) and for the producing Kabupaten/City (64%); commissions on forestry resources revenues (16%: 20%), for the producing Kabupaten/City (32%) and for other Kabupaten/City in the producing province (32%); fisheries (80%:20%); mining (80%:20%); oil (3%:85%), for the producing Kabupaten/City (6%) and for other Kabupaten/City in the producing province (6%);

and gas (6:70%), for the producing Kabupaten/City (12%) and for other Kabupaten/City in the producing province (12%).

The first year of the implementation of Otsus proceeded sporadically because there were conflicting structural interests between the executive and the legislature and this caused the postponement of the schedule for passing the 2002 APBD which resulted in a number of APBD-funded programs being postponed and many projects were not able to proceed. Therefore work programs, announced by the Regional Government, which ought to have lasted for 12 months could only be conducted for 8 or 9 months. It can be estimated that all programs were supposed to finish by December 2002.

The process of arranging the 2002 APBD had very weak foundations because in these APBD arrangements the Regional Government had not yet made the Regional Strategy Plan (Renstrada) 2002-2006 as a reference for each sector. In addition, the Renstrada has not progressed to UU No. 21/2001. Therefore there was inconsistency between the APBD and the Renstrada resulting in several non-priority programs being included in the APBD. Consequently, there was an inclination for wastage and leaking of the budget.

The Regional Government was unable to optimally implement UU Otsus in its approach, strategy, policies, programs and master plan. In particular, its priority programs, according to UU No. 21/2002 are education, health and more specifically strengthening the economy. This has occurred because there is little community empowerment at the lower levels, as a result of which many government programs are not compatible with the wishes of the community.

According to the APBD 2002, expenditure in the budget is allocated for education (18.88%), health (15.40%) and transportation (21.51%), which is a significant increase, but this has also been accompanied by the raising of expenditure on government (Research Results of Rapid Assessment of Economy), particularly for supervising government (12.76%). This means that expenditure on priority sectors under UU Otsus remains far below expectations.

The spirit of 'good governance' requires much improvement. Examining governmental management in the first year of the Otsus era, it is evident that transparency, public accountability and value for money (values of economy, efficiency and effectiveness), public participation, and the rule of law have not yet been established. The community in Papua cannot see transparency in information, which is relevant to the public interest. Public accountability related to Government responsibility for activities conducted by the Government is not particularly evident because there is less independent supervision. The management of public resources must be conducted efficiently and effectively but this is not yet evident in governmental management in 2002. In addition, community participation is not yet maximal because the community does not have a pro-active attitude towards Otsus. The management of regulations based on UU No. 21/2001 also requires to be improved because it is not in accordance with the spirit of that UU.

There is not yet an evaluation about matters which have been achieved in the first year of Otsus. Therefore there are no economic indicators from the Otsus era, so has structural economic change occurred which will raise the prosperity of the community in the Land of Papua?

UU No. 21/2001 does not regulate the pemekaran of the province in Chapter III and only regulates the division of the area for Kabupaten/City. In Chapter III, Article 3(4) it is stated that: "The formation, pemekaran, abolition and/or combination of Kabupaten/City shall be stipulated by an UU based on the proposal of Papua Province." This means that the pemekaran of Kabupaten/City becomes the interest of UU Otsus.

During the first year of the Otsus era there emerged the idea of splitting several Kabupatens. However it was evident that there were still obstacles which had to be confronted, including the preparations for a 'new Kabupaten' and arranging the governance of the Kabupaten/City. Governmental management was not able to proceed optimally. Consequently, there was inefficiency in governmental management and many Kabupaten officials could not perform their tasks and responsibilities.

A large gap in “income distribution” will occur, both among the Provinces or among the Kabupatens within one Province. As a result of this difference, one Province will have a higher income and another will have a lower income. This is also evident among Kabupatens within one province and the sharing of sources of revenue between the ‘New Province’ and the Central Government will also change. The ‘New Province’ will lose revenue sources from oil natural resources in the amount of 85% and gas natural resources in the amount of 70%. The Province of Irian Jaya Barat is predicted to receive revenue sources from oil natural resources in the amount of 30% and natural gas in the amount of 30%, according to UU No. 45/99.

