CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 47/PUU-XIX/2021

Concerning

Special Autonomy for Papua Province

Petitioner	:	**Majelis Rakyat Papua (MRP or Papuan People's Assembly)**
Type of Case	:	Judicial review of Law Number 21 of 2001 concerning Special Autonomy for Papua Province (Law 21/2001) and 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	:	Article 6 paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5), and paragraph (6); Article 6A paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5), and paragraph (6); Article 28 paragraph (1), paragraph (2) and paragraph (4); Article 38 paragraph (2), Article 59 paragraph (3), Article 68A paragraph (2), and Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021, and Article 77 of Law 21/2001 are in contrary to the principles of legal certainty, justice, affirmative action, freedom of association, assembly and expression of opinion, freedom from discrimination, and the principle of decentralization and the principle of the state recognizing and respecting special local government units**,** as guaranteed by Article 1 paragraph (2), Article 17 paragraph (3), Article 18 paragraph (1), paragraph (2), paragraph (3), paragraph (5), Article 18A paragraph (1), Article 18B paragraph (1), Article 22D paragraph (1), Article 22E paragraph (3), Article 27 paragraph (1), paragraph (3), Article 28C paragraph (2), Article 28D paragraph (1) and paragraph (3), Article 28H paragraph (1), Article 28I paragraph (2)), Article 34 paragraph (2) and paragraph (3) of the 1945 Constitution
Verdict	:	1. To declare that the Petitioner's petition regarding the review over Article 38 paragraph (2), Article 59 paragraph (3), Article 76 paragraph (1), paragraph (2) and paragraph (3) of the Law of the Republic of Indonesia 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), as well as Article 77 of Law Number 21 of 2001 concerning Special Autonomy for Papua Province (State Gazette of the Republic of Indonesia of 2001 Number 135, Supplement to the State Gazette of the

Republic of Indonesia Number 4151) is inadmissible;

2. To dismiss the remainder of the Petitioner's petition.

Date of Decision : Wednesday, August 31, 2022

Overview of Decision :

The Petitioner is Majelis Rakyat Papua (MRP or Papuan People's Assembly) in this case represented by Timotius Murib as Chairman, as well as Yoel Luiz Mulait and Debora Mote as Deputy Chairmen who are the leaders of the MRP, one of whose duties is to represent the MRP in court. The Petitioner is the MRP, which is a cultural representation of Indigenous Papuans who have certain powers in order to protect the rights of Indigenous Papuans based on respect for customs and culture, empowering women, and strengthening religious harmony.

Regarding the Authority of the Court, because of the *a quo* petition is a review of the constitutionality of legal norms, *in casu* Article 6 paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5), and paragraph (6); Article 6A paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5), and paragraph (6); Article 28 paragraph (1), paragraph (2) and paragraph (4); Article 38 paragraph (2), Article 59 paragraph (3), Article 68A paragraph (2), and Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021, and Article 77 of Law 21/2001 against the 1945 Constitution, the Court has the authority to adjudicate the *a quo* petition.

Regarding the legal standing of the Petitioner, therefore, the Petitioner has been able to describe the presumption of loss of constitutional rights and the existence of a causal relationship (*causal verband*), namely regarding the presumed loss of the constitutional rights of Indigenous Papuans and the enactment of the norms of Article 6 paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5) and paragraph (6),Article 6A paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5) and paragraph (6), Article 28 paragraph (1), paragraph (2) and paragraph (4)), Article 68A paragraph (2) of Law 2/2021. Therefore, regardless of whether or not there is an issue of constitutionality of norms as argued by the Petitioner, the Court is of the opinion that the Petitioner has the legal standing to act as the Petitioner in the petition for reviewing the norms of Article 6 paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5) and paragraph (6), Article 6A paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5) and paragraph (6), Article 28 paragraph (1), paragraph (2) and paragraph (4), Article 68A paragraph (2) of Law 2/2021. Meanwhile, regarding the legal standing of the Petitioner in the petition for reviewing the norms of Article 38 paragraph (2), Article 59 paragraph (3), Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021, and Article 77 of Law 21/2001, after examining the *a quo* articles, in addition to being related to the constitutional rights of the Indigenous Papuans, it is also related to the interests of the Papua regional government and the central government. Therefore, regarding the legal standing of the Petitioner, it is substantially related to the subject matter of the petition, therefore the relevant legal standing of the Petitioner shall only be known after proving the constitutionality of the norms of the articles being petitioned for review. Therefore, regarding the Petitioner's legal standing in the review of the norms of Article 38 paragraph (2), Article 59 paragraph (3), Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021, as well as Article 77 of the Law 21/2001, it will be proved together with the subject matter of the petition.

Whereas special autonomy for Papua is basically a special authority that is recognized and given to the province and the people of Papua to regulate and manage themselves within the framework of the Unitary State of the Republic of Indonesia (*Negara Kesatuan Republik Indonesia* or NKRI). The special autonomy for Papua Province was first established based on Law 21/2001 in order to carry out the mandate of the MPR RI Decree Number IV/MPR/1999 concerning the Guidelines for State Policy of 1999-2004 and MPR RI Decree Number IV/MPR/2000 concerning Policy Recommendations In the Implementation of Regional Autonomy, which, among others, emphasizes the importance of immediately realizing special autonomy through the stipulation of a Special Autonomy Law for the Irian Jaya Province by taking into account the aspirations of the people. The granting of Special Autonomy for the Papua Province is a social, political, economic and cultural need that is intended to realize the justice, uphold the rule of law, ensure the respect for human rights, accelerate the economic development, increase the welfare and development of

the Papuan people in the framework of equality and balance with the development of other provinces [*vide* General Elucidation of Law 21/2001]. The specificity granted to the Papua Province is in principal a form of affirmative action policy, therefore the granting of special autonomy to the Papua Province should not be permanent. This is because, in principle, the affirmative policies shall only be applied to certain groups and at certain times who experience inequality or injustice so that with this special treatment such certain groups/communities shall get equal opportunities with other groups/communities, thus if such inequality and injustice have been overcome, this means *raison d'être* for that affirmative action policy shall also be non-existent [*vide* Legal Considerations of the Decision of the Constitutional Court Number 34/PUU-XIV/2016 which was declared in a session open to the public on July 14, 2016, p. 26]. To implement this affirmative action policy, the legislators, in accordance with the mandate of the MPR Decree, desire that the Indigenous Papuans and the Papuan society in general to be the main subjects in the implementation of the special autonomy. Therefore, they need to be given adequate services and opportunities as well as to be empowered due to the reason that the implementation of development prior to the granting of the special autonomy was not on par with other autonomous regions. Therefore, appropriate and fast strategic steps are needed to pursue equality and balance in Papua Province through affirmative policies.

Whereas Law 21/2001 which regulates the implementation of special autonomy for Papua has been first amended through Law Number 35 of 2008 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2008 concerning Amendments to Law Number 21 of 2001 concerning Special Autonomy for the Papua Province to Become Law (Law 35/2008), due to the need to regulate the granting of the special autonomy for West Papua Province [*vide* preamble of Considering section letter b of Law 35/2008]. Furthermore, after the special autonomy for Papua has been running for more than 20 (twenty) years, it is necessary to improve several substances in relation to the specificity of Papua, including in this case the guarantee of the continuity of the granting of special autonomy funds to the Papua Province. This is because Article 34 paragraph (3) letter e *juncto* paragraph (6) of Law 21/2001 stipulates that the budget within the framework of special autonomy shall be equivalent to 2% (two percent) of the ceiling of the National General Allocation Fund, which shall primarily be intended for education and health financing, which shall be valid for 20 (twenty) years. The period of 20 (twenty) year was calculated from the promulgation of Law 21/2001, namely on November 21, 2001. In this case, Law 2/2021 as an improvement to Law 21/2001 redefines the deadline for granting the special autonomy funds to all provinces and districts/cities in the Papua region until 2041 [*vide* Article 34 paragraph (8) of Law 2/2021] . The allocation of special autonomy funds is expected to accelerate the development, encourage the welfare, and improve the quality of public services as well as the continuity and sustainability of the development in the Papua region [*vide* preamble of Considering section letter b of Law 2/2021]. In an effort to accelerate this, new material is added through Law 2/2021 to adapt to the development in political, economic and socio-cultural circumstances in the society, including new material for the regulation of the members of the DPRK who are elected through general elections and are appointed from the element of Indigenous Papuans. [*vide* General Elucidation of Law 2/2021].

