



# **Resource Management in Asia-Pacific**

**Working Paper No. 36:**

**Protection and Empowerment of the Rights of  
Indigenous People of Papua (Irian Jaya)  
Over Natural Resources  
Under Special Autonomy:**

**From legal opportunities to the challenge of implementation**

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# **Resource Management in Asia-Pacific**

## **Working Papers**

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# **Protection and Empowerment of the Rights of Indigenous People of Papua (Irian Jaya) Over Natural Resources Under Special Autonomy:**

## **From legal opportunities to the challenge of implementation**

### **Abstract**

The rights of indigenous peoples of Papua province over natural resources have been systematically denied since Papua became a part of the Republic of Indonesia. In this paper I discuss how an attempt has been made to correct this situation through the introduction of Special Autonomy status for the province. Firstly, I will provide a general review of the exploitation of key natural resources in Papua. Special emphasis is given to the corrupt implementation of Article No. 33 of the Indonesian Constitution, which has been used by the Indonesian Government to disregard the rights of the indigenous peoples over resources – not only in Papua, but also in many other parts of Indonesia. Secondly, I explain how the Law of Special Autonomy of Papua can protect and empower the rights of the indigenous peoples. Finally, I will analyse the factors which will enable indigenous peoples to effectively exercise their rights.

### **Introduction**

The persistent socio-political problems in the Province of Papua (formerly Irian Jaya) under the Indonesian regime cannot be separated from the fact that the rights of its indigenous peoples over natural resources have been systematically denied. Coupled with other problems such as violation of human rights; different perceptions of the history of integration of Papua into Indonesia; and unequal distribution of wealth, the demand for independence from Indonesia seemed the only possible solution for Papua.

Between 29 May and 23 June 2000, the peaceful separatist movement in Papua reached its peak when the Second Papua Congress<sup>1</sup> was held in Port Numbay (the increasingly popular name of Jayapura, the capital city of Papua). Organized by Presidium Dewan Papua (the Presidium of Papuan Council, or PDP) and funded mostly by then President Abdurrahman Wahid, this Congress was attended by approximately 20,000 Papuan delegates from all over Papua, Indonesia and overseas. On the final day of the conference, the Congress unequivocally restated the demand of the people for an independent state. The previous days were used to discuss critical issues faced by the people of Papua in four different commissions. One of these was the Commission of Fundamental Rights of the People of Papua. Part of its statement was read as follows:

The Papua nation lives in rich natural resources, but its people are suffering from poverty. Forest and sea are the centres of the Papuan livelihood. Therefore, to reinstate the Political Fundamental Rights of the people of Papua through economic effort, ... [we] recommend ... an economic system which can be used as a tool ... to mobilise the strength of the people to enter an Independent Papua ... [under the leadership] of the Presidium of Papuan

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<sup>1</sup> According to Agus Alua, the Chairman of the 2<sup>nd</sup> Papuan Congress, the 1<sup>st</sup> Papuan Congress was held in 1961 when West Papua (Papua Barat) was adopted as the name of the country; O, Papua My Land (Oh Tanahku Papua) was adopted as the anthem; and Morning Star as the national flag (Tebay, 2000). See also Chauvel (2000), PaVo (2000), and PaVo (2001) for more information on the issue.

Council and the Institute of Customary Consultation ... [by] taking over and [be in charge of] the [richness of our] nature through consultation with the companies which ... [exploit our resources] ... such as mining, logging and fishery ..." (*translation mine*)<sup>2</sup>.

There are a couple of important issues which could be derived from the above statement. Firstly, the demand to gain independence not only means political separation from Indonesia but also means control over the exploitation of their resources, and the right to be the masters of their own affairs. Secondly, the control over resources should not be delayed until political independence is achieved, but rather should be seized soon. Thirdly, the people were willing to collaborate with the investors in such a way that their customary rights over resources were not abused, but were respected.

It is well known that Jakarta responded negatively to the demand for independence. An invitation from the PDP to Indonesian authority to discuss unresolved differences regarding Papuan history fell on deaf ears. Jakarta considers that the political status of Papua in Indonesia has been finalized<sup>3</sup>, and the international community support the position of respecting the territorial integrity of Indonesia. Moreover, those who were considered responsible for this peaceful movement was intimidated and accused of treason. It has been claimed that since late 2000, extra-judicial killings had reached 136, and arbitrary detentions had risen to 838, as a result of increased repression and human rights violations (Organisasi Papua Merdeka and Presidium Dewan Papua, 2002).

What options are left for the indigenous peoples of Papua to exercise their rights in their own land? Will this rejection create more frustration which could manifest itself in some sort of fatalism<sup>4</sup>, or in the escalation of violent protest<sup>5</sup>? Indeed, many Papuans considered this issue critical. For instance, after the Congress, the consortium of the Papua based non-government organizations (NGOs) (*Foker LSM*) proceeded to develop a draft of the Special Autonomy Bill. Papua, in their concept, should be termed a special authority region (*Wilayah Otorita Khusus*) with various special/extraordinary characteristics compared with other Indonesian provinces. August Rumansara, one of the key NGO activists in Papua, made the following statement: 'We have to find an alternative, especially if the demand for independence, as was stated in the Congress' declaration, met dead-lock, because at the end of the day it will be the common people who will suffer'<sup>6</sup>.

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<sup>2</sup>The complete documents of the 2<sup>nd</sup> Congress of Papua have not yet been officially published by the Presidium of Papuan Council. However, for the Congress Resolution, visit <http://westpapuaaction.buz.org/CONGRESS-RESOLUTION-4-6-2000.htm>

<sup>3</sup>The position of the Indonesian government is best summed up in the following quotation (Department of Foreign Affairs of the Republic of Indonesia, 2001): "... Upon the adoption of UN General Assembly Resolution 2504 (XXIV), the act of free choice by way of deliberation, not 'one man one vote', was accepted by the international community. From that point on, the international community recognized, *de jure* and *de facto*, that the region of Irian Jaya was an integral part of the Unitary State of Indonesia. This international recognition could not be annulled or revoked, for not one country in the world could challenge the legitimacy of the territory of Irian Jaya as part of the Unitary State of the Republic of Indonesia. The principle of integrity and sovereignty of any state is one of the main principles embodied in the United Nations Charter. Consequently, any separatist movement would be rejected by the international community, as it violated the principles and objectives of the United Nations".