There will be an increase in expenditure for funding the salaries of state officers. This matter is very obvious because, as a result of the pemekaran, each province requires state officers to conduct governmental management. Therefore items of routine governmental expenditure within the APBD will rise. There will be a shortage of state officers who have echelon I and II qualifications, and this will enable the entry of officers, who have these qualifications, from outwith Papua. There is the possibility of transferring state officers from Jakarta to the ‘New Province’. The result of decentralisation is that there are many state officers, in echelons I and II in the Centre (Jakarta), who do not have posts and it is therefore predicted that these officers will be transferred to the ‘New Province’.

The Provincial Government ought to have made plans of governmental requirements and an economic feasibility study concerning the splitting of the new Provinces/Kabupatens/City so that governance of the new Provinces/Kabupatens/City could proceed. Therefore, the requirements for personnel and financing would be clear and, if possible, all levels of the bureaucracy will involve Papuans so that state officials do not need to come from the Centre, because this will cause social jealousy.

There are 3 scenarios for viewing provincial development in Papua. The **first** scenario, still using UU No. 21/2001, empowers the efficient use of revenue sources in methods of ‘good governance’, so that there does not occur friction between the legislature, the executive and the community.

The **second** scenario uses UU No. 45/99, so automatically UU Otsus will be invalid. Therefore the 'New Province' will use the decentralisation which is used by the other provinces in Indonesia, except for the Province of Nangro Aceh Darusalam (NAD). The logical consequence of UU No. 45/99 for the 'New Province' is that it is predicted that revenue sources will be less than 85% for oil and 70% for natural gas.

As a consequence of the validity of UU No. 45/99 the Otsus funds will not be visible in the APBD Papua and, therefore, each new province will experience a drastic decline in revenue. If applied to APBD 2002, it can be predicted that the APBD for one 'New Province' will be Rp.576, 438,667,331 (after Otsus funds are subtracted). Therefore the revenue components which become the mainstay for the 'New Province' are from the General Allocation Fund and shares of Tax income and non-Tax income. The proportion of Regional Original Income is only 8.92%.

If the pemekaran of the 'New Province' occurs then this province will adopt UU No. 45/99 on the Formation of the Provinces of Irian Jaya Tengah and Irian Jaya Barat and the Kabupatens of Paniai, Mimika, and Puncak Jaya and the City of Sorong. There will be a striking imbalance in the regional economic growth of each 'New Province'. This is because each combination of Kabupatens which will become a province has a different level of economic growth. This is fortunate for provinces whose land is rich in natural resources but unfortunate for provinces whose natural resources are scarcer.

The **third** scenario is that the pemekaran remains within the Otsus corridor but there occurs the division and sharing of revenue sources from Otsus funds in the amount of 2%. That matter requires to be examined, not just from the economic perspective, but also from the viewpoints of law, politics and social-cultural in order to proceed with this third scenario.

To avoid differences in economic growth and imbalances in income distribution among the 'New Province', which has been split, it has been considered how to share the revenue equitably and prudently between the Central Government, the 'New Provinces' and the Kabupatens, within the context of the 'Papuan Union'. Its membership will consist of the government and adat leadership in the Papua region.

Its primary task will be to formulate policies concerning the sharing of revenue resources (cross-subsidies). This matter is reasonable in order to avoid a sharing of resources which could inflict financial harm on the Papua Regional Government. This matter requires to be justified under UU No. 21/2001 and UU 45/99.

## **Social-Cultural Aspects**

When UU No. 45/99 was initially enacted, it was opposed and rejected by the wider community which took into account several principal reasons concerning: the development of the inhabitants; socio-cultural factors; socio-political factors; increased governmental bureaucracy; and because it would only advance particular Kabupatens in Irian Jaya Province, which was viewed by the community as unjustified. The rejection of this UU was evidenced by mass demonstrations, largely initiated by student groups. The validity of UU RI No. 45/99 re-emerged through INPRES No. 1/2003 and Mendagri Radiogram RI and this has implications for socio-cultural problems specific to the Papuan community.

The formation of the Province of Irian Jaya Barat, with Manokwari as its capital city, was supported by a number of prominent central government, regional government, adat (tribal-ethnic), religious and political figures and by LSMs and community groups representative of the region. Brigadir General (Ret'd) Abraham Ataruri was appointed as Governor of the Province of Irian Jaya Barat and he is now conducting some of the tasks and functions of his office.

*De facto*, and socially-politically, several Bupati, Camat (district heads) and village heads supported the governor of the Province of Irian Jaya Barat and the formation of Irian Jaya Barat. There were different systematic efforts, formal and informal, by a large number of prominent community figures and community groups from this region to go to Jakarta and argue that several Kabupatens in this region should become a province.