Whereas the second amendment to Law 21/2001 through Law 2/2021 is also intended to provide legal certainty in order to protect, uphold the dignity, provide the affirmation, and protect the basic rights of Indigenous Papuans, both in the economic, political and socio-cultural fields. Indigenous Papuans are the people who come from the Melanesian race group consisting of indigenous tribes in the Papua Province and/or people who are accepted and recognized as Indigenous Papuans by the Indigenous People of Papua who have diverse cultures, histories, customs and languages. [*vide* preamble of Considering section letter a *juncto* Article 1 number 22 of Law 2/2021].

Whereas as an implication of the granting of Special Autonomy for the Papua Province, it means giving greater responsibility to the province and the people of Papua to administer the government and to regulate the utilization of natural resources in the Papua Province to the greatest extent for the prosperity of the people of Papua as part of the people of Indonesia in accordance with the legislations. This authority also means the authority to empower the socio-cultural and economic potential of the people of Papua including by providing an adequate role for

the indigenous Papuans through the representatives of custom, religion and women which is manifested through the Papuan People's Assembly (*Majelis Rakyat Papua* or MRP) [*vide* General Elucidation of Government Regulations Number 54 of 2004 concerning the Papuan People's Assembly]. With regard to the MRP institution, its position is an organization formed based on the legislations and further regulated by government regulations, as has been considered in the Decision of the Constitutional Court Number 29/PUU-IX/2011 which was declared in a session open to the public on September 29, 2011.

Whereas the Court will further assess the constitutionality of the norms of Article 6 paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5), and paragraph (6); Article 6A paragraph (1) letter b, paragraph (2), paragraph (3), sentence (4), sentence (5), and sentence (6); Article 28 paragraph (1), paragraph (2) and paragraph (4); Article 38 paragraph (2), Article 59 paragraph (3), Article 68A paragraph (2), and Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021, as well as Article 77 of Law 21/2001, which are disputed by the Petitioner. Regarding the issue of constitutionality, the Court considers the following:

Whereas the Petitioner argues that Article 6 paragraph (1) letter b, paragraph (2), paragraph (3), and paragraph (6), as well as Article 6A paragraph (1) letter b, paragraph (2), paragraph (3), and paragraph (6) of Law 2/2021 have harmed the Indigenous Papuans because the appointment of the members of the Papuan People's Representative Council (DPRP) and the members of the District/City People's Representative Council (DPRK) from the Indigenous Papuan element is discriminatory among the Indigenous Papuans themselves in terms of equality before law and government as well as guarantees of certainty for all people in obtaining equal opportunities. In addition, according to the Petitioner, the phrase "in accordance with the provisions of the legislations" in the norms of Article 6 paragraph (4) and paragraph (5), as well as Article 6A paragraph (4) and paragraph (5) of Law 2/2021 may create legal uncertainty so that the phrase "in accordance with the provisions of the legislations" should be interpreted as "*perdasus*" and "*perdasi*".

If studied carefully, with regard to the issue of constitutionality of the norms of the articles being petitioned for review by the *a quo* Petitioner, in principal, it came from the fact that there are members of the DPRP and DPRK who are appointed from the element of Indigenous Papuans. The substance of Law 21/2001 has not stipulated any provisions regarding the existence of DPRK (district/city) members who are appointed from Indigenous Papuans. In order to protect and enhance the dignity and value of the Indigenous Papuans, Law 2/2021 as an amendment to Law 21/2001, has added a new article in relation to the composition of the DPRK which previously only consisted of the members of the district/city DPRD who were elected through general elections, amended into shall consist of the members of the DPRK who shall be elected through general elections and who shall be appointed from Indigenous Papuans [*vide* General Elucidation of Law 2/2021]. Therefore, after the enactment of Law 2/2021 the regional people's representative institutions in Papua Province, namely the DPRP in the province and the DPRK in the district/city, it has been determined that ¼ (a quarter) of times of the number of DPRP members or DPRK members shall be appointed from the element of Indigenous Papuan [*vide* Article 6 paragraph (2) and Article 6A paragraph (2) of Law 2/2021].

In relation to the Petitioner's argument regarding Article 6 paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5), and paragraph (6), Article 6A paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5), and paragraph (6) of Law 2/2021, the Court is of the opinion as follows:

Whereas in relation to the Petitioner's argument regarding Article 6 paragraph (1) letter b and Article 6A paragraph (1) letter b of Law 2/2021, according to the Petitioner, the existence of the element appointed from the Indigenous Papuans in the institution of the people's representative council shall create discrimination among Indigenous Papuans themselves in terms of equality before law and government as well as guarantees of certainty for all people in obtaining equal opportunities. In this regard, it is important for the Court to first emphasize the legal considerations of several Decisions of the Constitutional Court in reviewing the constitutionality of the norms of Article 6 paragraph (2) of Law 21/2001. In the Decision of the Constitutional Court Number 116/PUU-VII/2009 which was declared in a session open to the public on February 1, 2010. Furthermore, regarding the Indigenous Papuans who are appointed as members of

representative institutions in Papua, in the Decision of the Constitutional Court Number 4/PUU-XVIII/2020 which was declared in a session open to the public on February 26, 2020.

Based on the excerpts of these decisions, in principal, the Court has taken its stance that the arrangements regarding DPRP members who are appointed are the embodiment of Article 18B paragraph (1) of the 1945 Constitution which states, *"*The state shall recognize and respect any specific or special regional government units as regulated by law*".* One form of specificity as referred to is the presence of the element of Indigenous Papuan in the DPRP, as one of the elements of the administration of the Papuan regional government, which is carried out based on a collective/collegial system not through general elections, as is customary for filling in the people's representative institutions. This shows a special characteristic that is different from any other provinces. Apart from that, the norm for the appointed DPRP members is intended as a form of affirmative action policy. Therefore, the provisions of the norms of Article 6 paragraph (1) and Article 6A paragraph (1) of Law 2/2021 stipulate that the DPRP and DPRK shall consist of the members who: a. elected in general elections in accordance with the provisions of the legislations; and b. Appointed from the element of Indigenous Papuans, which shall be a form of the specificity of the Papua Province. The existence of the provisions for the members of the DPRP/DPRK to be appointed from the element of Indigenous Papuans actually provides legal certainty, support and at the same time accommodates the representation of Indigenous Papuans in representative institutions at the provincial and district/city levels, as has been 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.

Especially in its relation 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 representatives of indigenous peoples in the provinces or districts/cities and such representatives shall not currently be the members of any political party for at least 5 (five) years before registering as candidates for DPRP or DPRK members. In this case, if the Court follows the Petitioner's *petitum* requesting that the appointment of the members of the DPRP and DPRK to be deleted so that the members of the DPRP and DPRK only come from the general election results, then this has the potential to eliminate the specific nature of the Papua Province which is a form of affirmative action policy and at the same time it has the potential to threaten the representation of Indigenous Papuans in the DPRP and DPRK. Moreover, with the loss of the element of the Indigenous Papuans being appointed as petitioned for by the Petitioner it will actually negate the intent and legal politics of amending Law 2/2021 which reinforces the alignment of legislators to the Indigenous Papuans in the framework of protecting and enhancing their dignity. Therefore, with the certainty that Indigenous Papuans will be appointed ¼ (a quarter) of times of the number of DPRP members or DPRK members in the representative institutions at the provincial or district/city level, and with the same term of office as the elected DPRP/DPRK members, namely 5 (five) years, this shall provide justice and certainty for them in carrying out their role 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 Papuans being appointed is a form of affirmative action 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.