<sup>4</sup>It is interesting to observe a different type of fatalism which occurs among the "... skeptical observers" (Böge, 2001 p.2) for many parts of Melanesia, Papua included, which basically reflects in their attitudes that conflicts will always become part of the political dynamics of the South Pacific island states. Böge (200 p.2) further states that "... we should not give way to fatalism and determinism; ... [even though] these countries have enormous potential for conflict, this does not necessarily mean that violent conflicts will flare up".

<sup>5</sup>The most common method used by the customary owners of the forest resources to make themselves heard and taken seriously was by conducting *pemalangan* (literally means "putting a crossbar"), that is: to halt the activity of the company by seizing equipment, blocking the road, etc. Still this should be considered as the most peaceful mechanism of protest, as there were also instances where certain companies representatives were held hostages, for instance the hostage crisis led by Willem Onde against Korindo Group in Merauke (Uchida, 2001). Some of those protests could be solved without significantly delaying the production, but there were other cases of permanent shut down due to the people's protest.

<sup>6</sup>Pers.com. January 2002.

This paper will explore the following issues. Firstly, I will provide a general review of the situation related to the exploitation of key natural resources in Papua, namely land; forest; mining; oil and gas, and their affects on the rights of the indigenous peoples. I will highlight the corrupt implementation of Article No. 33 of the Indonesian Constitution which has been used by the Indonesian Government to disregard the rights of the indigenous peoples over resources – not only in Papua, but also in many other parts of Indonesia. Secondly, I will explain how the Law of Special Autonomy of Papua can protect and empower the rights of the indigenous peoples, and finally I will analyse how those rights can be effectively implemented.

### **Corrupt Implementation of Article 33 of the Indonesian Constitution**

From a legal standpoint, what has been the main source of injustice for indigenous peoples of Papua with regard to the exploitation of their natural resources? Tragically, it has been Article 33 of the Indonesian Constitution<sup>7</sup>, especially clauses 2 and 3, which read as follows:

Clause 2: “Branches of the production which are important for the state and which affect the life of most of the people shall be controlled by the state”.

Clause 3: “Land and water, and the natural resources found therein, shall be controlled by the state and shall be exploited for the maximum benefit of the people”.

One can easily deduce the likely impact of these clauses for indigenous Papuans when the terms ‘state’ and ‘maximum benefit of the people’ are defined by a corrupt regime<sup>8</sup>. Papuans, are a minority group, and have been last to receive the benefits of the exploitation of natural resources – even though those resources are found in their own land. As their population is much smaller than the Indonesian population in general, their political influence is almost non-existent, and since they are considered to be backward and undeveloped, the State considers it has every reason to exploit those resources without having any compulsion to consult Papuans. It was no surprise when Mubyarto (2000) found that Papua was ranked only above West Kalimantan in terms of poverty levels by province in Indonesia, even though Papua has been popularly recognised as one of the main contributors to the Indonesian economy through the exploitation of its rich natural resources (besides East Kalimantan, Aceh and Riau provinces).

Clauses 2 and 3 of Article 33 of the Indonesian Constitution have manifested themselves in various Indonesian laws, which unsurprisingly, also give little consideration of minority groups such as the indigenous peoples of Papua. Some of these are Law No. 5 of the year 1960 on the Principles of Agrarian Matters<sup>9</sup>; Law No. 11 of the year 1967 on the Principles of Mining<sup>10</sup>; Law No. 9 of the year 1985<sup>11</sup>; Law No. 15 of the year 1997 on the subject of Transmigration<sup>12</sup>; Law No. 41 of the year 1999 on Forestry<sup>13</sup>; and Law No. 22 of the year 2001 on Oil and Gas<sup>14</sup>. With the exception of laws which were passed after the *reformasi* era, none of the above mentioned laws consider the customary/traditional rights of the indigenous peoples over natural resources.

<sup>7</sup> Available on the internet at [http://www.undang-undangindonesia.com/index\\_uud45.htm](http://www.undang-undangindonesia.com/index_uud45.htm)

<sup>8</sup> According to Heroepoetri and Hafild (1999), the socialism principle of these clauses have been manipulated by the government through the transfer of the state’s control over natural resources to the major business sectors (state-owned as well as private-owned companies) without consulting the people. They claimed that in 1999, there were 579 logging concessionaires involved in the exploitation of Indonesian forest, but those companies were owned by only 25 individuals. In short, they sarcastically named the corrupt implementation of the Article 33 of Indonesian Constitution as “... *pengusaha untung, rakyat buntung* ...” (capitalist profits, people are amputated),

<sup>9</sup> Available on the internet at [http://www.undang-undangindonesia.com/uu\\_agraria/index\\_agraria.htm](http://www.undang-undangindonesia.com/uu_agraria/index_agraria.htm)

<sup>10</sup> Available on the internet at [http://www.miningindo.com/laws\\_regulations/details\\_rules\\_11\\_67.html](http://www.miningindo.com/laws_regulations/details_rules_11_67.html)

<sup>11</sup> Available on the internet at <http://www.theceli.com/dokumen/produk/1985/9-1985.htm>

<sup>12</sup> Available on the internet at [http://www.undang-undangindonesia.com/index\\_ketransmigrasian.htm](http://www.undang-undangindonesia.com/index_ketransmigrasian.htm)

<sup>13</sup> Available on the internet at [http://www.undang-undangindonesia.com/uu\\_kehutanan1/](http://www.undang-undangindonesia.com/uu_kehutanan1/)

<sup>14</sup> Available on the internet at <http://www.beacukai.go.id/Indonesia/Peraturan/UU/22-UU-2001.pdf>

## Transmigration<sup>15</sup>

It is estimated that a total of 75,200 families<sup>16</sup> of transmigrants have been moved to Papua since this program was implemented in the 1960s by the Sukarno regime, which then reached its peak under Suharto's New Order Government which lasted more than 30 years. As the index of land acquirement for the transmigrants who have come to Papua to be involved in the production of food crops is approximately 2.15 per family head<sup>17</sup>, it could be estimated that more than 160,000 hectares of good quality forest belonging to indigenous peoples has been taken for this program. This huge area of land, if combined, is as large as half of the territory of Biak Numfor District, or more than three times the total harvested area of sweet potato in the entire Papuan Province in 2000.