Community groups, radical and non-radical, have emerged who reject all efforts by different parties to pemekaran these regions into several provinces. Because of this, other individuals and community groups in Papua emerged who support the policy of pemekaran of the area of Papua Province.

Social support for the Otsus system of governance has declined and this has strengthened the groups supporting pemekaran of the province. Consequently, social

conflict has emerged between multi-stakeholders and community groups and this has become more manifest than previously, when these tendencies were latent.

There are latent or manifest community groups which reject UU Otsus and UU No. 45/99 concerning the pemekaran of Papua Province. The number of different multi-stakeholder and community groups who want various Kabupatens to become separate provinces, such as the Kabupatens of Merauke, Yapen Waropen and Sorong, has increased. This is not in accordance with UU No. 45/99.

Prominent national and regional figures, such as Menkopolkam RI (Coordinating Minister for Political and Security Affairs), the Governor of Papua Province and the Dean of the Faculty of Social and Political Sciences of UNCEN (Cenderawasih Pos, March 2003), and community groups in Papua have emerged who want synchronisation between UU No. 21/2001 and UU No. 45/99.

A community idea, opinion and desire has emerged concerning the need for synchronisation, reconciliation and social consensus amongst the community of Papua, in order to prevent the occurrence of open social conflict among community groups in Papua because social confusion, friction and tension has emerged in the wider community regarding the future system of governance and future regional development.

Community strength and energy is being expended considering problems and inconsistencies concerning the format of the future system of governance in this region, rather than being focussed on efforts to develop the region, which is more important in raising community prosperity in this region.

If these differences and inconsistencies in the community are not properly accommodated and managed, there arises the possibility that social conflict, concerning the system of governance in the region, will occur. A format to resolve social conflict, which is accepted by all parties, is required.

There are various community groups who are pro-Otsus, pro-pemekaran (whether or not in accordance with the INPRES), groups rejecting both, groups wanting merdeka,

and community groups, who are unclear about their attitude, do not understand the issues, or who are not interested.

Social rebelliousness has emerged in the form of: concern about formal leadership, and the acknowledgment that the leadership of particular prominent community figures has weakened; mistrust of the function and role of formal institutions; the weakening of community trust in the capability of the leadership to develop the community; the rejection of cooperation, coordination and participation in the process of regional development; the widespread student and community demonstrations; and the widespread disobedience of formal regulations.

Ongoing social conflict between pro-Otsus and pro-pemekaran community groups has caused the social condition within the Papua community to become more uncertain, less beneficial, less safe, and less comfortable. This has influenced events in other development sectors so that all relevant parties need to take concrete steps to exit from this situation.

Groups with particular interests have developed who claim to represent the populace of Papua to the central government and who attempt to develop public opinion to their own benefit. The current situation requires the active involvement of community groups and independent institutions which are trusted by the Papua community.

The community in Papua requires, and hopes, that social conflict concerning the system of governance in this region will be resolved quickly by the central government, the regional government and relevant parties who are trusted by the community and that close attention will be paid to comprehensive, integrated, holistic and peaceful efforts to accelerate the raising of the prosperity of the community in Papua.

After enactment by the government, the social function of UU No. 21/2001 is to mediate the conflicting strong desires between Papuans and the government. One of the basic considerations in Otsus is including and accommodating the social and cultural orientation of Papuans. However, certain Articles that are vital - socially,

culturally, and for raising the prosperity of the community - have not been implemented maximally.

Otsus can be viewed by the wider community in this region as the best social solution to the problems arising in the community. Its contents are the result of social compromise and the accommodation of aspirations, attitudes and affiliations, which have significant differences, complexities and dimensions within the Papua community.

Otsus can be viewed as the basis for regional development which is sensitive to, and accommodates, develops and strengthens the basic rights of the socio-cultural community of Papua and empowers and strengthens the customary adat, ulayat rights, education, health, nutrition and the human resources of Papuans.

Otsus has developed an approach, strategy, policy and development program in the socio-cultural sector of the community which is better than regional development previously, and has also succeeded in raising the regional and community development budget in the socio-cultural sector.

Otsus has not yet achieved social loyalty and support from the whole community in Papua. There remains an incomplete understanding between the central government, the regional government and the community in this region concerning several Articles (e.g. Flag, anthem, MRP) whose inclusion is regarded, for different reasons, as unnecessary or inappropriate.

