CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 43/PUU-XX/2022

Concerning

Appointment of Indigenous Papuans and Regional Expansion of Provinces and Regencies/Municipalities

Petitioners	:	**E. Ramos Petege and Yanuarius Mote**
Type of Case	:	Judicial review of Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for Papua Province (Law 2/2021) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	:	Judicial review of Article 6 paragraph (1) letter b, Article 6A paragraph (1) letter b, Article 68A paragraph (1) and paragraph (2), Article 75 paragraph (4) and Article 76 paragraph (2) and paragraph (3) of Law 2/2021 against Article 18 paragraph (1), paragraph (2), paragraph (3), paragraph (5) and paragraph (6), Article 22E paragraph (1) and paragraph (2) and Article 27 paragraph (1) and paragraph (2) of the 1945 Constitution
Verdict	:	1. To declare that petition for the review regarding the norms of Article 75 paragraph (4) and Article 76 paragraph (2) and paragraph (3) of Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for Papua Province (State Gazette of the Republic of Indonesia of 2021 Number 155, Supplement to the State Gazette of the Republic of Indonesia Number 6697) is inadmissible; 2. To dismiss the remainder of the Petitioners' petition.
Date of Decision	:	Wednesday, August 31, 2022
Overview of Decision	:	

The Petitioners are individual Indonesian citizens who are Indigenous Papuans and domiciled in the Papua Province. The Petitioners believe that their constitutional rights have been impaired by the enactment of the provisions of Article 6 paragraph (1) letter b, Article 6A paragraph (1) letter b, Article 68A paragraph (1) and paragraph (2), Article 75 paragraph (4) and Article 76 paragraph (2) and paragraph (3) of Law 2/2021, since the *a quo* provisions has eliminated the opportunity for the Petitioners to obtain employment and equal rights before a just law in a decentralized system, in addition to that the coordination and supervision by the central government has resulted in the implementation of special autonomy for the Papua

Province not being optimal and the concept of decentralization for the Papua Province is conducted as if it had been returned to a centralized system.

Whereas in relation to the authority of the Constitutional Court (the Court), because the Petitioners petitioned for a review of the law *in casu* Law 2/2021 against the 1945 Constitution, the Court has the authority to adjudicate the *a quo* petition.

Regarding the legal standing of the Petitioners who argued that the provisions of Article 6 paragraph (1) letter b and Article 6A paragraph (1) letter b of Law 2/2021 have harmed the constitutional rights of the Petitioners because there was no election process for Indigenous Papuans, it had deprived the Petitioners of the opportunity to obtain employment and equal rights before the law in a decentralized system. Then the provisions of Article 68A paragraph (1) and paragraph (2) of Law 2/2021 are contradictory and have eliminated the principles of regional autonomy, decentralization, and co-administration as constitutional attributions to regional governments, because coordination and supervision are still dominated by representatives of the central government, resulting in the implementation of special autonomy for the Papua Province became not optimal and the concept of decentralization for the Papua Province is conducted as if it has been returned to a centralized system so that the Petitioners lost their constitutional rights as the people of Papua to participate in the implementation of special autonomy for the Papua Province. As for the provisions of Article 75 paragraph (4) and Article 76 paragraph (2) and paragraph (3) of Law 2/2021, the decentralization system as stipulated in Article 18 paragraph (1), paragraph (2) and paragraph (3) of the 1945 Constitution becomes centralized because the formation of Provincial Regulations (Perdasi or *Peraturan Daerah Provinsi*) and (Perdasus or *Peraturan Daerah Khusus*) did not involve or obtain the consideration/approval of the Papuan People's Council (MRP or *Majelis Rakyat Papua*) and the Papuan People's Representative Council (DPRP or *Dewan Perwakilan Rakyat Papua*) or the Regency/Municipal People's Representative Council (DPRK or *Dewan Perwakilan Rakyat Kabupaten/Kota*), moreover the decision making for regional expansion was carried out by force by the central government and it has ignored the preparatory area stages.