Transmigration in Indonesia, including Papua, has occurred on a massive scale and has attracted heavy criticism. Firstly, transmigration is conducted without respecting and compensating the rights of indigenous peoples over their customary land. Since transmigration is of national interest, the natives of the land have no choice but to surrender, with very little compensation, if an area of land is considered an appropriate transmigration site (Aditjondro, 1985). As a result, transmigration programs were seen as one of the prime reasons for a massive exodus of Papuans to Papua New Guinea in the 1980s (Colchester, 1986). Secondly, transmigration is accused of being a form of Javanisation or colonization of the outer islands. There are researchers who have claimed that the cultures of the indigenous communities in Papua have been diluted by the placement of Javanese transmigrants in their area (Assman, 1990).

Thirdly, it is evident that transmigration causes environmental deterioration. The development of transmigration areas always involves clear felling of the forest area on a massive scale using heavy machinery. Coupled with the fact that flat areas were increasingly unavailable in Papua, the magnitude of environmental devastation caused by transmigration is significant. Finally, transmigration creates social jealousy among the local people and is clearly a type of injustice imposed by the Central Government. The World Bank has calculated that the resettlement cost for each family of transmigrants is US \$7,000 – almost all of which is funded as a loan from international donor institutions. As far as I know, there has never been a single socio-economic project managed by the Central Government directly aimed at the betterment of the people of Papua which spends that much per family. It was not a surprise when a Hatam headman in Minyambou village cynically asked me, 'Is it only when the Javanese people will come to our village that the government will build road to the city?' (personal communication, Hatam headman, February 1993).

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<sup>15</sup> The transmigration program in Indonesia is based on the assumption that there is an unequal distribution of population across its islands. It was initiated by the Dutch colonial government under the so called colonisation policy aimed at establishing "... `colonies' of settlers from Java in other islands" (Hardjono, 1977, p.16). Armida and Wismoyo (1982) claimed that the colonisation conducted to relieve the population pressure in Java, as well as to provide cheap labor for already established plantation-estates owned by foreign companies in Sumatra. Under the Indonesian Law No. 15 of the year 1997, transmigration is defined as a voluntary movement of population to improve their well-being and to settle at the transmigration development area of transmigration settlement area.

<sup>16</sup> By the end of 1998, there had been 44,166 families of transmigrants in Papua (source: Data at Kantor Departemen Transmigrasi Irian Jaya, 1988). As per the official report of Department of Public Works (available at [www.pu.go.id/publik/kanwil/irja/82isi.htm](http://www.pu.go.id/publik/kanwil/irja/82isi.htm)), by the end of fiscal year 1994/1995, there were already 58,437 families distributed in 163 settlements. The latest statistics shows that in the fiscal years of 1998/99 and 1999/2000 combined, there were additional 4,251 families of transmigrants arrived in Papua (Kantor Statistik Provinsi Irian Jaya, 2001). Assuming that there were at least 2,500 families of transmigrants being migrated between 1994/1995 and 1999/2000, it can be estimated that at least a total of 75,200 families have been migrated to Papua under the government sponsored transmigration program.

<sup>17</sup> In 1991 and 1992 I conducted a series of field works in the transmigration sites in Manokwari District, Papua, and learned that for 300 families involved in the food-crops type of transmigration program, at least 740 of forest land have to be cleared (Sumule, 1994).

## Forestry<sup>18</sup>

Perhaps the resolution made by the Papuan customary communities in a workshop on Revisiting the Forestry Management Policy in Irian Jaya, 17 to 18 February 2001 in Jayapura, provides the best summary of their situation with regard to the on-going exploitation of Papuan forestry resources:

Forest resources [in Papua] can only be managed in a sustainable manner if it is given back to the customary community. We would act as the main player ..., while the government, tertiary education and non-government organizations facilitate us to develop our capacities to manage the resource properly. ... We are opened for collaboration with honest and responsible business community<sup>19</sup>.

I find this resolution very interesting, as it contains at least four items of importance. Firstly, the customary community in Papua has clearly not properly benefited from the forest management during the 37 years of centralised administration by the Indonesian regimes. Secondly, from the Papuan customary community's point of view, the involvement of outsiders, including the conservation agencies<sup>20</sup>, has apparently not produced any convincing evidence that sustainability is the underpinning principle adopted by non-indigenous parties in managing forest resources. Thirdly, the marginalised position of the indigenous peoples must be changed totally into a situation where they become the masters of their own resources. Finally, while acknowledging the need to cooperate with outsiders, which at the same time reveals a subtle recognition of their limitation to manage the resources by themselves, the Papuan customary community insists that any type of future cooperation should enable them to enjoy as much benefit as possible.

The contribution of the Papuan forestry sector to the economy of Indonesia and the Papuan Province is indeed very significant, even though the productivity of the logging industry tended to decrease at the beginning of the *reformasi* (Table 1). The Indonesian Association of Forest Concessionaires (*Asosiasi Pengusaha Hutan Indonesia – APHI*) in its press release dated 2 March 2000 claimed that for the last five years, the contribution of the Papuan logging industry, through the payment of various taxes and non-taxes, was as much as Rp 553,363,136,849.92, or approximately 0.5 trillion rupiah per year. Of that figure, approximately 45 percent was distributed by the Central Government to the treasury of the Government of Papua Province<sup>21</sup>. However, as the socio-economic situation of the indigenous population inside and around the forest concession areas is one of the lowest in Papua, it can easily be concluded that the significant financial contribution of the logging industry has very little impact on their lives<sup>22</sup>.

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<sup>18</sup> Some of the information presented in this section has already been presented in an International Workshop on Sustainable Forestry Management in June, 2001, Bali, Indonesia, organized by Crawford Fund. The title of the paper was Toward a Sustainable Forest Management with Significant Participation of the Customary Communities in Papua (Irian Jaya), Indonesia: Some Critical Issues To Be Considered in the Decentralization Era. It is my understanding the organizer will publish the above mentioned paper on the workshop's proceedings.