The socialisation process for Otsus has not been conducted efficiently to all levels of the community in the region. The dissemination process concerning Otsus still requires to be conducted and improved if Otsus is to contribute to future regional development.

The implementation of Otsus, at this time, is illustrated by the non-existence of Provincial Regional Regulations (Perdasi) and Special Regional Regulations (Perdapus), which expand the articles in Otsus, and this has reduced and weakened the trust and support of the community. In addition, several elements of Otsus have been

conducted in ways which are not in accordance with the objectives of Otsus, and this has caused resistance or social rebelliousness among stakeholders and community groups.

The implementation of Otsus, in the context of regional development, has not proceeded well because, since its commencement, there have been individuals and community groups who have different and even conflicting opinions, aspirations, attitudes and social affiliations. Even in the brief period of time of its implementation it has caused diverse social-cultural implications in the life of the regional, national and international community.

Within the government, Higher Education, business, policing and TNI sectors, both within Papua and externally, the contents of Otsus have started to become known, understood and accepted. However, the structural involvement of the Papua community in the implementation Otsus is not balanced and only involves certain community groups and interests. Many Kampung have not until now sensed any direct implications from Otsus.

It is still premature to measure the social-cultural implications of the implementation of Otsus but several small-scale evaluations have been conducted. Otsus has rapidly increased the allocation of development funds in the education, health and nutrition sectors and, if the conduct of development continues well, it is certain that the human resources of the community in Papua will improve in a short time.

Although the implementation of Otsus in the social-cultural sector has not been conducted for long, it has also caused diverse, complex and multi-dimensional social problems in the life of the region. Its implementation has caused differences, incompatibilities and latent and manifest social conflict within the bureaucracy and amongst different levels of the community.

There are prominent community figures and groups, who explicitly, for different reasons, do not desire, do not agree with and reject Otsus as a system of governance for Papua. The horizontal and vertical social conflict which has arisen lately is likely to be unproductive and will weaken the social structure and life of the community.

It appears that the sources of incompatibility and conflict are structural and self-interested, and manifestly involve values, relationships, ideologies and data. This social conflict has provoked tendencies towards social, ethnic and tribal disintegration and regionalism within the Papua community, and has polarised the community according to different affiliations and social attitudes, contrary to Otsus.

The implementation of Otsus has provoked primordial sentiments and regional affiliations within the regional government bureaucracy and the community. The implementation of Otsus has also been affected by the emergence of bureaucratic attitudes and behaviour which contains aspects of KKN (Corruption, Collusion & Nepotism) and this has reduced the level of community trust in Otsus itself. Only adherence to the rule of law will raise the level of community trust, loyalty and support in the credibility, accountability and transparency of this system of regional governance.

## **THIRD PART**

### **Conclusion and Recommendations**

#### **Conclusion**

The study results of the first and second parts indicate that there is a significant difference in the jurisdictional validity of a number of policies in Papua Province (previously Irian Jaya). UU No. 45/99 stipulates that the jurisdictional validity of this UU is the Provinces of Irian Jaya Tengah, Irian Jaya Barat and Irian Jaya Timur. This is different from the legal territory stipulated in MPR RI Resolution No. IV/MPR/1999 and MPR RI Resolution No. IV/MPR/2000. These two MPR Resolutions stipulate the legal territory that is referred to as Irian Jaya (Special Autonomy for Irian Jaya). The same stipulation is also to be found in UU No. 21/2001. The jurisdiction of this UU is Papua Province (Papua Province is Irian Jaya Province which is given Special Autonomy within the framework of NKRI which, at the time this UU was enacted, consisted of 14 Kabupatens/City). In UU No. 26/2002, which regulates the formation of a number of new Kabupatens in Papua Province, the jurisdictional validity of this UU, as stated in its general provision, is Papua Province according to UU No. 21/2001. The Government's inconsistency in stipulating the jurisdictional validity of this policy has caused confusion and erroneous interpretations.