Whereas with the declaration that the provisions of Article 6 paragraph (1) letter b and Article 6A paragraph (1) letter b of Law 2/2021 are not in contrary to Article 28H paragraph (2) of the 1945 Constitution, within the limits of reasonable reasoning, because of the norms of the *a quo* Article have very close relationship with Article 6 paragraph (2) and paragraph (3), as well as Article 6A paragraph (2) and paragraph (3) of Law 2/2021, the Court is of the opinion the Petitioner's argument regarding Article 6 paragraph (2) and paragraph (3), as well as Article 6A paragraph (2) and paragraph (3) of Law 2/2021 shall no longer be relevant to be considered any further because they have the same the substance. Therefore, regarding the Petitioner's argument in relation to Article 6 paragraph (2) and paragraph (3), as well as Article 6A paragraph (2) and paragraph (3) of Law 2/2021, they are not in contrary to Article 28H paragraph (2) of the 1945 Constitution.

Whereas furthermore the Petitioner also argues regarding the phrase "in accordance with

the provisions of the legislations" in the norms of Article 6 paragraph (4) and paragraph (5) and Article 6A paragraph (4) and paragraph (5) of Law 2/2021, which according to the Petitioner has created legal uncertainty so it needs to be interpreted as "in accordance with the *perdasus* and *perdasi*". With regard to the Petitioner's *a quo* argument, the Court has previously decided on the phrase "based on the legislations" in Article 6 paragraph (2) of Law 21/2001, namely the Decision of the Constitutional Court Number 116/PUU-VII/2009 whose legal considerations include that Article 6 paragraph (2) of Law 21 /2001, the phrase "based on the legislations" must be declared as unconstitutional except the phrase "based on the legislations" in the *a quo* Article is interpreted as "based on a Special Regional Regulation", otherwise it may cause legal uncertainty that is contrary to Article 28D paragraph (1) of the 1945 Constitution.

If the legal considerations contained in the Decision of the Constitutional Court Number 116/PUU-VII/2009 are examined carefully, the opinion of the Court is based on the substance of the norms being reviewed concerning the matter of election and appointment of DPRP members which are carried out based on the legislations. The interpretation of the Court is very reasonable because it may lead to legal uncertainty due to the unclear form or legal basis for the election and appointment of DPRP members. However, the phrase "in accordance with the provisions of the legislations" in Article 6 paragraph (4) and paragraph (5) as well as Article 6A paragraph (4) and paragraph (5) of Law 2/2021 have a different dimension of regulatory substance when compared to the phrase "based on the legislations" in Article 6 paragraph (2) of Law 21 /2001. In this case, the phrase "in accordance with the provisions of the legislations" in Article 6 paragraph (4) and paragraph (5) and Article 6A paragraph (4) and paragraph (5) of Law 2/2021 relates to fundamental matters, namely: (i) position, composition, duties, powers, rights and responsibilities, membership, leadership, apparatus of the DPRP and DPRK; (ii) the financial and administrative position of the leadership and members of the DPRP and DPRK, therefore it would be inappropriate if it was regulated in a legal product formed at the regional level. In the system of administering regional government, it becomes inappropriate if it is understood to be regulated or based on the legal products made in the regions, *in casu, Perdasus* or *Perdasi*, as argued by the Petitioners. In addition, the relevant fundamental matters are always related to and concerned with a number of legislations such as the laws, government regulations and others. This means that if the phrase "in accordance with the provisions of the legislations" in Article 6 paragraph (4) and paragraph (5) and Article 6A paragraph (4) and paragraph (5) of Law 2/2021 is only interpreted as *Perdasus* or *Perdasi*, it has the potential to cause uncertainty in the implementation of the duties and authorities of the MRP and DPRP and/or DPRK.

Such relevant provisions of the legislations are very clearly shown in, among others, Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council (hereinafter shall be referred to as Law 17/2014) and its amendments and implementing regulations. In Article 422, CHAPTER VIII MISCELLANEOUS PROVISIONS of Law 17/2014 expressly states that: "This law shall also apply to the Aceh People's Representative Council (DPRA), the district/city people's representative council (DPRK) in Aceh, the Papua People's Representative Council (DPRP) in Papua Province, and the West Papua Provincial DPRD, as long as it is not specifically regulated in any separate law".

In the provisions of Law 17/2014 and its amendments, it has been clearly regulated regarding the position, composition, duties, authorities, rights and responsibilities, membership, leadership, apparatus, financial and administrative position of leaders and members of people's representative institutions, including the Regional People's Representative Council (DPR). DPRD). In the event of any exception of the provisions in Law 17/2014 for the DPRP and DPRK in the Papua region, the exception law shall apply to them. In this regard, the "Second Part" regarding the "Papuan People's Representative Council" of Law 2/2021 has regulated several matters regarding the DPRP, namely the members who are appointed from the element of Indigenous Papuans [Article 6 paragraph (1) letter b, paragraph (2) and paragraph (3) of Law 2/2021], the duties and powers of the DPRP [Article 7 of Law 2/2021], the rights of the DPRP and the rights of each member of the DPRP [Article 8 and Article 9 of Law 21/2001], the obligations of the DPRP [Article 10 of Law 21 /2001]. For the parts other than the exception of provisions in Law 21/2001 and Law 2/2021, the Law 17/2014 and its amendments shall apply. Therefore, it is important to

use the phrase "in accordance with the provisions of the legislations" in the formulation of the norms of Article 6 paragraph (4) and paragraph (5) as well as Article 6A paragraph (4) and paragraph (5) of Law 2/2021 in order to provide clarity and certainty of reference. Other statutory provisions that need to be referred to are Law Number 23 of 2014 concerning Regional Government (hereinafter shall be referred to as Law 23/2014) because in Article 399, CHAPTER XXV concerning "OTHER PROVISIONS" expressly states that: "The provisions in this law shall also apply to the Province of the Special Region of Yogyakarta, the Province of the Special Capital Region of Jakarta, Aceh Province, Papua Province and West Papua Province, as far as they are not specifically regulated in the Law which regulates the specialities and specificities of these Regions."

Therefore, regarding the members appointed from the element of Indigenous Papuans, the duties and authorities of the DPRP, the rights of the DPRP and the rights of each member of the DPRP, as well as the obligations of the DPRP have been regulated in Law 21/2001 and Law 2/2021, while the remainder provisions for the DPRP institution and DPRK regulations must still refer to Law 23/2014. This means that the phrase "in accordance with the provisions of the legislations" in the norms of Article 6 paragraph (4) and paragraph (5) and Article 6A paragraph (4) and paragraph (5) of Law 2/2021 is in no way reduces the specificity values in the Special Autonomy for Papua Law, as argued by the Petitioner, but instead emphasizes that it provides certainty for anyone, including the MRP in implementing all provisions of the legislations in relation to the Special Autonomy for Papua within the Unitary State of the Republic of Indonesia. Moreover, the provisions regarding the position, composition, duties, powers, rights and responsibilities, membership, leadership and apparatus of the DPRP are regulated in accordance with legislations, which have been regulated since the beginning of the granting of special autonomy for the Papua Province [*vide* Article 6 paragraph (5) of Law 21/2001] and they have never been reviewed. Based on the description of the aforementioned legal considerations, there is no legal uncertainty in the norms of Article 6 paragraph (4) and paragraph (5) and Article 6A paragraph (4) and paragraph (5) of Law 2/2021, as argued by the Petitioner.