<sup>19</sup> The full text of the resolution in the Indonesian language is available on the internet. Visit: [http://www.mofrinet.cbn.net.id/informasi/intag/rum\\_lokakarya\\_irja.htm](http://www.mofrinet.cbn.net.id/informasi/intag/rum_lokakarya_irja.htm)

<sup>20</sup> In the year 2000 I conducted an evaluative research for WWF in Papua (Sumule, 2000). Surprisingly, the criticism of certain groups of indigenous people, especially those who were living inside the protected areas, against the activities of a specific conservation organization was very strong. They claimed that the conservation activities introduced to them did not bring economic benefits as expected by the people, but rather for the benefits of that organization. Since this is an internal report, it is not published. However, the report might be accessed at the office of WWF Sahul Bioregion in Jayapura, Papua.

<sup>21</sup> However, the figure presented by APHI was significantly below what was supposed to be paid to the government. The 2000 yearly report of the Regional Office of Department of Forestry of the Irian Jaya Province stated that in the last five years, the total log production by APHI members in Papua was 7,990,013.66m<sup>3</sup>. APHI reported that their production in the same period of time was 5,418,573.79 m<sup>3</sup>, or less 2,571,439.87m<sup>3</sup>. If the average payment to the state per m<sup>3</sup> of log, as used by APHI in their calculation, was Rp 102,123.39, that means the potential loss of the state's income from logging industry in Papua was as much as Rp 262,604,162,613.86, or more than a half of the amount paid by APHI.

<sup>22</sup> For instance, see the letter sent by the Asmat customary community at Sawa Erma to the Governor of Papua dated 20 June 1998, demanding protection from the intimidation conducted by the security apparatus because the community

**Table 1.** Logging production in Papua Province, 1997/1998 -- 1999/2000.

Group of companies	1997/1998 (m <sup>3</sup> )		1998/1999 (m <sup>3</sup> )		1999/2000 (m <sup>3</sup> )	
	Target	Actual	Target	Actual	Target	Actual
Kayu Lapis Indonesia	707,257	407,958	582,024	247,516	560,388	134,843
Djayanti	526,546	345,981	421,994	224,998	395,215	70,247
Barito Pacific Timber	167,583	38,237	212,069	45,164	153,627	36,496
Alas Kusuma	321,239	214,272	340,779	98,524	404,068	53,666
Korindo	400,837	323,744	446,025	254,027	442,187	136,024
Wapoga Mutiara Timber	378,270	204,973	432,500	113,805	443,050	57,584
Hanurata	192,238	93,530	137,136	73,158	16,774	61,105
Other group	875,809	493,192	990,583	449,559	862,552	212,357
<b>Total</b>	<b>3,569,779</b>	<b>2,121,887</b>	<b>3,563,110</b>	<b>1,506,751</b>	<b>3,277,861</b>	<b>762,322</b>

## Mining

Perhaps the most reported violations of human rights by extractive industries in Papua have been associated with the copper and gold mining activities of PT Freeport Indonesia – a subsidiary of the US based company Freeport MacMoRan<sup>23</sup>. The Central Government considers this to be one of the most strategic industries in Indonesia, and has deployed more than 1,000 military and police troops to protect this world class mine (Davies, 2001). As a result, a number of local people, who were seen as a threat to the existence of this foreign investment, have been killed and tortured. Unsurprisingly, the armed wing of the Organisasi Papua Merdeka (The Free Papua Organisation) is also relatively active near the Freeport area.

Another source of trouble is the management of Freeport's tailings. Approximately 300,000 tons of fine-solid materials were dumped daily into the Aghawaghon-Aijkwa river system. In the lowlands an enormous deposition area of tailings has formed, destroying at least 130 km<sup>2</sup> of tropical forest, including sago forest. This is the source of food for the Kamoros, the natives of the lowland Mimika District. This deposition area has taken a significant part of the customary land of Koperapoka sub-clans of Kamoro tribes. It was only in 1996<sup>24</sup>, after a series of protests made by the Koperapoka people and outside criticism, that Freeport introduced a Recognition Program which includes the identification of new settlement areas for the Koperapoka people.

It has been emphasised that Freeport's role in the Indonesian economy is very significant – a national-strategic industry, which must be protected at all costs. However, one should not be surprised that, as is the case with every type of extractive industry in Papua, Freeport's contribution to the Papuan economy is significantly lower than its contribution to the Central Government's economy (Table 2).

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opposed the plan of Jayanti company to construct fish canning industry in their customary land, available at <http://members.tripod.com/~telapak/call2.htm>

<sup>23</sup> One of the such reports is Project Underground. (1988). See also Ballard (1991). On the other hand, a Fast Fact of Freeport on Human Rights states as follows (Freeport-McMoRan Copper&Gold Inc, 2002): "... PT Freeport Indonesia has taken a clear position in support of human rights for all people and has gone on record condemning violations of human rights in the province of Papua. The Company in 1999 adopted a Social and Human Rights Policy and communicated the policy to employees. The policy requires human rights education for all employees as well as reporting of any human rights incident to human rights officers. It provides that employees must certify annually that they have neither participated in nor are aware of any human rights violation".

<sup>24</sup>Freeport's products, in form of copper-gold concentrate, was shipped for the first time in 1971.

**Table 2.** Revenue of the Provincial Government of Irian Jaya (Papua) from Freeport in 1997 (the highest income of Freeport in the last 10 years).

Type of revenue	US \$000,000
Royalty	25.26
Dead rent	0.21
Land and Building Tax	2.07
C type of Mineral and Water	0.50
Vehicles tax	0.14
Foreign Employees Tax	0.004
<b>Total</b>	<b>28.17</b>
Compared with the Provincial Original Income ( <i>Pendapatan Asli Daerah</i> ) of US \$9,093.18	63%
Compared with the Central Government Revenue obtained from Freeport operation of US \$237 million (dividend, royalty, and various taxes)	11.89%

In addition, as only 16 percent of the total Freeport workforce and its supporting companies are Papuans, the salaries and other benefits paid to the employees have a relatively small impact on the development of local economies. This situation is echoed with regard to Freeport's impact on agricultural development in the area. If we assume that there are 13,000 employees of Freeport and its supporting companies which must be fed three times a day, and the cost per meal per head is Rp 30,000, the gross value of this industry is more than 1 billion rupiah every day. This revenue is enjoyed solely by PT Pangansari Utama Food Industry, which is one of the biggest food catering businesses in the world. However, as most of the required foods have to be imported from outside Papua (even though local purchasing is attempted), the impact of this catering industry on the local economy is also insignificant.