Whereas the Petitioners have described their constitutional rights in relation to the rights of Indigenous Papuans. Therefore, regardless of whether or not there is an issue of constitutionality of norms as argued by the Petitioners, the Court is of the opinion that the Petitioners have the legal standing to act as the Petitioners in the petition for the review of the norms of Article 6 paragraph (1) letter b, Article 6A paragraph (1) letter b , Article 68A paragraph (1) and paragraph (2) of Law 2/2021. Meanwhile, in relation to the legal standing of the Petitioners in the petition for the review of the norms of Article 75 paragraph (4), Article 76 paragraph (2) and paragraph (3) of Law 2/2021, after examining the *a quo* articles, in addition to being related to the constitutional rights of Indigenous Papuans, it is also related to the interests of the Government and the interests of the Papua regional government. Therefore, regarding the legal standing of the Petitioners which substantially relating to the subject matter of the petition, the legal standing of the Petitioners will only be known after proving the constitutionality of the norms against the articles being petitioned for review. Therefore, regarding the legal standing of the Petitioners in the review of the norms of Article 75 paragraph (4) as well as Article 76 paragraph (2) and paragraph (3) of Law 2/2021, it will be proven together with the subject matter of the petition.

Regarding to the subject matter of the petition, the Petitioners basically argue that the phrase "appointed" in the norms of Article 6 paragraph (1) letter b and Article 6A paragraph (1) letter b of Law 2/2021 do not reflect the principle of general elections and do not adhere to the principles of justice, equality and impartiality, furthermore the regulation in the Government Regulation Number 106 of 2021 concerning Authority and Institutions for the Implementation of the Special Autonomy Policy for the Papua Province (PP 106/2021) regarding the formation of a Selection Committee (*Panitia Seleksi* or Pansel) which selects/appoints the members of the DPRP or DPRK from the element of Indigenous Papuans provides a gap or space for the

abuse of authority by the Pansel by working with a group of individuals, so that the phrase "appointed" in the norms of Article 6 paragraph (1) letter b and Article 6A paragraph (1) letter b of Law 2/2021 closes the equal opportunity for everyone, especially indigenous Papuans to be elected and obtain employment in the government. Meanwhile regarding Article 68A paragraph (1) and paragraph (2) of Law 2/2021, according to the Petitioners, the *a quo* Article has eliminated the principles of regional autonomy, decentralization, and co-administration as constitutional attributions to the regional governments, because the establishment of the special agency does not show any correlation and progress in the implementation of the special autonomy for Papua in resolving various conflicts and human rights violations that have occurred. Likewise, the composition of the special agency is not proportional to assess and evaluate the implementation of the special autonomy for Papua because the policy makers and overseers of its implementation are dominated by the officials from the central government. Furthermore, according to the Petitioners, the provisions of Article 75 paragraph (4) of Law 2/2021 constitute a form of unreasonable transfer of authority, both from a philosophical, juridical and sociological perspective, if the Central Government takes over the authority of the regional governments to form Perdasus and Perdasi, then it neglects the spirit and soul of the establishment of Law 2/2021. In addition, according to the Petitioners, Article 76 paragraph (2) and paragraph (3) of Law 2/2021 has eliminated one stage in the regional expansion process, namely the "preparatory area stage" which is one of the crucial elements in regional expansion because it must fulfil the basic requirements and administrative requirements as well as procedural discussion stage with the regional heads and DPRD (DPRP/DPRK).

Regarding the petition of the Petitioners which was submitted when the Case Number 47/PUU-XIX/2021 was under an examination session with the agenda of hearing the statement of the Petitioner's witnesses. With regard to the Case Number 47/PUU-XIX/2021 there has been no decision regarding the review of the norms of Article 6 paragraph (1) letter b, Article 6A paragraph (1) letter b, Article 68A paragraph (2) and Article 76 paragraph (2) and paragraph (3) of Law 2/2021. Therefore, there is no relevance for enacting Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) of PMK 2/2021. Moreover, the Petitioners in the *a quo* petition has also submitted a petition for the review of the norms of Article 68A paragraph (1) and Article 75 paragraph (4) of Law 2/2021 which was not submitted in the Case Number 47/PUU-XIX/2021.

