BASIC ELEMENTS

OF THE

SPECIAL AUTONOMY LAW FOR PAPUA

A CONTRIBUTION TO THE DISCUSSION

AT

CONFERENCE ON SPECIAL AUTONOMY FOR PAPUA / INDONESIA

"AUTONOMY FOR PAPUA – OPPORTUNITY OR ILLUSION?"

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1. THE ORIGINAL IDEA

It might be useful to recall that the offer of 'autonomy' had been made by the central government since the very beginning of increasing protests by the Papuan community in 1998. It was offered by the government to counter the people's demand for freedom and independence. A similar offer has been addressed to the Aceh Regency, another regency in the Indonesian Republic which is looked at as a problem-area.

The offer to the Papua Regency was
[1] created on the officially urged opinion in governmental circles that problems in Papua were mainly problems originating from the failure of development policy in the region,
[2] inspired by the – in the government's view – indisputable fact that Papua is and always will be a part of the Indonesian Republic, and
[3] based on the fact that autonomy would be granted anyway, as part of a nation-wide program to give more authority to the regional administration.

2. RESPONDING TO BASIC ASPIRATIONS

Everyone involved in the process of articulating the 'special autonomy' concept became aware of the fact that it had to respond to the aspirations voiced over the last years, if it was to have a chance at being accepted by the Papuan community. The commission worked from one draft to another and ended with a concept that breathed fresh hope and perspective. Some features especially related to the struggle of the Papuan community over the last two years were found in a number of substantial paragraphs in the final draft, such as:

- Respect for local socio-cultural expressions, including the freedom to fly the Papuan flag, and sing the community's 'national' anthem (Ch. II and XI) [1]
- An effective say in political decisions, ie in relation to migration and the deployment of security forces (Ch. IV)
- Representation of local traditional leadership in the administration (Ch. V)
- Obtaining a major share of the profit from the exploitation of natural resources (Ch. X)
- An opening to a political dialogue on the past ('rectification of history') (Ch. XII, Art. 43)
- Attention for justice to be done and human rights violations to be halted (Ch. XII)

3. CONTENTS RELATED TO THE MENTIONED MAIN ASPECTS

[3.1.] Respect for local socio-cultural expressions, including the freedom to fly the Papuan flag, and sing the community's 'national' anthem.

The original draft stresses that the Papuan culture is rooted in the Melanesian pattern of culture and therefore differs from most of the cultural identities in Indonesia. The Preface (art. e) [2] of the final document stresses that the Papuan people are a part of the indigenous peoples

[1] The mentioned references refer to the official conceptual document, which has been handed to the House of Representatives of the Indonesian Republic (DPR-RI) to be considered and decided on. The document is titled: "Rancangan Undang-Undang Republik Indonesia, tentang Otonomi Khusus bagi Propinsi Papua".

[2] The mentioned references here refer to the final approved version UU RI No. 21 Tahun 2001.

in Indonesia, while admitting that there is difference of culture, language, tradition and history.

In the Preface of the final document an article (art. k) has been added which reads as follows: "taken into account the situation and condition of the Irian Jaya Regency, especially the aspirations of its people to get the name Irian Jaya changed into Papua as expressed in the decision by the Papuan DPRD, no. 7?DPRD//200 dd. 16 Agustus 2000."

In Ch. II attention is given to "local symbols" such as the place of 'an own flag', 'an own anthem' and 'logo' (Mambruk bird [Crested pigeon] instead of Garuda bird); while the original draft qualifies these elements as "expressions of identity of the Papuan people", the final document values them as "cultural symbols" and explicitly refuses them as "symbols of independence".

[3.2.] An effective say in political decisions in he region.

The final document excludes more fields from regional authorities than the original draft; the additional excluded field is Religion (IV, art. 4).

Quite an important means of participation is opened up by granting the opportunity to citizens of the Papuan rengency to set up a political party (VII, art. 28).

Where the original draft provides for a "participating role by regional Parliament and Government" in decisions about the deployment of security forces, the final document only deals with 'police forces' and reduces this role to a "coordinating function of the Governor" with the central government (XIII, art. 48,).

Within the demographic policy it is demanded in the original draft to stop completely any transmigration program; in the final document transmigration is still agreed on, be it only with the approval by the Governor (XVIII, art. 61).

In relation to the formation of new administrative 'regencies' in the regency, the final document stresses that this restructuring can only be done with approval by the Papua House of Representatives (DPRP) as well as by the "Senate" MRP (XXIV, art. 76).

The document deals in clear terms with the need for social control. While the original draft deals with it in very general terms, the final document adds a special Article (XXI, art. 68) is inserted dealing with the right of the central government to 'supervise' any decisions, regulations, etc settled for on the regional level. Even the use of repression is granted to the central government within this context (Art. 68.2). Especially the use of the word 'repressive' in this final document suggests far-reaching authority (including the right to overrule?) for the central government.

[3.3.] Representation of local traditional leadership in the administration.

A rather very new element in the administrative set-up of the regency is the possibility to form the *Majelis Rakyat Papua* (MRP), a kind of a Senate. In the document the position of the MRP is not treated with under the Legislative or Executive part of the Administration but has been given an own position (V, art. 19 –25). Although the original draft positions the MRP (whose members consist of traditional leaders and representatives of various indigenous interest groups) as a *part of the legislative body*, the final document limits the legislative body to the DPRP (Papua House of Representatives). Based on this principal allocation of position, a lot of changes are made in relation to the original draft, which at the end might be summed

up in the difference between a 'decision making' position (DPRP) and a 'consultation' position (MRP). Nevertheless the MRP is given the authority to "agree or refuse" decisions by the DPRP (Art. 20). So, the real MRP position isn't that clear. But it should be noted that the concept of a Parliament consisting of two 'houses', which is launched in the original draft, is not found anymore in the final document.