### Oil and gas

The history of oil exploitation in Papua can be traced back to the 1930s when the Nederlandse Nieuw Guinea Petroleum Maatschappij (NNGPM) started exploration in the Bird Head area of Papua in 1935, and commenced oil production in 1948. Since the transfer of administration from the Dutch to Indonesia in 1963, oil wells in the Sorong area have provided one of the main sources of income for Indonesia through its monopolistic company Pertamina. In the 1970s, Indonesia enjoyed an oil-boom which drove its economic growth, and the contribution of Papua's oil resources cannot be ignored.

To what extent has the development of this resource taken into account the customary rights of the Papuan indigenous peoples? Unlike the mining and forestry industries, it has to be recognised that the affects of the oil and gas industry on the indigenous peoples in Papua, has not been thoroughly researched. However, recent complaints from the local communities with regard to the exploration activities of Pertamina-ARCO (which was then amalgamated with BP) and BP's plan to develop one of the largest and richest natural gas reserves in Bintuni Bay give us some idea of the impact:

- In 2000 a public meeting was held in Manokwari, where Pertamina-ARCO introduced their plan to develop the gas industry. Decky Kawab<sup>25</sup>, one of the prominent leaders of the Bintuni community in Manokwari and Head of Economic Section of the Manokwari District, made this

<sup>25</sup> Decky Kawab is currently the Vice Regent (Wakil Bupati) of Manokwari District. He is one of the strong candidates to become the Bupati of Bintuni Bay, as the Bintuni Bay area will be developed into an autonomous District, separated from Manokwari, in the near future.

rather sarcastic remark to the Pertamina-ARCO officials present who promised to pay proper attention to the rights of the indigenous people in Bintuni Bay: “Oil [and gas] industry is not new to us. We are fed up with the lies of the oil companies’ people. No more promises, please. Just do what you must do for the people!”

- On 8 May 2002, the Manokwari NGO Alliance for Tangguh Advocacy issued a press release claiming that the Environmental Impact Analysis (EIA) of BP-Pertamina’s Tangguh LNG Project was inadequate for approval by the Indonesian Central Commission of Environmental Impact Assessment (AMDAL). The alliance claimed that no real participation involving the appropriate local communities had taken place. Moreover, it claimed that issues such as sago forest fires, the death of 48 children caused by earlier seismic operations, and compensation for land released for the project site must be resolved first (Jaringan Advokasi Tambang, 2002).

## **Opportunities for the Protection and Empowerment of the Rights of Papuan Indigenous Peoples Under Special Autonomy**

### **The process of drafting the Bill**

The Indonesian Law No. 21 of the year 2001, on the subject of The Special Autonomy for the Province of Papua, was based substantially on a draft Bill submitted by the Province of Papua. The Bill of Special Autonomy was developed in Papua by Papuans, which is significantly different to the practice of law development in Indonesia. In the case of almost every law in Indonesia, the Central Government has taken the leading role in drafting the Bill, before submission of the Bill to the National Parliament for deliberation.

The legal basis for the drafting of the Bill of Special Autonomy for Papua was Decree Number 4 of the People’s Consultative Assembly (*Majelis Permusyawaratan Rakyat* or MPR) of the year 1999 on the Basic Guidelines for the State Policy, and the Decree Number 4 of MPR of the year 2000 on the Policy Recommendation for the Execution of the Regional Autonomy. One of the key themes of the MPR’s Decree No.4 of the year 1999 was the policy to maintain the integration of Indonesia in the Provinces of Aceh, Irian Jaya and Maluku. In the case of Papua, it states that “... the nation’s integration shall be maintained under the umbrella of the Unitary State of the Republic of Indonesia by respecting equality and diversity in the social cultural life of Irian Jaya people by designating special autonomy regulated by the law ...”. It also stated that the human rights violation in Papua should be solved through “... a fair and dignified judicial process ...”.

The drafting of the Special Autonomy Bill in Papua was full of dynamics. On the one hand the wish of many indigenous Papuans was very clear - full political independence from Indonesia. On the other hand, such a demand has been totally rejected by the Indonesian Government in Jakarta, and this rejection has been supported by many other countries. The only option left was to initiate the drafting of the Bill from Papua and accommodate as much of ‘the essence of being a politically independent state’ in that Bill. Highlights of the process of drafting the Bill of Special Autonomy for Papua are outlined below<sup>26</sup>.

*Fourth week of December 2000.* Several prominent Papuan figures held a series of meetings to consider how to achieve a peaceful win-win solution within the legal and political framework of the Republic of Indonesia. They agreed that special autonomy, as promised in 1999, should be the vehicle to achieve that goal. Among them were the newly elected Governor Jaap Solossa; the then speaker of

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<sup>26</sup> Part of the information presented in this section have been published before (Sumule, 2001).

Papua's Provincial Parliament Nathaniel Kaiway (since deceased); the Rector of Cenderawasih University (Uncen) Frans Wospakrik; the Indonesian Junior Minister for the Acceleration of Development in East Indonesia, Manuel Kaisiepo; August Kafiar, and Rev Karel Phil Erari. Bas Suebu, a former Governor of Papua and currently the Indonesian Ambassador to Mexico, also took part. The university Rector was asked to form a team of Papuan intellectuals to start the process.

*First week of January 2001.* The Rector's team began collecting documentation from non-government, university, provincial government and Papuan Congress sources, about the possible contents of a law on Papuan special autonomy.

*Third week of January 2001.* In a speech broadcast on radio and local television, the Governor invited people to participate in discussing the contents of a special autonomy Bill to be put to the Central Government and the National Parliament. He assured people that they were free to discuss anything they considered important, and urged the security apparatus to respect the people's democratic rights. Jaap Solossa also announced that the team formed by the Rector of Uncen had prepared a document entitled 'The basic rights and responsibilities of the people of Papua', to inform initial discussions. He invited people to add, delete or even refuse the document, and to write down their suggestions for improvement. He also invited representatives from each district to come to Jayapura for a Study Forum to discuss the draft, adding that people should determine their own representatives.