Whereas in addition to arguing for the norms as mentioned above, the Petitioner also argues for Article 6 paragraph (6) and Article 6A paragraph (6) of Law 2/2021, which in principal states that the members of the DPRP and DPRK appointed from the element of Indigenous Papuans, the number is ¼ (a quarter) of times of the total number of the members of DPRP or DPRK, with the term of office for the members of DPRP and DPRK being the same as the elected members, namely 5 (five) years as stipulated in the Government Regulations, the Petitioner petition for the Court to declare such provision as unconstitutional [*vide petitum* of the petition number 6]. It is important for the Court to refer back to the legal considerations of the Decision of the Constitutional Court Number 116/PUU-VII/2009 which among other things states that Article 6 paragraph (2) of Law 21/2001 regarding the phrase "based on the legislations" shall be declared as unconstitutional except for the phrase "based on the legislation" in the *a quo* article shall be interpreted as "based on Special Regional Regulations", otherwise it may cause legal uncertainty that is in contrary to Article 28D paragraph (1) of the 1945 Constitution.

Within the limits of reasonable reasoning, as previously cited, the Court's consideration at that time was due to the unclear form of the legal basis regarding the appointment of DPRP members so as to avoid the occurrence of a legal vacuum which could lead to legal uncertainty, the Court stated that a special regional regulation (*Peraturan Daerah Khusus* or *Perdasus*) is needed as the implementation of Article 6 paragraph (2) of Law 21/2001. Therefore, for the sake of legal certainty, in its verdict the Constitutional Court declared that Article 6 paragraph (2) of Law 21/2001 as long as the phrase "based on the legislations" shall be declared as unconstitutional except for the phrase "based on the legislation" in the *a quo* Article shall be interpreted as "based on Special Regional Regulations". Unlike the circumstances after the enactment of Law 2/2021 as an amendment to Law 21/2001, in Law 2/2021 further provisions regarding the members of the DPRP and DPRK have been explicitly stated in government regulations. This means that the substances related to further regulation of DPRP and DPRK membership are no longer constitute as a legal vacuum. As for the *perdasus* that is currently still valid, it must comply with the provisions of the government regulation [*vide* Article 103 Government Regulation Number 106 of 2021 concerning the Authority and Institutions for Implementing the Special Autonomy Policy for

the Papua Province (hereinafter shall be referred to as PP 106/2021)]. Therefore, the Petitioner's argument that Article 6 paragraph (6) of Law 2/2021 will cause legal uncertainty is legally unreasonable.

Based on all aforementioned the legal considerations, the Petitioner's argument regarding Article 6 paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5) and paragraph (6), Article 6A paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5) and paragraph (6) of Law 2/2021 is legally unreasonable.

Whereas the Petitioner argues that the deletion of the norms of Article 28 paragraph (1) and paragraph (2) of Law 2/2021 may eliminate or hinder or limit the political rights of Indigenous Papuans in their freedom of association, assembly and expression of opinion as well as participation to form local political parties, so that the Petitioner petitions for the formulation of Article 28 paragraph (1) and paragraph (2) to become “(1) The residents of the Papua Province are able to form local political parties; and (2) The procedures for forming local political parties and participating in general elections shall be in accordance with the legislations. In addition, according to the Petitioners, the amendment in the word "mandatory" in Article 28 paragraph (4) of Law 21/2001 to the word "may" in Article 28 paragraph (4) of Law 2/2021 so that the formulation becomes "Political parties may ask for consideration and/or consultation with the MRP in terms of the selection and political recruitment of their respective parties” has removed the institutional authority of the MRP in terms of the selection and political recruitment of political parties.

Regarding the Petitioner's argument in relation to the establishment of local political parties, the Court has considered and decided such matter in the Decision of the Constitutional Court Number 41/PUU-XVII/2019 which was declared in a session open to the public on October 26, 2020**.** Based on the legal considerations of the decision, the Court is of the opinion that the specificity of Papua does not cover the formation of local political parties. The Court is of the opinion that the Petitioner’s argument which compared with political parties in Aceh Province is not comparable considering that each special region shall have their own specificities and specialities that differ from one region to another. The state recognition of the existence of specificities and specialities in several regions in Indonesia is in line with the provisions of Article 18B paragraph (1) of the 1945 Constitution.

Therefore, even though in Law 2/2021 the provisions of Article 28 paragraph (1) and paragraph (2) have been deleted, the Court did not find unconstitutionality of the norms in the *a quo* Article. Moreover, in the Decision of the Constitutional Court Number 41/PUU-XVII/2019, although the Court considers that the specificity in Papua does not cover the formation of local political parties, the Court is also of the opinion that determining the need for the existence of local political parties in Papua is the authority of legislators. This means that the deletion of norms in Article 28 paragraph (1) and paragraph (2) of Law 2/2021 must be seen as a form of open legal policy in the current regulation of political parties in Papua.

As for the Petitioner's argument regarding the loss of institutional authority of the MRP in terms of selection and political recruitment of political parties due to the amendment in the word "mandatory" in Article 28 paragraph (4) of Law 21/2001 to the word "may" in Article 28 paragraph (4) of Law 2/ 2021, the Court considers that the MRP is a cultural representation of Indigenous Papuans, who have certain powers in the context of protecting the rights of Indigenous Papuans based on respect for customs and culture, empowering women, and strengthening religious harmony [*vide* Article 1 point 8 and Article 5 paragraph (2) of Law 2/2021]. The MRP, in carrying out its functions to provide considerations and/or consultations regarding political selection and recruitment if requested by any political party, must remain within the corridors of its duties and authorities in the context of protecting the rights of Indigenous Papuans based on respect for customs and culture, empowering women, and strengthening religious harmony. The protection for Indigenous Papuans in political recruitment by political parties has also been guaranteed in Article 28 paragraph (3) of Law 2/2021 which states, "Political recruitment by political parties in provinces and districts/cities in the Papua region shall be carried out by prioritizing Indigenous Papuans" . Therefore, the use of the word "may" in the norms of Article 28 paragraph (4) of Law 2/2021 does not mean eliminating the duties and powers of the MRP to carry out the protection of the rights of Indigenous Papuans in terms of political selection and recruitment. On the other hand, if the word "may" is changed to "mandatory" as petitioned for by the Petitioner, this will in fact become an

issue because it eliminates the independence of political parties to carry out democratic and open recruitment of citizens in accordance with the Articles of Association and Bylaws of each political party [*vide* Article 29 of Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties and Elucidation of Article 28 paragraph (4) of Law 2/2021].

Based on the above considerations, the Petitioner's arguments which petition which state that the deletion of the norms of Article 28 paragraph (1) and paragraph (2) of Law 2/2021 may eliminate the political rights of Indigenous Papuans to freedom of association, assembly and expression of opinion, as well as the argument of the Petitioner that the amendment to the word "mandatory" into the word "may" in Article 28 paragraph (4) of Law 2/2021 has removed the institutional authority of the MRP in terms of political selection and recruitment of political parties, those are legally unreasonable.

Whereas the Petitioner further argues that the phrase "providing the guarantees of legal certainty for the entrepreneurs" in Article 38 paragraph (2) of Law 2/2021 has the potential to cause discrimination against protection and treatment between the people and owners of capital as entrepreneurs in order to obtain fair legal certainty. The Petitioner petitioned for the Court to amend the *a quo* phrase into "providing the guarantees of legal certainty for every person".