From the perspective of legal validity, UU No. 45/99 has been legally effective since its enactment. This is because it was made by an authorised institution, through the formal procedure and mechanism for creating UU, and within the correct framework of the hierarchy system for statutory regulations. However as a legal instrument, this UU was invalid in a society with values. This is because it was factually validated in Irian Jaya Province (now Papua Province) with the community, which was the target of UU No. 45/99. In fact, the application of UU No. 45/99 was connected with the formation of Kabupatens/City as ordered in article 2, with the area of each Kabupaten/City as referred to in articles 5-8, and these provisions were already effective. Their meaning is not a problem from the perspective of juridical legal validity or sociology. This is because, in a concrete manner, the community approved of the formation of each new Kabupaten/City as necessary for their development and

prosperity. On the contrary, the application of UU No. 45/99 concerning the provisions of article 2 on the formation of the Provinces of Irian Jaya Tengah and Irian Jaya Barat, with areas stated in articles 3 and 4, followed by the appointment and inauguration of caretaker Governors for both the new provinces, according to Keppres RI No. 327/M of 1999, clearly received a serious and widespread rejection from different components of the community in Irian Jaya Province (now Papua Province). This rejection was based on several reasons: (1) the policy of pemekaran of the area of the Level I Region of Irian Jaya Province was conducted without any community consultation; (2) the policy of pemekaran of the area of the Level I Region of Irian Jaya Province was not in accordance with the recommendations submitted by the Regional Government of Irian Jaya, which, *inter alia* stated that any pemekaran should be into 2 Provinces, that is: (a) the Level I Region of Irian Jaya Timur Province, with its capital city in Jayapura, covering: Kabuapten Jayapura, Capital City of Jayapura and the Kabupatens of Merauke, Jayawijaya and Puncak Jaya; (b) the Level I region of Irian Jaya Barat, with its capital city in Manokwari, covering: the Kabupatens of Sorong, Manokwari, Fakfak, Nabire, Biak Numfor, Paniai, Mimika and the Administrative City of Sorong; and (3) the policy of pemekaran of the Level I Region of Irian Jaya Province was more intended as a strategy for strengthening the territorial integrity of NKRI, rather than aiming to raise the level and status of Papuans through accelerated, and equitable, development. This point is proved by the format of the territorial division which pays little attention to social-cultural unity, readiness of human resources and economic capability and the availability of communications and transportation.

This rejection by different components of the community in Irian Jaya Province (now Papua Province) of the formation of the Provinces of Irian Jaya Tengah and Irian Jaya Barat was strengthened by the Decision of DPRD Irian Jaya Province No. 11/DPRD/1999, of 16 October 1999 Concerning a Declaration of the Opinion of DPRD Irian Jaya Province to the Central Government rejecting the Pemekaran of Irian Jaya Province and Proposing the Withdrawal of Decision Letter of President RI No. 327/M of 1999 concerning the Appointments to the caretaker Governorships of the Provinces of Irian Jaya Tengah and Irian Jaya Barat. This rejection was implemented with a Letter from the Governor of Irian Jaya Province to MENDAGRI (Surjadi Soedirdja). This Governor's Letter was answered by MENDAGRI in Letter

No. 125/2714/SJ, of 18 November 1999, which essentially said that he understood the attitude of the community of Irian Jaya and would take further action according to the DPRD Decision. The rejection by different components of the community in Irian Jaya Province (now Papua Province) of the pemekaran, and the issuing of the Governor's Letter and MENDAGRI's Letter as stated, showed that, from the perspective of legal validity, the provisions of UU No. 45/99, concerning the formation of the provinces of Irian Jaya Tengah and Irian Jaya Barat were ineffective, and consequently there was a loss of socio-legal capacity, although these provisions still possess valid juridical capacity.

When considering administrative governance, it was found that institutional governance at all levels in Irian Jaya (provincial to district/village/kampung), at the time this UU was enacted, was not yet capable of reaching a vast territorial area. The area of Irian Jaya is 421,981 Km<sup>2</sup>, and it only had 10 autonomous kabupatens, 3 administrative kabupatens, and 1 administrative city, and 173 districts and 2260 village areas. This condition resulted in the emergence of different structural as well as functional obstacles in the process of governmental administration. Several obstacles were *inter alia*: (1) the span of control over a vast area causes obstacles of coordination and supervision; (2) limitations in the quantity and quality of apparatus resources causes obstacles in the actualisation of the optimal functioning of governmental administration; (3) infrastructure limitations result in an imbalance between available financial sources and infrastructure requirements, causing obstacles in the transportation and communications sectors. All of this eventually causes governmental administration in terms of service, empowerment and development to become ineffective and inefficient.