*Fourth week of January 2001.* The Rector's team divided into small groups to visit all districts. Discussions were held with local government and non-government leaders, including the district-based panels of the Papuan Council. Not all discussions were 'trouble-free' - some people refused to discuss special autonomy and firmly restated their demand for independence. However, many of those who read the document realised the Provincial Government was serious about finding solutions, and many people visited the Rector's team and offered suggestions.

*First week of February to first of week of March 2001.* The team and a steering committee of Papuan intellectuals, including church representatives; academics; NGOs; government officials and provincial parliamentarians, started the legal drafting process. Eight drafts were produced consecutively. Inputs collected from visits to the districts were seriously taken into consideration.

*Second and third week of March 2001.* Some outside experts on autonomy were invited to provide input into the development of the draft Bill. Meetings were held with Papuan parliamentarians in Jakarta for the same purpose. This led to draft numbers 9, 10 and 11.

*28 and 29 March 2001.* The Study Forum on Special Autonomy for a New Papua was held in Jayapura, and organised by Uncen. It was attended by representatives from all districts, as well as some parliamentarians and Supreme Advisory Council members from Jakarta. Strong opposition from those who considered that special autonomy would compromise the people's demand for independence interrupted the opening session. Some participants who agreed with this view walked out, however a significant number remained, and the meeting continued. Before each discussion session, Bas Suebu explained the Bill, including the article about the need to resolve the question of the validity of Papua's integration into the Republic of Indonesia. On the second day, better attended, Bas Suebu repeated this explanation. Participants provided suggestions that were substantial.

*First week of April 2001.* Based on the inputs from the Forum, more drafts were produced.

*Second week of April 2001.* The Uncen Rector handed the final draft (14) to the Governor of Papua, who presented it to the Provincial Parliament. Parliament unanimously supported the draft.

16 April 2001. A delegation from the province of Papua, headed by the Governor and the Acting Speaker of the Provincial Parliament, handed the Bill to President Abdurrahman Wahid; Vice President Megawati Sukarnoputri; Parliamentary Speaker Akbar Tandjung, and Coordinating Minister for Political, Social and Security Affairs Bambang Yudhoyono. Each was asked to support the Bill.

The Parliament then established a Special Committee of the Bill of Special Autonomy for Papua (*Panitia Khusus – Pansus – RUU Papua*) on the 19<sup>th</sup> of July 2001. The Bill submitted from Papua was officially adopted to be discussed by the Pansus. On the 27<sup>th</sup> of July, the Pansus held its first meeting. The Assistantship Team (locally known as Tim Asistensi for the drafting of the Bill, formed by the Governor, and headed by the Rector of Uncen) was invited to explain the background, philosophy and content of the Bill of Special Autonomy drafted in Papua, even though an exhaustive explanation had been made during the lobbying with all factions in the Parliament during the period of 12<sup>th</sup> to 22<sup>nd</sup> of June. After the explanation, the Pansus decided that Tim Asistensi should be present at every meeting of Pansus as resource people. The Tim would be asked to provide clarification on any issues, if this was needed.

20 October 2001. The Bill was passed by the Central Parliament. The Minister for Interior Affairs welcomed the Bill and praised it as the most comprehensive solution for Papua. He also stated that this Bill could become a model for the settlement of other similar situations in the world.

21 November 2001. President Megawati Soekarnoputri enacted the Bill to become the Law of the Republic of Indonesia No. 21 on the subject of The Special Autonomy for the Province of Papua. On the 1 January 2002, it was formally implemented in Papua.

## **Contents of the Law of Special Autonomy of Papua with Regards to Protection and Empowerment of the Rights of the Indigenous Peoples of Papua**

Changes were made to the text of the Bill by the Indonesian Parliament during the deliberation process. There were scholars who criticized the Law of the Republic of Indonesia Number 21 of the year 2001 on Special Autonomy for the Province of Papua<sup>27</sup> (see, for instance, Sekretariat Keadilan & Perdamaian Keuskupan Jayapura, 2001). However, it is in my opinion that to a larger extent, the Law has accommodated the principles proposed in the Bill, especially with regard to the protection and empowerment of the rights of the indigenous Papuan people. In addition, I also believe that the current Law can still be used to achieve the main goal of special autonomy status for Papua, which is, as stated in the Law, to “...lay a firm basic framework for steps to be taken to find a thorough solution for the problems in Papua Province ...”.

Key elements of the Law with regard to the protection and empowerment of the rights of the Papuan indigenous peoples – including over natural resources - are described below.

### **Acknowledgment that Papuans are Melanesians and that substantial mistakes have been made by the State in the past**

Article e. of the Consideration section of the Papuan Special Autonomy Law acknowledges that indigenous Papuans are of the Melanesian race. This is very significant as it had previously been almost impossible, except in some anthropological-academic discussions, to use Melanesia as a basis for differentiating Papuans (and Ambonese, Timorese, etc) from the majority of Malay-Indonesians.

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<sup>27</sup> The full text of the law in Indonesian can be accessed at <http://www.dprin.go.id/regulasi/2001/11/UU21.PDF> and <http://www.kbri-canberra.org.au/archives/uupenjuu2f01.htm>.

I grew up in the central highland region and undertook almost all levels of my education in Papua, yet, I could hardly recall the Papuans being addressed as Melanesians in the curriculum. Anon (2000) argues that this was the result of the approach adopted by the State, where the culture of the dominant social group became the national culture, which was in turn expected to solidify Indonesian nationalism (Zakaria, 1997). This approach influenced almost all past development policies and programs. Acknowledgement of Papuans as Melanesians, whom according to the Law have their own "... diversity of culture, history, and languages", implies that the future implementation of all development policies and programs in Papua should always be characterised by respecting and adopting the culture of its indigenous peoples.