Whereas after the Court has carefully read the petition of the Petitioners along with the evidence submitted by the Petitioners, the Court is of the opinion that regarding the review of the norms of Article 6 paragraph (1) letter b and Article 6A paragraph (1) letter b of Law 2/2021, it has been decided by the Court in Case Number 47/PUU-XIX/2021, which in principal states that the existence of provisions for the members of the DPRP/DPRK shall be appointed from the element of Indigenous Papuans actually provides legal certainty, support and at the same time accommodates the representation of Indigenous Papuans within the representative institutions at the provincial and district/municipal level, as considered in the Decision of the Constitutional Court Number 116/PUU- VII/2009 and the Decision of the Constitutional Court Number 4/PUU-XVIII/2020. Moreover, when it is related to the Elucidation of Article 6 paragraph (1) letter b and Article 6A paragraph (1) letter b of Law 2/2021 which has emphasized that the phrase "from the element of Indigenous Papuans" means the representative of indigenous people in the province or regency/municipality and who are not the member of any political party for at least 5 (five) years before registering as the candidate for the member of DPRP or DPRK. With the certainty that Indigenous Papuan element shall be appointed as many as ¼ (one-fourth) of the number of DPRP members or DPRK members in representative institutions at the provincial or district/municipal level, and with the same term of office as the elected DPRP/DPRK members, namely 5 (five) years, it shall provide justice and certainty for them in carrying out their roles in formulating various regional policies and determining development strategies, especially in the socio-political and cultural fields. Therefore, the Court is of the opinion that the existence of the element of Indigenous Papuan

being appointed, it is a form of affirmative policy which is a form of special treatment that is appropriate and is not in contrary to Article 28H paragraph (2) of the 1945 Constitution. Therefore, the arguments of the Petitioners are legally unreasonable.

With regard to the Petitioners' argument regarding the review of the norms of Article 68A paragraph (1) and paragraph (2) of Law 2/2021, specifically in relation to the review of the norms of Article 68A paragraph (2) of Law 2/2021, the Court has decided such matter in the Case Number 47/PUU -XIX/2021. Because the review of the norms of Article 68A paragraph (2) of Law 2/2021 is closely related to the norms of Article 68A paragraph (1) which regulates the establishment of a special agency, the Court is of the opinion that the legal considerations for reviewing the norms of Article 68A paragraph (2) of Law 2/2021 in Case Number 47/PUU-XIX/2021 also contain legal considerations for the provisions of the norms of Article 68A paragraph (1) of Law 2/2021, which basically states that the establishment of a special agency aims to synchronize, harmonize, evaluate and coordinate the implementation of Special Autonomy and development in the Papua region as an effort to increase the effectiveness and efficiency of development in Papua. The composition of representatives from the Papua Province in the Special Agency can be understood as an effort to open the channels of aspirations for the performance of the special agency in Papua. Moreover, it can be seen as to guarantee the independence of the direct involvement of the Papuan people, because the term "representatives" from each province as referred to in Article 68A paragraph (2) letter c of Law 2/2021 means those who may not come from government officials, the House of Representative (*Dewan Perwakilan Rakyat* or DPR), the Regional Representatives (*Dewan Perwakilan Daerah* or DPD), DPRP, MRP, DPRK, and the members of political parties. The establishment of a special agency is to promote the welfare development and to improve the quality of public services as well as to ensure the continuity and sustainability of development in the Papua region, therefore it is in line with the objectives of granting special autonomy, so that it is directly responsible to the President. Direct responsibility to the President is in line with the President's position as the holder of government power based on Article 4 of the 1945 Constitution. In that context, the Court is of the opinion that the appointment of the Vice President as the Chairman of the "special agency" actually proves the attention of the central government in the efforts to accelerate the realization of special autonomy for Papua, while still paying attention to the aspirations of the Papuan people. This is because the composition and configuration of the "special agency" as referred to in Article 68A paragraph (2) of Law 2/2021 remains in line with the essence of the decentralization system because it accommodates the interests of the Indigenous Papuan people within the framework of the Republic of Indonesia. Therefore, the arguments of the Petitioners are legally unreasonable.

With regard to the arguments of the Petitioners regarding the review of the norms of Article 76 paragraph (2) and paragraph (3) of Law 2/2021, the *a quo* provision has been decided by the Court in Case Number 47/PUU-XIX/2021, which in principal states that the proposal or initiative design for the expansion of Papua to become an autonomous region is specified in Law 2/2021, namely: (1) expansion as a regional government proposal and (2) expansion as an initiative of the central government and the House of Representative (*Dewan Perwakilan Rakyat* or DPR). If such proposal comes from the local government to expand the province and district/municipality into provinces and districts/municipalities, this can be done with the approval of the MRP and the DPRP. In this case, the role of the regions in relation to the formation of preparatory area shall not be completely eliminated as long as the proposed expansion is carried out with the approval of the MRP and DPRP, because this is in accordance with Law 23/2014. In this regard, the Court needs to emphasize, even if the regional expansion of province and district/municipal areas originating from the initiative of the Government and the DPR was carried out without going through the stages of establishing a preparatory area, an in-depth and comprehensive study must still be carried out. In this case, the regional expansion must still pay attention to political, administrative, legal, socio-cultural unity, human resource readiness, basic infrastructure, economic capacity, future developments, and/or the aspirations of the Papuan people. Therefore, the regional

expansion, even if it is carried out on the initiative of the Government and the DPR, can still guarantee the space for Indigenous Papuans to carry out political, governmental, economic and socio-cultural activities. Therefore, the arguments of the Petitioners are legally unreasonable.