The policy of pemekaran of Irian Jaya Province can be understood as a strategic policy which is capable of raising services, empowering the community and accelerating development. It is also hoped that this policy can raise levels of ability in the management and utilisation of the region's potential in order to support the administration of regional autonomy. Although the policy of pemekaran of Irian Jaya Province is viewed as one of the alternatives within the framework of achieving effectiveness and efficiency in governmental administration and the conduct of development, the momentum and format of the pemekaran as regulated in UU No.

45/99, is regarded as imprecise and does not provide significant implications for raising services, empowering the community and accelerating development in the area of Irian Jaya. An analysis of the formulation process and the contents of this UU indicate that there are a number of elements which can justify this statement, *inter alia*: (1) the momentum for the enactment of this policy is less than precise. This policy was enacted during the culmination of political escalation in Irian Jaya Province, with several components of the Irian Jaya community conducting different efforts in struggling for the rights of the Papua community, even including the desire to separate themselves ('merdeka') from NKRI. Because of that, the pemekaran policy was merely viewed as an effort by the Government to divide the populace of Papua so that politically they would not have sufficient strength to influence the political bargaining process in struggling for the rights of the community of Irian Jaya (now Papua); (2) the process for the formulation of this policy was regarded as inappropriate because it did not involve the wider community (popular consultation) and, similarly, it did not accommodate community aspirations, particularly in the method of dividing the territory and; (3) this division of the territory was regarded as inattentive to the resource potential, social-cultural aspects and accessibility between regions.

The presence of INPRES No. 1/2003 and subsequent actions, which rapidly strengthened the Province of Irian Jaya Barat, gave shape to the ideas and wishes of a particular bureaucratic and political elite, and the interests of certain individuals and groups, in this region. The centralisation culture, which during this time became the general justification in the executive and legislative arena, forced this issue. The desires of certain individuals in these elite social arenas were regarded as benefiting people at the lower level or in village communities. However, these issues did not represent the aspirations of the urban and rural lower strata, either sociologically or ethnologically, but they were not able to avoid the influence of political euphoria in these social arenas. The pemekaran of the Province of Irian Jaya Barat, which was rejected by the populace, results from these facts. The social conflict which consequently emerged, pro and contra the pemekaran, substantially occurred at the level of the bureaucracy and the political elite. The majority of the Papua community merely became victims of the desires of the political elite. In enacting the pemekaran, the idea of the adat community, based on socio-cultural territorial units in Papua, was

not respected. A number of considerations that formed the basis for making this UU were not publicly articulated, although some of the considerations of elite and bureaucratic groups, in making this UU, were rational and open. The question for us is, why was the enacted pemekaran of the province rejected by the populace of Papua?

The postponement of the pemekaran concerning the Province of Irian Jaya Barat is required for the sake of legal rationality. The pemekaran should be based on socio-cultural agreement between the Papua populace, the Government and the DPR RI and postponement will encourage a fair and civilized social life. Postponement will enable the socialisation of several matters which are primary considerations in the pemekaran effort, such as: the increase in the population; social-cultural matters; social-political matters; the increasing burden on governmental tasks; progress in particular kabupatens in the area of Irian Jaya Province; and the conduct of development and social guidance in order to guarantee the future development and progress of these kabupatens.

The debate about Otsus and the pemekaran of the province is irrelevant when that debate is merely directed towards a choice of one of the options (Otsus or Pemekaran). This is because pemekaran is not considered taboo by Otsus (see Article 76 UU No. 21/2001). What must be debated are the formulation process and the format of the pemekaran, placed within the framework of Otsus, which was signed by the President. The development of the social-cultural sector according to the Otsus format has started to be appreciated as one of the best policies in this region and this needs to continue to be defended and expanded within the context of future regional and national development.

UU No. 21/2001 possesses legal, political, cultural and economic values which are very good for the populace of Papua. The process of making this UU was quite representative of the Papua adat social-cultural communities. However, at the time this study was conducted, this UU had not been comprehensively and thoroughly observed, understood and implemented, in an honest and responsible manner, by the majority of parties, both at the level of the government, the DPRD Papua Province and by the people of Indonesia. Otsus has not yet become a priority issue for a

number of regional government institutions, the DPRD and all components of the Papua community, although it has specific characteristics as follows: (a) it explicitly and clearly assists the populace of Papua, through the establishment of the Papuan People's Assembly (MRP) within the system of governance in Papua Province; (b) it is not indifferent to the culture of the Papua adat community; (c) it acknowledges and protects the rights of the adat community and Human Rights in Papua; (d) it acknowledges the existence of indigenous Papuans from the Melanesian Race within the diversity of ethnicities in Indonesia and; (e) it acknowledges the distinctive features of indigenous Papuan culture as enabling Papua Province to have a special identity or symbol.