Regarding the Petitioner's argument, it is important for the Court to emphasize that in accordance with Article 28D paragraph (1) of the 1945 Constitution, fair legal certainty is the right of every person, without exception. In line with these provisions, Article 38 paragraph (2) of Law 2/2021 stipulates that economic businesses in Papua Province that utilize natural resources shall be carried out while respecting the rights of indigenous peoples, providing guarantees of legal certainty for entrepreneurs, as well as ensuring the principles environmental preservation, and sustainable development whose regulations are stipulated by *Perdasus*. The guarantees of legal certainty as referred to in the *a quo* Article 38 paragraph (2) must be understood as a whole with the provisions of other verses. In this case, through the Special Autonomy for Papua, the legislators desire to create the greatest possible prosperity and welfare for all the people of Papua while upholding the justice and equality [*vide* Article 38 paragraph (1) of Law 2/2021]. To embody the provisions concerning the economy in Article 38 paragraph (1) of the *a quo* Law, Article 38 paragraph (3) also emphasizes that economic business in Papua Province shall be carried out with the obligation to pay attention to local human resources by prioritizing Indigenous Papuans. Therefore, the phrase "providing guarantees of legal certainty for entrepreneurs" as referred to in Article 38 paragraph (2) is in the context of providing "business incentives" so as to increase economic efforts in Papua to create as much prosperity and welfare for all the people of Papua while respecting the rights of indigenous peoples, the principles of environmental preservation, and sustainable development. Moreover, the guarantees of legal certainty for entrepreneurs must be understood as this shall include entrepreneurs who are Indigenous Papuans who will and are running a business. Furthermore, the relevant regulations to provide guarantees of legal certainty for entrepreneurs are the further regulations as stipulated by the *Perdasus* so that the MRP, who has the duty and authority to provide consideration and approval of the *Perdasus* bills [*vide* Article 20 paragraph (1) letter b of Law 21/2001] may guide the substance of the relevant *Perdasus* in accordance with the conditions or characteristics of the Papuan people.

Based on the description of the aforementioned legal considerations, the norms of Article 38 paragraph (2) of Law 2/2021 do not cause any discrimination and legal uncertainty and are in line with the stipulation in 28I paragraph (2) and Article 28D paragraph (1) of the 1945 Constitution. Therefore, the Petitioner's argument regarding the unconstitutionality of the norms of Article 38 paragraph (2) of Law 2/2021 is legally unreasonable.

Whereas the Petitioner further argued that the phrase "with the lowest possible burden on society" in Article 59 paragraph (3) of Law 2/2021 has the potential to harm the people of Papua in obtaining optimal health services.

Regarding the Petitioner's argument, it is important for the Court to first emphasize that the norm in the provisions of Article 59 paragraph (3) of Law 2/2021 is not a new norm because it has been determined previously in Article 59 paragraph (3) of Law 21/2001 which states, "Every Papuans shall have the right to obtain health services as referred to in paragraph (1) with the lowest possible burden on society. Furthermore, the Elucidation of Article 59 paragraph (3) of Law 21/2001 states, "what is meant by the lowest possible burden on society is the cost of health

services shall be adjusted to the economic capacity including the waiver of service fees for those who cannot afford it". Even though Article 59 was amended in Law 2/2021, the provisions of the norms of Article 59 paragraph (3) were not amended in Law 2/2021. The difference is that Article 59 paragraph (3) of Law 2/2021 no longer has an Article Elucidation as is the case with Article 59 paragraph (3) of Law 21/2001. The question is whether the existence of this provision shall result in health services for the Papua society will be reduced or increased. In this matter, it is important to understand that one of the reasons for the granting of the Special Autonomy for Papua for the first time through Law 21/2001 was because of the gap in the health sector [*vide* General Elucidation of Law 21/2001]. Due to this reason, namely to focus on the special autonomy in the health sector, the provisions of Article 34 paragraph (3) letter e of Law 21/2001 stipulates "The special budget within the framework of Special Autonomy shall be equivalent to 2% (two percent) of the ceiling of the National General Allocation Fund, which shall primarily be intended for education and health financing. The provisions of Article 34 were then amended by Law 2/2021. In addition to there is no substantial difference between the substance of Article 59 paragraph (3) of Law 2/2021 and the substance of Article 59 paragraph (3) of Law 21/2001, due to the reasons of improving the conditions in Papua, Law 2/2021 has explicitly increased special budget in the framework of Special Autonomy, the amount of which is increased to 2.25% (two point twenty-five percent from the original 2% (two percent) of the ceiling of the National General Allocation Fund. Not only that, the budget has been determined to be used on the basis of implementation performance of 1.25% (one point twenty-five percent) of the ceiling of the National General Allocation Fund which is intended for education, health, and community economic empowerment financing, with a minimum 20% (twenty percent) of which shall be for Health expenditure [*vide* Article 34 paragraph (3) letter e number 1 and number 2 of Law 2/2021]. Moreover, to strengthen the alignment of the special autonomy policy in the health sector, it has also been determined that the profit sharing proceed from the oil mining shall be 70% (seventy percent) and from natural gas mining shall be 70% (seventy percent), 25% (twenty-five percent) of these revenues shall be allocated for health financing and nutrition improvement [*vide* Article 34 paragraph (3) letter b number 4 and number 5 *juncto* Article 36 paragraph (2) letter b of Law 2/2021].

Whereas starting from the design of the regulation for the allocation of the health sector as has been determined above, the regulation for the health sector was then determined in CHAPTER XVII of Law 2/2021. In this regard, the Government and the Regional Government of the Papua Province are obliged to set the quality standards, to provide health services for the population, including to improve the nutrition, reproductive health, as well as maternal and child health, also to carry out the efforts to prevent and control diseases [*vide* Article 59 paragraph (1) of Law 2/2021], and every Papuan shall have the right to receive health services at the lowest possible burden on society [*vide* Article 59 paragraph (3) of Law 2/2021].

Based on the aforementioned legal facts, the Court is of the opinion that it has been proven that the budgeting provisions within the framework of Special Autonomy have been designed in such a way that is still paying the greatest attention to the health services aspects for the people of Papua. In addition, health is also an important indicator in measuring the human development index. Because of the importance of providing health services, the Government, Regional Government of Papua Province, and District/City Government of Papua shall be required to allocate health budgets for health service efforts for Indigenous Papuans [*vide* Article 59 paragraph (5) of letter a of Law 2/ 2021]. Therefore, the design of the budget allocation for health as described in the aforementioned legal considerations, the phrase "with the lowest possible burden on society" does not need to be feared that it will cause the loss or reduction of health services to the community, including the Indigenous Papuans. Because, the phrase "with the lowest possible burden on society" is not meant to reduce the budget allocation from the Government or Regional Government for the health sector, but the meaning of the phrase is to provide relief or convenience for the people/every resident of Papua in obtaining health services.

Based on the description of the aforementioned legal considerations, the Petitioner's argument that the phrase "with the lowest possible burden on society" in Article 59 paragraph (3) of Law 2/2021 has the potential to harm the people of Papua in obtaining optimal health services is legally unreasonable.

Whereas the Petitioner argues that the norm of Article 68A paragraph (2) of Law 2/2021 in

terms of the establishment of a special body chaired by the Vice President has caused legal uncertainty, and is in contrary to the principles of decentralization, division of powers, regional specificity and diversity, as well as the principle of the state recognizing and respecting special regional government units based on the 1945 Constitution.

Regarding the Petitioner's argument, the Court considers 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 [*vide* Article 68A paragraph (1) and General Elucidation of Law 2/2021]. The special agency consists of a chairman and several members with the following composition: a. Vice President as chairman; b. the minister administering government affairs in the domestic sector, the minister administering government affairs in the field of national development planning, and the minister administering government affairs in the financial sector as the members; and c. 1 (one) representative from each province in Papua Province as member. The composition of representatives from the Papua province can be understood as an effort to the open channels of aspirations for the performance of special agency in Papua. Moreover, the independence of the direct involvement of the Papuan people is guaranteed, it can be seen that the "representatives" from each province as referred to in Article 68A paragraph (2) letter c of Law 2/2021 are those who do not come from government officials, the People's Representative Council, the Regional Representatives, DPRP, MRP, DPRK, and the members of political parties [vide Explanation of Article 68A paragraph (2) letter c Law 2/2021].