Whereas because of the substance of the norms of Article 6 paragraph (1) letter b, Article 6A paragraph (1) letter b, Article 68A paragraph (2), and Article 76 paragraph (2) and paragraph (3) of Law 2/2021 which are being disputed by the Petitioners is in principal/in essence the same as what was decided by the Court in the Decision of the Constitutional Court Number 47/PUU-XIX/2021. Therefore, the legal considerations in the Decision of the Constitutional Court Number 47/PUU-XIX/2021 shall *mutatis mutandis* apply to the legal considerations of the *a quo* petition. Therefore, with regard to the norms of Article 6 paragraph (1) letter b, Article 6A paragraph (1) letter b, Article 68A paragraph (2), and Article 76 paragraph (2) and paragraph (3) of Law 2/2021 which are considered unconstitutional by the Petitioners, such consideration is legally unreasonable.

With regard to the arguments of the Petitioners regarding the review of the norms of Article 75 paragraph (4) of Law 2/2021, it is important for the Court to first confirm the principal in relation to the provisions of the *a quo* article which is part of the CHAPTER XXIII concerning TRANSITIONAL PROVISIONS which requires that the *Perdasus* and *Perdasi* to implement the provisions in Law 2/2021 and to be enacted no later than 1 (one) year after Law 2/2021 was promulgated. In the event that the *Perdasus* and *Perdasi* are not promulgated after the specified time has passed, namely no later than 1 (one) year since Law 2/2021 was promulgated, on July 19, 2022 the provisions of Article 75 paragraph (4) of Law 2/2021 shall apply whereas the Government may take over the implementation of the authority specified in the *Perdasus* and *Perdasi*. The takeover shall be carried out due to the importance and strategic authority that must be regulated in the *Perdasus* and *Perdasi* for the implementation of Special Autonomy for Papua. In principal, the matters regulated in the *Perdasus* and *Perdasi* are an inseparable part of the granting of special autonomy to the Papua Province. Therefore, if there is no legal certainty in the further regulation of Law 2/2021 in the *Perdasus* and *Perdasi*, within the specified period, the President as the holder of government power in accordance with the mandate of Article 4 of the 1945 Constitution shall be obliged to further determine the matter that should be carried out in the implementation of Special Autonomy for Papua Province within the NKRI system. Moreover, the constitutionality of the relevant norms by the Petitioners relates to the principal of the Transitional Provisions which aim, among other things, to provide legal certainty and to avoid the occurrence of any legal vacuum. Therefore, in order to achieve the purpose of these transitional provisions, if within the specified period (no later than 1 year) the *Perdasus* and *Perdasi* are not promulgated, then the authority that should be regulated in the *Perdasus* and *Perdasi* shall be taken over by the Government to immediately regulate it so that the specificity granted to Papua Province can be realized in accordance with the aims and objectives of the stipulation of Special Autonomy in Law 21/2001 and Law 2/2021.

Whereas after the Court has considered the subject matter of the petition of the Petitioners as mentioned above, the Court will consider the legal standing of the Petitioners in the petition for the review of the norms of Article 75 paragraph (4) as well as Article 76 paragraph (2) and paragraph (3) of Law 2/2021. Article 75 paragraph (4) of Law 2/2021 is a provision that regulates the promulgation of *Perdasi* and *Perdasus* within 1 (one) year since Law 2/2021 being promulgated, if this is not carried out then the Government shall take over the implementation of this authority. Such matter is not directly related to the Petitioners as individual Indonesian citizens and are Indigenous Papuans, the parties directly related to the preparation of the *Perdasus* and *Perdasi* are the MRP, DPRP, DPRK, and the Governor. Moreover, in their petition, the Petitioners only focused on the provisions of the norms of the *a quo* Article 75 paragraph (4), which according to the Petitioners opened a gap in the decentralization system to become a centralized system due to the takeover of authority by the Central Government in forming the *Perdasus* and *Perdasi*, however the Petitioners could

