



**THE CONSTITUTIONAL COURT
REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
ON CASE NUMBER 41/PUU-XVII/2019**

Concerning

Formation of Local Party in Papua

- Petitioner** : **Krisman Dedi Awi Janui Fonataba, S.Sos and Darius Nawipa**
- Case** : Judicial Review Number 21 of 2001 on Special Autonomy For Papua Province (Law 21/2002) Against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
- Case of Lawsuit** : Testing Law 21/2001 Article 28 paragraph (1) and paragraph (2) in particular the phrase “political party” and UUD 1945 Article 28C paragraph (2) and Article 28E paragraph (3)
- Injunction** : The Petitioner’s Case is not admissible
- Date of Decision** : Monday, 26 October 2020
- Decision Overview** :

The Applicant is an Indonesian citizen who formed a local party namely Partai Papua Bersatu.

The Petitioner substantially burdened by the provisions under Article 28C paragraph (2) and Article 28E paragraph (3) UUD 1945 in particular by the phrase “political party” under Article 28 paragraph (1) and paragraph (2) 21/2002 with reason that the phrase “political party” under

the Article is ambiguous in nature, thereby had prevented and violated the Petitioner's constitutional rights to form a local political party in the Papua Province and West Papua Province and to participate in local democracy event in Indonesia.

In relation to the Court's authority, in response to the Petitioner's case is a Judicial Review on the Constitutionality of Law 21/2001, which is under the Court's authority thereby pursuant to Article 24C paragraph (1) UUD 1945, Article 10 paragraph (1) point a Constitutional Court Law, and Article 29 paragraph (1) Justice Power Law, the Court is competent to decide the case;

On the legal standing, notwithstanding to any evidence of the Petitioner's arguments or otherwise which challenged the constitutionality of Law 21/2002, in qualification as an Indonesian citizen who formed a political party had specifically presented his constitutional rights that had been burdened by the challenged norm herein, which is the rights to speaks his collective rights and the rights to assemble, associate and express opinion. Thereby, it appeared a causal relationship between the Contractor's arguments on the burdened constitutional rights and the applicable challenged norm, therefore if the Petitioner's case is admissible, such burdened is relieved. Thereby, the Petitioner has the legal standing to act as the Petitioner to the case;

In response to the constitutionality of the phrase "political party" under Article 28 paragraph (1) and paragraph (2) Law 21/2001 as argued by the Petitioner, the Court had decided:

1. That the special autonomy of the Papua Province (including the West Papua Province) is granted under Law 21/2001. Such special autonomy is implemented from the People's Consultative Assembly Guideline Number IV/MPR/1999 on 1999-2004 Governance [vide

Chapter IV paragraph G number 2], People's Consultative Assembly Guideline Number IV/MPR/2000 on Local Autonomy Recommended Policies, and an implementation of Article 18B paragraph (1) UUD 1945. Thereby such Papua special autonomy is a part of state official acknowledgement on local extraordinary with respect to the Republic Of Indonesia as a nation, pursuant to the General Interpretation of Law 21/2001;

2. That the determination of sort and scope of such extraordinary underlie on its formation and original demand with respect to a constituent subdivision and on a case-by-case bases [vide Constitutional Court Decision Number 81/PUU-VII/2010 dated 2 March 2011]. In the context of Papua such as to bridge the social gap between the Papua Province and other Provinces, and for better welfare of the people in Papua Province, and reserved opportunities for the natives, it is necessary to issue policy with specific purposes under the state administration of The Republic Of Indonesia (vide "In consideration of" paragraph h Law 21/2001);

3. That pertaining to such specific purposes pursuant to Law 21/2001 nothing stated on local political party formation is allowed in Papua as is the case in Aceh Province under specific purposes granted by the legislator by Law 11 of 2006 on Aceh Government (Law 11/2006);

4. That even though Papua and Aceh is being granted special autonomy however the sort and scope not necessarily equal. It views the underlying and original demand according to the legislator. Thereby the Article is not discriminative for it to acts differently for different purposes. In addition, the specific policy on political recruitment by national political party in Papua which prioritize the natives and subject to consent of Papuan Consultative Assembly its accords to the spirit of Papua special autonomy which emphasize the significances for the

natives and placed them as the key subjects, as referred to in the General Interpretation of Law 21/2001 and secure human resources development in political engagement for the natives in particular and the Papuan in general. Moreover, through national political party engagement the natives interests at national level is rest assured as a result of such human resources development is not limited to local level and therefore opened to political career at national level, thereby the aspirations and interests with respect to Papua will present in easy. In consideration of the Article did not burdened the Petitioner's rights to associate, assembly, and express opinion, instead it granted privileges to the natives in particular and the Papuan in general to speaks their interests and aspirations, both at local and national level under the state administration of The Republic Of Indonesia by engagement with national political party;

5. That from the discussion on Special Autonomy Bill for the Papua Province (Papua Special Autonomy Bill) there is a substantive shift on norm formulation pattern from “the people of Papua Province may form a political party” to “The people of Papua could form political party”. Normatively, replacement of the word “may” with “could” shifted the norm formulation pattern from anything near imperative to facultative. Such shift maintained the norm construction of Article 28 paragraph (2) which stated “the procedure of political party formation and participation in general election in accordance to the applicable laws and regulations”. Within the limit of logical reasoning, the phrase “in accordance to the applicable laws and regulations” as stated under Article 28 paragraph (2) does not illustrate and show a character as a local political party. Thereby, the regulation on political party in the Papua Province as stated under Article 28 Law 21/2001 did not intended as local political party. On the ground, the regulation on political party under Law 21/2001 does not expressly stated nor interpreted as local political party. Instead, when being compared to Law 11/2006, the

existence of such local political party is explicitly referred to in Article 1 paragraph 14 Law 11/2006. Not only such reference, Law 11/2006 also detailed local political party in a dedicated chapter, which is Chapter XI Article 75 to Article 75 Law 11/2006. This means, if the legislator intended the phrase “political party” under Law 21/2001 as local political party, the regulation shall detailed anything related to local political party;

6. That in consideration of the foregoing, the Court did not find any preponderance evidence that the phrase “political party” under Article 28 Law 21/2001 is local political party. However, in the position as a region being granted with special autonomy status, in the event of there is opportunity to amend the laws on political party in the future, the legislator could issue specific regulations on the governance of political party in Papua which allow any citizen who lives in Papua to a larger opportunities in national political party engagement in Papua. Furthermore, as a part of political party democratization, such specific regulation could serves as a model of national political party management decentralization at the local level. In the limit of logical reasoning, larger opportunities to engage in political party management will provide wider space to the Papuan to fill political positions as a result of political contestation which includes political party. Nevertheless, if local political party formation will be included as a part of Papua specific status, the legislator may do so by a revision to Law 21/2001 to the extent it is in accordance to the underlying and actual demands of the Papua whilst being intended as a part of efforts to maintain the integrity of The Republic Of Indonesia.

That in consideration of the foregoing judgement, according to the Court the Petitioner’s case is unfounded. Thereby the Court decided to announce that the Petitioner’s Case is not admissible.