The purpose of establishing a special agency is to accelerate the development of welfare and the improvement of the quality of public services as well as the continuity and sustainability of development in the Papua region so that it is in line with the objectives of the granting of special autonomy [*vide* preamble of Considering section letter a of Law 2/2021]. Therefore, the special agency 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 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 structure and composition 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.

Based on the aforementioned legal considerations, the Petitioner's argument regarding the norm of Article 68A paragraph (2) of Law 2/2021 creates legal uncertainty, is in contrary to the principles of decentralization, division of powers, regional specificity and diversity, as well as the principle of the state recognizing and respecting regional government units based on Article 18B of the 1945 Constitution, is legally unreasonable.

Whereas the Petitioner argues that Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021 has eliminated and emasculated the authority of the MRP as a cultural representative of indigenous Papuans in giving the approval for the expansion of provincial and district/city areas. According to the Petitioner, Article 76 paragraph (1) of Law 2/2021 should be interpreted as "the Expansion of province and district/city into provinces and districts/cities may only be carried out with the approval of the MRP and DPRP". In addition, the phrase "without being carried out through the preparatory area stages" in Article 76 paragraph (3) of Law 2/2021 should be interpreted as "must be carried out through the preparatory area stages".

With regard to the Petitioner's argument regarding Article 76 paragraph (1) and paragraph (2) of Law 2/2021, the Court considers that one of the objectives of the amendment in Law 2/2021 is directed at reducing the inter-regional disparities in Papua by using a regional structuring approach that is bottom up and top down while still prioritizing the principles of democracy and efficiency [*vide* General Elucidation of Law 2/2021]. The implementation of the bottom up and top down approach by the legislators needs to be seen as a form of policy choice in maintaining a balanced and proportional combination between the roles of the central government and regional government in determining the policies for structuring certain areas while maintaining the national interest as a unitary state, as long as this also does not neglect the protection of Indigenous

Papuans. Moreover, the recognition of government units which are specific and special as part of the way to recognize and respect the indigenous peoples' units and their traditional rights shall be regulated in law [*vide* Article 18B of the 1945 Constitution].

As for the argument of the Petitioner which petitions for the formula "may only" in Article 76 paragraph (1) of Law 2/2021, the Court considered that doctrinally the content material of the law in principle shall be *gebod* (order) which is a method that contains an order or obligation to do something; *verbod* (prohibition) which is a rule that contains a prohibition to do something; as well as *mogen* (permit) which is a method that contains the permit that means something may be done and may not be done. Meanwhile, from the nature of the rule of law, it is known that there is an imperative method that is coercive (*gebod* and *verbod*), as well as the facultative method, which is permissible and does not have to be done (*mogen*). Meanwhile, the arguments and the *petitum* of the Petitioner that petitions for the formulation of the word "may" to be interpreted as "may only" in Article 76 paragraph (1), the Court is of the opinion that shall actually lead to an ambiguity in the meaning contained in the *a quo* Article, namely between the imperative or facultative method, because the word "only" is coercive while the word "may" is permissible. If you use the phrase "may only" then the formulation of the method shall become unusual in the compilation of the method of the norms of legal regulations. The use of the word "may" actually have a clear intention, namely to state the discretionary nature of the authority given to the institution [*vide* Appendix II number 267 of Law Number 12 of 2011 concerning Formation of Legislation, hereinafter shall be referred to as Law 12/2011]. Through the formulation of the word "may" for the MRP in giving approval for regional expansion, shall not cause the authority of MRP as stipulated in Law 2/2021 to be hindered or reduced.

Furthermore, the Petitioner also disputed the phrase "without going through the preparatory area stages" in the norm of Article 76 paragraph (3) of Law 2/2021, according to the Petitioner it is unconstitutional if it is not interpreted as "must be carried out through the preparatory area stages". In relation to the *a quo* of the Petitioner, it is important for the Court to first consider the proposed design or initiative for the expansion of Papua into an autonomous region as stipulated in Law 2/2021, namely: (1) the expansion as a regional government proposal [*vide* Article 76 paragraph (1) of Law 2/2021] and (2) the expansion as a central government proposal and the House of Representative (DPR) [*vide* Article 76 paragraph (2) of Law 2/2021]. If the proposal comes from the local government to divide the province and district/city into provinces and districts/cities, this may 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 areas is not completely eliminated as long as the proposed expansion is carried out with the approval of the MRP and DPRP, as this is in accordance with Law 23/2014. In this regard, the Court needs to emphasize, even if the expansion of provincial and district/city areas originating from the Government and the DPR (House of Representatives) Proposal and it was carried out without going through the preparatory area stages, an in-depth and comprehensive study must still be carried out. In this case, 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 people of Papua [*vide* Article 76 paragraph (2) of Law 2/2021]. Therefore, regional expansion, even if it was carried out due to the Government and the DPR proposal, it can still guarantee the space for Indigenous Papuans to carry out political, governmental, economic and socio-cultural activities.

Based on the aforementioned legal considerations, the Petitioner's argument regarding the norms of Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021 has eliminated and emasculated the authority of the MRP, it is evident that the norms are not in contrary to Article 18B of the 1945 Constitution so that the Petitioner's argument legally unreasonable.

Whereas the Petitioner also argues that the phrase "may be submitted" in Article 77 of Law 21/2001 is a phrase that is unclear, biased and has multiple interpretations, and it has caused the debate among Papuan people in proposing the amendments to the *a quo* Law. This phrase, according to the Petitioner, has also eliminated all of the authority of the MRP when the MRP was not involved in the process and the preparation of proposal of amendment to the special autonomy law governing the Indigenous Papuans. Therefore, in principal, the Petitioner petitions that the word "may" shall be interpreted as "may only".

Regarding the Petitioner's argument, the Court first needs to look at the provisions of

Article 5 paragraph (1) and Article 20 paragraph (1) of the 1945 Constitution that the President and the DPR are institutions that are given the power by the constitution to make the legislations. Meanwhile, the Court also observes that there is a provision in Article 18 paragraph (2) of the 1945 Constitution that provincial, district and city regional governments shall regulate and manage their own government affairs according to the principles of autonomy and co-administration. Likewise, the provisions of Article 18B paragraph (1) of the 1945 Constitution which states that the state shall recognize and respect the specific or special regional government units which are regulated by the legislations. The existence of Article 18 paragraph (2) and Article 18B paragraph (1) have guaranteed the existence and the specificity of Papua province. On the other hand, there is the authority of the President and DPR as the legislators as stipulated in Article 5 paragraph (1) and Article 20 paragraph (1) of the 1945 Constitution. Therefore, the implementation of these two things must be carried out in a balanced manner without mutually annulling other articles in the constitution.

The Court considers that the norm of Article 77 of Law 21/2001 is the embodiment of the principle of balance, especially with regard to the formation of specific and special regions. In this case, Article 77 of Law 21/2001 basically stipulates that the proposal of amendments to Law 21/2001 may be submitted by the people of Papua Province through the MRP and DPRP to the DPR or the Government in accordance with the legislations. The formulation of these provisions does not close the opportunity for the people of Papua through the MRP and the DPRP to submit the proposal of amendment to the *a quo* law.