Otsus is capable of mediating between the strong contradictory desires of Papuans and the Government. Certain Articles which are socially, culturally and economically vital have commenced although they are not yet fully implemented but they are very strong and relevant for providing solutions for resolving social-cultural problems which, until now, have occurred within certain levels of the community in Papua Province. Otsus accommodates all the demands and distinct attitudes concerning the rank and status of Papuans. This UU: regulates any planned pemekaran of Papua Province, to become several provinces, with the agreement of the MRP and the DPRD; regulates special matters for the interests of indigenous Papuans in the governmental system, politics, the law and socially, in the form of PERDASUS with the agreement of the DPRD and MRP; regulates affirmative policies related to demography and working opportunities for indigenous Papuans; regulates the management of natural resources which must guarantee fairness for indigenous Papuans; involves trade enterprises, private institutions and LSMs in the management of education, health, nutrition and the environment with the support of the regional government of Papua Province; and allocates the equivalent of 2% from the National General Allocation Fund for 20 years for education (30%) and health (15%). Consequently, this will raise the quality of Papuan human resources, and the financial burden on the Papua community can also be kept as low as possible, and these services will even be free for those who are really not able to contribute.

In particular this UU needs to be fully socialised to the community in the villages, because at the time this study was conducted, the majority of that community have an

indifferent attitude and do not feel that they have any interest in Otsus. If this matter is not thoroughly attended to, that community will choose its own options outside Otsus and the Pemekaran.

The coming into force of Otsus for Papua Province provides an increase on the revenue side and contributions from Otsus funds are dominant in this.

Implementation during the first year of the Otsus era has been erratic. This has occurred because of several factors such as: the existence of competing interests between the legislature and the executive in arranging the APBD; the arrangement of the APBD was not submitted to Renstrada; and the Regional Government has not optimally implemented its approach, strategy, policy programs and master plan causing confusion in the expenditure budget. In addition, the spirit of 'good governance' needs to be improved and there has not been an evaluation of the effectiveness of Otsus.

The impact of the pemekaran in Papua will result in a gap in the distribution of income and economic growth. On the other hand, it is predicted that there will be a loss of potential revenue resources, especially oil and natural gas, because of the presence of the Central Government's portions.

There are three scenarios in monitoring the impact of the pemekaran. Firstly, using Otsus by proposing 'good government'. Secondly, using UU No. 45/99, wherein the 'New Provinces' will use general regional autonomy. Thirdly, using the pemekaran within the Otsus corridor, wherein the Otsus 2% funds will be divided amongst the 'New Provinces'.

The development of the social-cultural sector according to the Otsus format is viewed as one of the best policies in this region and it needs to continue to be conducted, defended and expanded in the framework of the future national development of the NKRI in this region.

Community social support for the pemekaran policy in this region is based on UU No. 45/99 and it continues to strengthen and increase and this requires to be

accommodated within the framework of finding a final format for the system of governance in this region. The accommodation of democratic values is considered to be the best solution for social conflict concerning the format of governance in this region.

Efforts are required to tackle and resolve social conflict concerning the future system of governance in this region and this must be conducted through the synchronisation of these Undang-undang, reconciliation and consensus, and by involving the community. These efforts must be conducted non-violently and in accordance with valid NKRI law, democratic values and human rights.

The reactivation of UU No. 45/99 through INPRES No. 1/2003 and the rapid strengthening of the Province of Irian Jaya Barat can be viewed as the materialisation of a political idea, wish and desire of a particular political and bureaucratic elite in the centre and in this region and as a result of a conflict of social-political interests concerning the development of this region.

The social conflict which has emerged, pro and contra the pemekaran of the province, substantially originates in bureaucratic ranks and in the political elite of the centre and this region. This condition has arisen because of various self-interested groups in this region. The majority of the Papua community, which has little or no understanding of socio-political issues in the region in general, has merely become the victims of the desires of several political elite groups.

UU No. 21/2001 is viewed as not having been implemented honestly and responsibly by the executive, the DPRD and components of Indonesian society. This UU is more inclined towards the Papua community, giving attentiveness to the culture of the Papua adat community, acknowledging and protecting the rights of the adat community and Human Rights in Papua, acknowledging the existence of indigenous Papuans from the Melanesian Race within the diversity of the ethnicities of Indonesia, and acknowledging the distinctive features of indigenous Papuan culture as enabling Papua Province to have a particular identity or symbol.