In addition, articles f. and g. of the Consideration section of the Law can be seen as acknowledgments by the State that since Papua became part of the Republic of Indonesia, the rights of indigenous Papuans have not been fully respected. It was acknowledged: (1) that the administration and development of the Papua Province has not complied with the sense of justice, has not yet achieved prosperity for all people, has not yet fully supported law enforcement, and has not yet respected the human rights of people in Papua Province, in particular among the Papuan indigenous communities; and (2) that the management and use of the natural wealth of Papuan land has not yet been optimally utilised to enhance the living standard of the indigenous Papuan peoples, creating a wide socio-economic gap between Papua Province and other regions, and violating the basic rights of indigenous Papuans. It is within this context that Tom Beanal, the Leader of the PDP, considers Special Autonomy as a mean for the Indonesian Government to address the lack of development in Papua Province<sup>28</sup>.

### **The establishment of the Papua People's Assembly (*Majelis Rakyat Papua – MRP*)**

The Papua People's Assembly (MRP) is the cultural representation of the Papuan indigenous peoples, and has the authority to protect the rights of the Papuan indigenous peoples, based on respect of custom and culture; the empowerment of women, and the strengthening of a harmonious religious life. MRP was established on the basis of what was perceived to be the lack of true and meaningful political representation of the indigenous peoples of Papua<sup>29</sup>.

The members of MRP should be Papuan indigenous people comprising of representatives of customary community, religious community, and women – the number of each is one-third of the total membership of MRP.

Some of the key tasks and rights of the MRP are as follows:

- to approve, disapprove or make suggestions regarding any Bill of Special Provincial Regulation (*Peraturan Daerah Khusus – Perdasus*) which affects the livelihood of the indigenous peoples;
- to approve, disapprove or make suggestions regarding any agreement drawn up between the Government (Central and Provincial) and a third party applicable in the Papuan Province, which is in particular related to the protection of the rights of the Papuan indigenous people;
- to observe and convey the aspirations and/or complaints of the customary community; religious community; women, and the general public, with regard to the rights of the indigenous peoples of Papua, and to facilitate the follow-up settlement;
- to ask for information on matters related to the protection of the rights of the indigenous peoples of Papua, and to ask for review of any ordinary Provincial Regulation (*Peraturan Daerah*)

<sup>28</sup> Statement made in an interview with Metro TV, December 2001, after the assassination of Theys Eluay, the Chairman of the PDP.

<sup>29</sup> I have written a paper entitled "*Majelis Rakyat Papua and Its Significance in Protecting the Rights of Indigenous People of Papua*" which discusses this aspect in detail. The paper is scheduled to be published in the next issue of Development Bulletin.

*Provinsi – Perdasi*) which is considered contrary to the protection of the rights of the indigenous peoples of Papua.

### **Recognition and protection of the rights of the customary community**

The Law of Papuan Special Autonomy defines the customary community (*masyarakat adat*) as the indigenous Papuans who live in a specific region in Papua and are bound by, as well as submit to, a specific custom with a significant sense of solidarity among its members. This definition is more or less consistent with the proposed characteristics of *masyarakat adat* in Indonesia by Walhi in 1993, as groups of people who inherit ancestral origins to a specific geographical region, as well as inheriting specific values, ideologies, economies, politics, culture, and social systems (Heroepoetri, 1997).

Article 43 of the Law of Special Autonomy specifies that the Government of Papua Province shall acknowledge, respect, protect, empower, and develop the rights of the customary community. More specifically, clause 3 of the Article stipulates that any use of the customary land should be based on a permit granted by the affected customary community through a proper consultation process. The use of customary community land should include proper compensation in the form of a cash payment, land substitution, resettlement, shareholding, or other form of compensation agreed to by mutual consent of the relevant parties. In addition, Article 44 dictates that the Provincial Government shall be obliged to protect the intellectual property rights of the indigenous peoples of Papua, according to the provisions of statutory regulations.

Clause 2 of Article 38 stipulates that economic ventures which are based on the exploitation of Papua's natural resources, should recognize and respect the rights of the customary community over those resources. This principle is treated equally with other Principles relating to Papuan economic development, namely the provision of legal assurance for investors, environmental protection and sustainable development.

This Law also attempts to correct the previous unfair treatment of indigenous peoples by providing an opportunity for the community to legally challenge any permit granted by the Indonesian Government to a third party to exploit Papua's natural resources. Clause 2 of Article 40 stipulates that if a court decision considers that a permit and/or cooperation agreement is: (1) legally flawed; (2) affects the rights of members of the community; and (3) contradicts the Principles of the Law of Papuan Special Autonomy, that specific permit and/or cooperation agreement should be reviewed and the permit/agreement holders should bear the legal consequences.

Another important aspect of the Special Autonomy Law is the reintroduction of the customary court (*peradilan adat*). According to the Law, the customary court can be used to reconcile the disputing parties of the customary communities, and has the authority to hear civil and criminal cases among its members. The decisions made by the customary court are final and cannot be taken to the State Court unless one of the parties involved rejects the decision. The formal position of the Papuan customary court in the Indonesian judicial system should be seen as a historic achievement, for at least two reasons: (1) the dispute over resources by different clans in Papua can be legally processed through a customary mechanism; and (2) a precedent has been set for customary communities in other regions of Indonesia to have their indigenous legal systems recognised by the State.

### **The restriction of transmigration and the implementation of affirmative policy**

Legally, the implementation of Special Autonomy for Papua would make the undertaking of State-sponsored transmigration in Papua much more difficult. Clauses 3 and 4 of Article 61 stipulate that national transmigration can only be conducted in Papua with the agreement of the Governor, which must first be enacted in a Provincial Regulation. As has been stated above, the MRP has the veto

power to reject such a regulation if it is not considered to be in the interests of the indigenous peoples of Papua.

With regard to the broader issue of population management, Clause 1 of Article 61 stipulates that the Provincial Government of Papua is obliged to manage population growth in Papua. This includes the application of an affirmative action policy aimed at assisting the indigenous peoples of Papua to strengthen their ability to participate in the development of their country as quickly as possible. Under the affirmative action policy, the Province of Papua has the right to limit in-migration for a given period of time.

### **Concluding Remarks: The Challenge of Implementation**

Implementation of the Law of Special Autonomy of Papua will provide legal opportunities to make a significant improvement in the lives of the indigenous peoples of Papua, particularly with regard to the protection and empowerment of their rights over natural resources. However, for the Law to achieve results, there are a number of critical factors which must be dealt with at the local level (assuming that the Central Government respects and upholds the Law of Papuan Special Autonomy). These critical factors are explained as follows.