The Court is of the opinion that if the word "may" in the norm of Article 77 Law 21/2001 is interpreted as "may only" so that the norm becomes "Proposal of Amendments to this Law may only be submitted by the people of Papua Province through the MRP and DPRP to the DPR or the Government in accordance with legislations", as stated in the Petitioner's *petitum* number 20, this interpretation, in fact, is in contrary to the 1945 Constitution. This is because Article 20 of the 1945 Constitution stipulates that the DPR shall have the power to form the laws together with the president. In addition to being in contrary to Article 5, Article 20, Article 22D of the 1945 Constitution, this shall also violate the provisions of Article 21 of the 1945 Constitution, because the Constitution also determines the right of members of the DPR to submit the bills. If the Petitioner's *petitum* is granted, it is the same as negating the initiative proposals of the members of the DPR, DPR, DPD, and the President in submitting a proposal of a bill to amend the Papua special autonomy law. In this case, it is important for the Court to emphasize that even if the word "may" is used in the norm of Article 77 of Law 21/2001, it is actually still possible for the MRP and the DPRP to convey their aspirations regarding the amendment to Law 21/2001. Moreover, in the provisions of Article 96 of Law 12/2011, it determines the existence of the public's right to provide inputs in the formation of legislations, namely the community of individuals or groups of people who have an interest in the substance of the bills. Therefore, without adding the phrase "may only", the people of Papua shall still have the right to submit the proposal of amendments to the *a quo* law as long as it is implemented through the DPR as the legislator together with the Government and in accordance with the provisions of the legislations. Moreover, regarding the phrase "may only" as desired by the Petitioner, the Court has also considered that the phrase "may only" actually creates ambiguity in the meaning and method contained in the *a quo* Article, namely whether is imperative and/or facultative in nature. Meanwhile, regarding the Petitioner's argument in relation to the non-involvement of the public in the process of formulating Law 2/2021 as an amendment to Law 21/2001, aside of being an implementation issue, the Court is of the opinion that this issue is within the scope of formal review of laws so that it is irrelevant for the Court to consider it.

Based on the description of the aforementioned legal considerations, the Petitioner's argument regarding the phrase "may be submitted by the People of Papua Province through the MRP and DPRP" in Article 77 of Law 21/2001 is unclear, biased and has multiple interpretations so that it is in contrary to the 1945 Constitution, such argument is legally unreasonable.

Whereas, after the Court has considered the subject matter of the Petitioner's petition as referred to above, the Court will consider the legal standing of the Petitioner in the petition for the review of the norms of Article 38 paragraph (2), Article 59 paragraph (3), Article 76 paragraph (1), paragraph (2), and paragraph (3) of Law 2/2021, as well as Article 77 of Law 21/2001 as follows:

a. Whereas Article 38 paragraph (2) of Law 2/2021 being petitioned for review is part of the Chapter on the Economy which basically regulates the economic enterprises in Papua Province that utilize natural resources. Such matter is not directly related to the Petitioner as MRP which is a cultural representation of Indigenous Papuans who is focusing on respect for customs and culture, empowering women, and strengthening religious harmony. Moreover, in their petition, the Petitioner emphasize the phrase "providing the guarantees of legal certainty for the entrepreneurs" in the *a quo* Article 38 paragraph (2), but cannot describe the presumed loss of constitutional rights whether they are actual, specific or potential in nature as well as the causal relationship (*causal verband*) between the presumed loss of the constitutional rights of the Petitioner and the enactment of the norms being petitioned for review.

b. Whereas Article 59 paragraph (3) of Law 2/2021 is a provision that regulates autonomous regional government affairs in the health sector. Law 2/2021 has regulated other articles regarding the allocation of health service funds and who shall be responsible for the health services in Papua. Therefore, the petition for the *a quo* Article 59 paragraph (3) is not directly related to the focusing on the respect for customs and culture, empowering women, and strengthening religious harmony which are the duties and authorities of the MRP.

c. Whereas Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021 are provisions which govern the expansion of provincial and district/city areas in Papua, the approval for the expansion of provincial and district/city areas is not only given by MRP but it shall be a joint approval with the DPRP. Therefore, if the Petitioner submits a petition for review of Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021 then it should be submitted together with the DPRP. The Petitioner describes its legal standing that Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021 has eliminated, nullified, and emasculated the authority of the MRP in giving the approval for the expansion of provinces and districts/cities. However, as the Court considers, the existence of the *a quo* Article has not eliminated the authority and role of the MRP in granting the approval for the expansion of province and district/city areas together with the DPRP.

d. Whereas that is also the case with Article 77 of Law 21/2001 which regulates the proposal of amendment to the special autonomy law for the Papua Province (*in casu* Law 21/2001), it may be submitted by the people of Papua Province through the MRP and DPRP to the DPR or the Government. Because the proposal of amendment to Law 21/2001 may be submitted through the MRP and the DPRP, the *a quo* petition for the review of Article 77 should be submitted by the Petitioner together with the DPRP. As for the *a quo* case, the petition is only submitted by the MRP. In addition, in outlining its legal standing, the Petitioner argues that it was not involved in the process and preparation of the proposal of amendment to the special autonomy law, after the Court considered, this matter is the implementation of norms and is within the scope of formal review, not a matter of constitutionality of norms.

Whereas regarding the legal standing of the Petitioner in the petition for review of Article 38 paragraph (2), Article 59 paragraph (3), Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021, and Article 77 of Law 21/2001 , after the Court has considered the subject matters of the petition, it has been evident that the substance of the Petitioner's petition also relates to the interests of the regional government as well, therefore the submission of the *a quo* petition for review of the articles cannot only been submitted by the Petitioner itself. Moreover, the Petitioner was unable to explain the presumed loss of constitutional rights whether actual, specific or at least potential as well as the causal relationship (*causal verband*) between the presumed loss of the Petitioner's constitutional rights and the enactment of the norms of the articles being petitioned for review. Therefore, the petition for the review of the norms of Article 38 paragraph (2), Article 59 paragraph (3), Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021, and Article 77 of Law 21/2001 does not fulfil the requirements to be granted any legal standing, therefore the Court is of the opinion that the Petitioner does not have the legal standing to act as the Petitioner in the review of the *a quo* articles.

Whereas even if the Petitioner has the legal standing to petition for a review of the norms of Article 38 paragraph (2), Article 59 paragraph (3), Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021, as well as Article 77 of the Law 21/2001, *quod non*, the arguments of the Petitioner's petition regarding the *a quo* articles are legally unreasonable, as the Court has considered in the subject matter of the petition.

Based on all the aforementioned legal considerations, the Court is of the opinion that the provisions of Article 6 paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5), and paragraph (6); Article 6A paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5), and paragraph (6); Article 28 paragraph (1), paragraph (2) and paragraph (4); Article 38 paragraph (2), Article 59 paragraph (3), Article 68A paragraph (2), and Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021, as well as Article 77 of Law 21/2001 have evidently not caused any injustice, legal uncertainty and discrimination as guaranteed in the 1945 Constitution as argued by the Petitioner. Therefore, the Petitioner's petition is entirely legally unreasonable and the Petitioner does not have the legal standing to submit the petition for review of Article 38 paragraph (2), Article 59 paragraph (3), Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021, as well as Article 77 of Law 21/2001.

Accordingly, the Court subsequently passed down a decision which verdict states that:

1. The Petitioner's petition throughout the review of Article 38 paragraph (2), Article 59 paragraph (3), Article 76 paragraph (1), paragraph (2) and paragraph (3) of the Law of the Republic of Indonesia 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 to the State Gazette of the Republic of Indonesia Number 6697), as well as Article 77 of Law Number 21 of 2001 concerning Special Autonomy for the Papua Province (State Gazette of the Republic of Indonesia of 2001 Number 135, Supplement to the State Gazette of the Republic of Indonesia Number 4151) is inadmissible;
2. To dismiss the remainder of the Petitioner's petition.

Dissenting Opinion

Regarding the *a quo* verdict, there are dissenting opinions from Constitutional Justice Saldi Isra regarding the legal standing of the Petitioner in the petition for review of Article 38 paragraph (2), Article 59 paragraph (3), Article 76 paragraph (1), paragraph (2), and paragraph (3) of Law 2/2021, as well as Article 77 of Law 21/2001, as follows:

Whereas in the *a quo* petition, the Papuan People's Assembly (*Majelis Rakyat Papua* or MRP) petition for the review of the constitutionality of Article 6 paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5), and paragraph (6); Article 6A paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5), and paragraph (6); Article 28 paragraph (1), paragraph (2) and paragraph (4); Article 38 paragraph (2), Article 59 paragraph (3), Article 68A paragraph (2), and Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021 concerning the Second Amendment to Law 21/2001 concerning Special Autonomy for the Papua Province, as well as Article 77 of Law 21 against the 1945 Constitution. In this case, the Petitioner, *in casu* MRP, represented by Timotius Murib as Chairman, and Yoel Luiz Awalt and Debora Mote as Deputy Chairmen.