In the document a role for a "Pengadilan Adat" (Traditional Court) is recognised (XIV). The functioning of the traditional court is sanctioned, but can be overruled by the "Pengadilan Negeri" (National Court) in the event that one of the conflicting parties opts for a revised process at the national court.

[3.4.] Obtaining a major share of the profit from the exploitation of natural resources

In the original draft the revenues from natural resources were just claimed without specification; the final document details the revenues: 80% from forestry, 80% from fisheries, 80% from mining in general (including Freeport mining), while 70% from oil exploration and 70% from gas exploration. After 25 years the revenues from oil- and gas exploration will be lowered to 50% (IX, art. 34). The 80% / 70% amentioned above have to be spent partly (minimum 30%) on education, and partly (minimum 15%) on health care (IX, art. 36).

In the original draft it is demanded that the processing of raw materials should be completely done in Papua; in the final document this claim has been weakened by making processing dependent on principles of a sound, efficient and competitive economy (X, art. 39).

[3.5.] An opening to a political dialogue on the past ('rectification of history')

An article in the draft version which relates to the work of the Commission for Rectification of History, which reads: "If the results of the (Commission for) rectification of history show that the process of integration of Papua into the Unitary State of the Indonesian Republic in the past doesn't accord with International Law in relation to the people's right of self-determination, the central government and the Papua people, via its parliament, will take steps towards a solution" is completely omitted in the final document. Instead the final document, a "Commission for Truth and Reconciliation" is agreed on, to be set up by the central government after consultation with the Papua Governor (XII, 46). [In the original draft, a "Commission for rectification of Papua's history" was suggetsed to be under the complete authority of the Papua government]. Besides being under different authority, the formulation (in the final document) of the Commission's main task is "(1) to provide clarification of Papua's history in order to strengthen the people's unity in the State of the Indonesian Republic, and (2) to formulate and decide on steps towards reconciliation". In the original draft the task of the "Commission for rectification of Papua's history" is not explicitly formulated, but the need for the commission is put within the context of "reaching final and comprehensive solutions related to the difference of opinion on the history of integration of Papua into the Republic of Indonesia".

[3.6.] Attention for justice to be done and human rights violations to be halted

The document recognises the traditional rights, such as those related to land, and any use of the land has to be based on mutual agreement (XI, art. 43). The document stipulates as well that adat-land (traditional owned land) which already has been handed over to other parties while respecting the regulations of the law should disputed anymore. Herewith it counters the more radical tune of the original draft document, which claims recognition of almost absolute traditional rights on land and water with all its richness.

The document urges the formation of a special Commission for Human Rights (XII, art. 45). The difference is found in the official status (hence independent authority) they are willing to provide. In the original draft a purely Papua-based and organised Commission is demanded, while in the final document a *branch*-Committee under the official National Commission for Human Rights is agreed on. In the final document the Commission is meant to be set up by the central government, and not by the Papua government (as was suggested in the original draft).

4. AN OVERVIEW : SOME SUMMARIZING CONCLUSIONS

Overviewing the contents odf the Special Autonomy Law we might conclude:

First of all it becomes clear that in the document the basic assumption is that Papua is and always will be an integral part of the Indonesian Republic. The final document leaves no doubt as to that matter.

Secondly, in line with this basic assumption, the demand for open research into the history of Papua is virtually made impossible; the nomination (by Jakarta) of a "Commission for Truth and Reconciliation" (CTR) doesn't serve properly the need for an open-ended political dialogue. It might even be concluded that setting up a CTR as viewed by the government is not really meant to open up the truth, but mainly meant to strengthen the national unity. Herewith the CTR loses its original principal contents and purpose.

Thirdly, a similar remark relates to another important element: the Human Rights Commission. Also this one is mainly put under the central government's control.

Fourth, the real position of the MRP ('House of Lords') is kept very ambiguous, and the impression is given that it will end up being more a part of 'window-dressing' rather than of a 'decision-making body'.

Fifth, the display of 'local symbols' is restricted to expressing 'cultural identity' only. This will trigger heavy discussion in the future, and leaves the possibility open for the security forces to act when *they* value that the symbols are used otherwise. The restriction to 'expression of cultural identity' effectively makes a spontaneous display of local symbols a very risky matter.

Sixth, the supervising role of the central government is quite ambiguous as the use of 'repression' is granted within this context.

Seventh to implement the "special autonomy law" a great deal of work must be done to translate the 'principles' into concrete regulations (regional laws). Within this process a lot can change or move away from what is originally opted for. The need for an extensive as well as intensive social control is very real to prevent a situation whereby in the end the regulations just serve certain interest-groups.

Although not responding to all the aspirations of the Papuan people the Special Autonomy Law still leaves ample room for a new role for the Papua people in future socio-political decisions, ***on condition*** that the new law is implemented properly. It might help substantially to improve matters such as education, health care, local

economy; it might help also to realise a better and more visible respect for local traditions, and for all the daily display of respect for the dignity of the Papua people. It might help to improve the situation of respect for human rights and to lead perpetrators to court. But as to the need for justice to be done it should be noted that the Judiciary Body as agreed in the final document leaves a lot of doubts as to its effectiveness.

So, the least that can be said is the fact that the Special Autonomy bill, if implemented correctly, will create new room for 'freedom' in relation to well-being (economics; education; health; local needs) and in relation to human rights (participation; respect for people's identity; traditional rights; local aspirations).

The Special Autonomy bill offers little room towards an open-ended political dialogue, and therefore fails to address one of the three main components of "the call for political freedom".