#### **Availability of the workable implementation regulations**

One of the main challenges currently faced by the people and the Government of Papua is the drafting of a number of regulations to implement the Special Autonomy Law. At the provincial level, these regulations include Special Provincial Regulation (*Perdasus*), Provincial Regulation (*Perdasis*), and Governor's Decree (*Keputusan Gubernur*). There are also regulations to be drafted at the district, municipality and village levels. Article 75 stipulates that all implementation regulations referred to by the Law should be enacted within two years of 21 November 2001. This, of course, is a huge task, as many issues relating to the protection and empowerment of the rights of indigenous peoples have no precedent at the national level.

Considering the limited time available, this challenge might have seemed unachievable if the 'normal' way of legal drafting was pursued, i.e. to wait for the Governor's office to submit the draft of an implementation regulation to the Provincial Parliament for deliberation. It can be seen from the current situation, that so far, only the draft of the Government Regulation of the Establishment of MRP has been finalized<sup>30</sup>. It is therefore important that drafting of the implementation regulation of the Papua Special Autonomy Law should not be the sole responsibility of the Governor and Provincial Parliament. On the contrary, genuine efforts should be made to invite relevant community members to participate in the drafting process, at least in the production of alternatives to the Bills, which can then be adopted formally for deliberation in the Provincial Parliament. The drafting of the Bill of Special Autonomy for the Papua Province, which involved Papuan intellectuals, demonstrates that there is enormous potential within the Papuan community to be utilised in the legal drafting process. In order to expedite the process of drafting implementation regulations that will be workable over the long-term, lessons should be learnt from material gathered from regions which are socio-culturally similar to Papua - namely the Melanesian States in the South Pacific region.

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<sup>30</sup> Article 72 stipulates that for the first time the Governor and Provincial Parliament draft the qualifications and numbers of members, as well as procedure for the election of members of MRP, to be submitted to the Central Government as references in the development of a Government Regulation.

## Professionalism and integrity of the Papuan governance system

Since the *reformasi* took place in Indonesia, the determination to eradicate KKN (the acronym for *korupsi, kolusi, nepotisme*, or corruption, collusion and nepotism) from the governance system, which has tainted the corrupt new order regime for more than 30 years, has become one of the most popular political slogans. The Indonesian People's Consultative Assembly (MPR) even produced a specific decree for this purpose, as contained in the Decree No 11 of the year 1998.

As part of the Indonesian political system, the Papua Government is not immune from the KKN. The long-standing perception that Indonesia is one of the most corrupt countries in the world, including during the *reformasi* (see for instance Transparency International, 2001), is also the experience of Papua Province. The culture of corruption must be addressed if Special Autonomy is to bring sustainable prosperity to its people<sup>31</sup>.

A principle mechanism for combating KKN has been outlined in the Papua Special Autonomy Law, which is partly through the substantial participation of people in the planning, executing, monitoring and evaluation of any development program. In this context the role of MRP is significantly important. As a formal institution, exclusively representing the indigenous peoples of Papua, MRP is in a position to ensure that the rights of the people are protected. This may be through the establishment of a legal mechanism to control the KKN, as well as through their ability to hold the Papuan bureaucracy accountable for their actions.

## Strengthening the customary institutions

Since *reformasi*, there has been considerable effort to formalise the customary system of governance through the creation of various *Lembaga Masyarakat Adat* (Customary Community Institutes or LMA). Besides to challenge the pro-government LMA established during the new order regime, the reformed LMAs were very much affiliated with the pro-independence movements organized by the Presidium of the Papuan Council<sup>32</sup>.

The latest development with regard to the formalisation of customary systems in Papua was the undertaking of the Grand Assembly of the Papuan Customary Communities in February 2002, organised by the Presidium of Papuan Council. The Assembly produced a declaration acknowledging the Papuan customary communities as owners of the rich natural resources of Papua, as well as a group to be respected by the government and private sectors with regards to exploitation of those resources. The Assembly also established two bodies: the Papuan Customary Council (*Devan Adat Papua*) and the Papuan Customary Government (*Pemerintah Adat Papua*).

Regardless of the political affiliation of the institutions of the customary communities, two issues are important here:

- (1) for the customary community in Papua to be successful in dealing with outsiders, and to gain as much benefit from the legal opportunities as possible as outlined in the Special Autonomy Law,

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<sup>31</sup> As per clause 3e of the article 34 of Special Autonomy Law, for the fiscal year of 2002 an additional budget of Rp 1,382,300,000, or approximately US\$153.5 million, have been allocated by the Central Government for Papua Province. However, if the 30% rate of corruption persists, as has been suspected since 1992 by Prof. Soemitro Djojohadikusumo, one of the most respected Indonesian economists, that means some US\$46 million of that budget will disappear, which is basically equal to the total amount of the compulsory budget for the improvement of Papuan education system as stipulated in the Law.

<sup>32</sup> For instance, in Manokwari District, the Chairperson of the LMA of the Manokwari District, Bas Mandacan, is also the Chairperson of the Manokwari Panels of the Papuan Council. The same situation can also be found in other districts/sub districts. For more information on the Adat issue in a contemporary Papua see Howard, McGibbon and Simon (2002).

they must organise themselves into an effective institution which is respected both by the members of the customary community and outsiders; and

- (2) in order to achieve a highly regarded institution such as this, some forms of training and institutional strengthening will be required.

The main challenge for Papua is that, with the exception of local organisations such as the Institute for Strengthening the Customary Community (*Lembaga Penguatan dan Pemberdayaan Masyarakat Adat – LPPMA*), there are currently few individuals or groups with the skills to empower organisations such as the institutions of the customary community. Many NGOs are working with local communities, but very few of them concentrate on facilitating the community to establish their own autonomous and professional institutions. The professionalism of any customary institution should be characterised by its ability to utilise the socio-political and economic opportunities available in the Special Autonomy Law, to resolve horizontal disputes over resources with other customary communities, and to develop effective partnerships with outsiders without having to compromise customary values.

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