not describe the presumed loss of these constitutional rights whether it is actual, specific or potential in nature as well as the existence of a causal relationship (*causal verband*) between the presumed loss of the constitutional rights of the Petitioners and the enactment of the norms being petitioned for review. Meanwhile Article 76 paragraph (2) and paragraph (3) of Law 2/2021 are provisions that govern the regional expansion of province and regency/municipality areas in Papua, where approval for the regional expansion of province and regency/municipality areas is not only given by the MRP but it is a joint approval with the DPRP. Therefore, if the Petitioners submit a petition for the review of Article 76 paragraph (2) and paragraph (3) of Law 2/2021 then the Petitioners must be the members of the MRP or the DPRP, because the right to submit the petition is within the authority of the MRP and the DPRP. In addition, the Petitioners were also unable to describe the presumed loss of these constitutional rights whether actual, specific or potential in nature as well as the vasal relationship (*causal verband*) between the presumed loss of constitutional rights of the Petitioner and the enactment of the norms being petitioned for review. In addition, it has been proven that the substance of the Petitioners' petition also relates to the interests of the regional government, therefore the *a quo* petition for review of the articles cannot only be submitted by the Petitioners as individual Indonesian citizens. Moreover, the Petitioners were unable to explain the presumed loss of constitutional rights, whether it is actual, specific or at least potential and that there was a causal relationship (*causal verband*) between the presumed loss of the constitutional rights of the Petitioners and the enactment of the norms of the articles being petitioned for review. Therefore, the petition for the review of the norms of Article 75 paragraph (4) as well as Article 76 paragraph (2) and paragraph (3) of Law 2/2021 does not meet the requirements to be granted any legal standing, therefore the Court is of the opinion that the Petitioners do not have the legal standing to act as the Petitioners in the review of the *a quo* articles*.* Even if the Petitioners have the legal standing to submit the petition for the review of the norms of Article 75 paragraph (4) and Article 76 paragraph (2) and paragraph (3) of Law 2/2021, *quod non*, the arguments of the Petitioners' petition regarding the *a quo* articles are entirely legally unreasonable.

Based on all of the aforementioned considerations, the Court subsequently passed down a decision which verdict states as follows:

1. To declare that the petition for review as long as it is in accordance with the norms of Article 75 paragraph (4) and Article 76 paragraph (2) and paragraph (3) of Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for the Papua Province (State Gazette of the Republic of Indonesia of 2021 Number 155, Supplement State Gazette of the Republic of Indonesia Number 6697) is inadmissible;
2. To dismiss the remainder of the Petitioners' petition.

Dissenting Opinion

Whereas regarding the *a quo* decision of the Constitutional Court, there are dissenting opinions from Constitutional Justice Saldi Isra regarding the legal standing of the Petitioners in the petition for review of Article 75 paragraph (4) and Article 76 paragraph (2) and paragraph (3) of Law 2/2021, which in principal is as follows:

Whereas the Petitioners have explained specifically to describe a causal relationship between the enactment of the norms of the articles being petitioned for review of the constitutionality, which are the norms of Article 75 paragraph (4) and Article 76 paragraph (2) and paragraph (3) of Law 2/2021. Within the limits of reasonable reasoning, all the norms put forward for the review shall be closely related and intertwined with the cultural issues of the Indigenous Papuans (OAP or *Orang Asli Papua*). Such legal opinion cannot be separated from the legal politics behind the establishment of Law 2/2021. In this case, the preamble "Considering" section letter a of Law 2/2021 is explicitly intended to protect and uphold dignity, provide affirmation, and protect the basic rights of OAP, both in the economic, political and socio-cultural fields. Because all the norms submitted for the petition are related to the cultural

interests of OAP, the Court should have given legal standing to the Petitioners for all of the relevant norms. Whereas based on all of these legal considerations, in addition to providing legal standing for the Petitioners in the review of the constitutionality of the norms of Article 6 paragraph (1) letter b, Article 6A paragraph (1) letter b and Article 68A paragraph (1) and paragraph (2) of Law 2/ 2021, the legal standing should also be given to the Petitioners in the review of the constitutionality of the norms of Article 75 paragraph (4) and Article 76 paragraph (2) and paragraph (3) of Law 2/2021. Regardless of such matter, even if the norms of Article 75 paragraph (4) and Article 76 paragraph (2) and paragraph (3) of Law 2/2021 the Petitioners have legal standing in submitting the petition, but regarding the subject matter of the petition, as described in the legal considerations of the *a quo* decision, it is legally unreasonable. Therefore, all the norms being petitioned for review of its constitutionality by the Petitioners in the *a quo* petition should be declared as dismissed.