UU No. 21/2001 provides the space and position for increasing the prosperity of Papuans and this UU must be comprehensively socialised to the rural community because, at the moment, the majority do not understand contemporary political issues and they have developed an attitude of indifference or they feel that they do not have an interest. If this matter is not thoroughly attended to the community may, by itself, choose options outside of Otsus and the pemekaran policy.

## **Recommendations**

The Central Government needs to take immediate clear steps in connection with the validity of these two legal instruments. This is necessary in order to prevent the occurrence of social conflict within the community and in order to provide a guarantee of legal certainty which is necessary for governmental administration and development in Papua Province.

There needs to develop several new formats, in cooperation with core societies involved in the conflict, within the framework of developing formats: pre-dialogue, reconciliation or negotiation; during the process of dialogue, reconciliation or negotiation; and post-dialogue, reconciliation or negotiation.

Multi-party consideration and agreement is required to develop a new format for the system of governance in this region by the synchronisation of UU No. 45/99 and UU No. 21/2001. Implementation should be entrusted to a team which is trusted by the central government, the regional government and the community in this region.

An evaluation, using economic indicators, is required concerning the results which have already been achieved. The Government can cooperate with higher education institutions in Papua to produce a study evaluating the effect of Otsus.

A multi-disciplinary scientific study must be conducted, in order to investigate different social-cultural issues. This study must be objective and non-partisan as between community groups which are pro-Otsus or pro-pemekaran, and it should provide suggestions to relevant parties concerning future policy actions. Within this there should be conducted an analysis of social-cultural facts within the context of developing a format for handling social conflict, identifying the social-cultural map, and stipulating the format for peaceful dialogue, reconciliation or negotiation. In order to obtain good research results this task needs to be given to academic institutions and independent community groups which are trusted by the Papua community and have proved their capability in formulating the best policies for the region and the community.

It is about time that the standard of public management, within the Otsus corridor, is improved. The executive and legislature must abide by the spirit of the priority sectors stipulated in Otsus, such as education, health and community empowerment. Competing interests between the executive and legislature must end, because this affects the implementation of development programs in Papua. Furthermore, in arranging the RAPBD, submitted to the Renstrada, the priority sectors must be prominent. The spirit of 'good governance' which includes transparency, public accountability and value for money needs to be cultivated in the Land of Papua. In addition, an evaluation of the Otsus era needs to be conducted in order to discover whether Otsus has already made basic changes to the position of the Papua community.

Consideration is required concerning the 'Papuan Union' model (a coalition of new provinces) which would have a membership comprising of bureaucratic, legislative and adat leaders. This institution would essentially have the function of making policies concerning the sharing of revenue resources between Papua and the Central Government. This institution would also regulate the equitable and prudent use of 'Papuan Union' funds (cross-subsidies) so that income imbalances and economic disparities amongst the provinces could be reduced.

Research is required concerning the impact of the pemekaran, not merely from the economic perspective but also from the political, legal and social-cultural perspectives. This is reasonable so that all components of the community in the Land of Papua can accept this concept.

An objective and non-partisan multi-disciplinary scientific study is required in order to investigate different social-cultural issues and this will provide suggestions to relevant parties for deciding future development policies in this region.

A penetrating multi-disciplinary analysis and study of the social-cultural facts will: develop a format for handling social conflict; identify the pattern of attitudes and social affiliations; identify community polarisation; identify the format of social reconciliation desired by the community; and determine the cooperative format for dialogue concerning the future format of governance.

Academic institutions and independent community groups which are trusted by the Papua community and have proved their capability in formulating the best policies for the state, the region and the community must be actively involved in searching for the best solution to social conflict in the community concerning the future format of regional governance.

An analysis is required concerning the development of the new format of governance, together with core societies involved in the conflict, through a process or mechanism such as: (a) pre-dialogue, reconciliation and negotiation; (b) the process of dialogue, reconciliation and negotiation, and (c) post-dialogue, reconciliation and negotiation.

A scientific analysis and multiparty agreement is required in order to develop a new format for the future system of governance in this region which synchronises UU No. 45/99 and UU No. 21/2001. Implementation must be entrusted to a team which is trusted by the central government, the regional government and the community in this region.