Whereas regarding the legal standing of the Petitioner, the Court in the legal considerations of the *a quo* decision stated in the petition for review of Article 38 paragraph (2), Article 59 paragraph (3), Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021, and Article 77 of Law 21/2001, after the Court had considered the subject matters of the petition, it was evident that the substance of the Petitioner's petition also relates to the interests of the regional government as well, therefore the submission of the *a quo* petition for review of the articles cannot been submitted by the Petitioner itself. Moreover, the Petitioner was unable to explain the presumed loss of constitutional rights whether actual, specific or at least potential as well as the causal relationship (*causal verband*) between the presumed loss of the Petitioner's constitutional rights and the enactment of the norms of the articles being petitioned for review. Therefore, regarding the petition for the review of the norms of Article 38 paragraph (2), Article 59 paragraph (3), Article 76 paragraph (1), paragraph (2), and paragraph (3) of Law 2/2021, and Article 77 of

Law 21/2001, The Petitioner does not fulfil the requirements to be granted the legal standing in submitting the norms of the *a quo* articles*.* Therefore, in the verdict of the decision of the *a quo* petition, the Court declared that the petition for the review as long as it relates to the norms of Article 38 paragraph (2), Article 59 paragraph (3), Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021, as well as Article 77 of Law 21/ 2001 is inadmissible (NO).

Whereas with regard to not being granted the legal standing for the Petitioner in the review of the norms of Article 38 paragraph (2), Article 59 paragraph (3), Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021, and Article 77 of Law 21/2001, I, Constitutional Justice Saldi Isra has dissenting opinions or perspectives due to the following reasons:

Whereas in describing its legal standing, the Petitioner constructs it in the context of protecting the rights of indigenous Papuans (*Orang Asli Papua* or OAP) based on respect for customs and culture, empowering women, and strengthening religious harmony, it describes as having a direct interest in Law 2/2021 *jo.* Law 21/2001. For the Petitioner, factually or potentially the norms of Article 6 paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5), and paragraph (6); Article 6A paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5), and paragraph (6); Article 28 paragraph (1), paragraph (2) and paragraph (4); Article 38 paragraph (2), Article 59 paragraph (3), Article 68A paragraph (2), and Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021 on the Second Amendment to Law 21/2001 on Special Autonomy for the Papua Province, as well as Article 77 of Law 21 against the 1945 Constitution have harmed and/or potentially harmed the Indigenous Papuans. Therefore, as a cultural representation of Indigenous Papuans, the Petitioner shall have certain (specific) powers in order to protect the rights of Indigenous Papuans based on respect for customs and culture, empowering women, and strengthening religious harmony;

Whereas in reviewing the legal standing of the Petitioner in the *a quo* petition, it cannot be completely separated from the juridical construction of the existence of the MRP as part of the specificity in granting the special autonomy to Papua as the implementation of Article 18B of the 1945 Constitution of the Republic of Indonesia (1945 Constitution). Moreover, regarding the respect for the cultural identity as the rights of traditional communities, it is under a category of human rights as regulated in the constitution [*vide* Article 28I paragraph (3) of the 1945 Constitution]. In this case, the legal politics of the formation of the Special Autonomy Law for Papua places the MRP as a cultural representation of Indigenous Papuans, which has certain powers in the context of protecting the rights of Indigenous Papuans based on the respect for customs and culture, empowering women, and strengthening religious harmony (*vide* Article 1 point 8 of Law 2/2021). Such legal politics must be interpreted correctly, especially when placed under the context of Article 18 and Article 28I paragraph (3) of the 1945 Constitution.

Whereas when Article 6 paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5), and paragraph (6); Article 6A paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5), and paragraph (6); Article 28 paragraph (1), paragraph (2) and paragraph (4); Article 38 paragraph (2), Article 59 paragraph (3), Article 68A paragraph (2), and Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021, and Article 77 of Law 21/2001 which were petitioned for constitutionality review, they must be examined based on Article 51 of the Constitutional Court Law. In this case, Article 51 of the Constitutional Court Law requires that: (1) the existence of the constitutional rights of the Petitioner as granted by the 1945 Constitution; (2) the constitutional rights and/or authorities of the Petitioner are harmed by the enactment of the law being petitioned for review; (3) the loss of constitutional rights of the Petitioner is specific, actual, or at least potential which according to reasonable reasoning may be ascertained to occur; (4) there is a causal relationship *(causal verband)* between the loss and the enactment of the law being petitioned for review; and (5) there is a possibility that with the granting of the petition, the loss of the constitutional rights will not or will no longer occur.

Whereas after examining and reviewing the description regarding the loss of the constitutional rights of the Petitioner, both those described as factual losses and potential losses,

the Petitioner has specified them so as to describe a causal relationship with the enactment of the norms of the articles being petitioned for constitutional review. In this case, if it is placed accurately and correctly in the MRP's position as a cultural representation of Indigenous Papuans as set forth in Article 1 number 8 of Law 2/2021, there is not enough reason to differentiate the granting of the legal standing to the Petitioner for the petition of the norms of Article 6 paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5), and paragraph (6); Article 6A paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5), and paragraph (6); Article 28 paragraph (1), paragraph (2) and paragraph (4); Article 68A paragraph (2) of Law 2/2021 with the enactment of the norms of Article 38 paragraph (2), Article 59 paragraph (3), Article 76 paragraph (1), paragraph (2) and paragraph (3) of Law 2/2021, as well as Article 77 of Law 21/2001. Within the limits of reasonable reasoning, all the norms being petitioned for the review are closely related and intertwined with the cultural issues of Indigenous Papuans.

Such legal opinion cannot be separated from the substance of the norms of the articles being petitioned for review. For example, in the substance of Article 38 paragraph (2) of Law 2/2021, there is the phrase "respect the rights of indigenous peoples" and Article 59 paragraph (3) of Law 2/2021 there is the phrase "every Papuan shall have the right to receive health services", both norms are absolutely impossible to be separated from the cultural issues of Indigenous Papuans and the interests of the Papuan people. Likewise, Article 76 paragraph (1), paragraph (2), and paragraph (3) of Law 2/2021 and Article 77 of Law 20/2001 cannot be separated from the existence of the MRP as a cultural representation of Indigenous Papuans. In this perspective, if the substance of the special nature of the law is always associated with the interests of the regional government, because there is indeed an alignment of interests between the two, we may be judged to have failed in understanding the position of cultural institutions in the design of special autonomy. Therefore, because all the norms submitted for the petition are related to the cultural interests of Indigenous Papuans, the Court should have given the legal standing to the Petitioner for all of the relevant norms.

Whereas based on all of these legal considerations, in addition to the norms of Article 6 paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5), and paragraph (6); Article 6A paragraph (1) letter b, paragraph (2), paragraph (3), paragraph (4), paragraph (5), and paragraph (6); Article 28 paragraph (1), paragraph (2) and paragraph (4); Article 68A paragraph (2) of Law 2/2021 which is given the legal standing, then within the norms of Article 38 paragraph (2), Article 59 paragraph (3), Article 76 paragraph (1), paragraph (2) and paragraph (3) of the Law 2/2021, as well as Article 77 of Law 21/2001, the Petitioner should also be given the legal standing to submit the petition. However, for the norms of Article 38 paragraph (2), Article 59 paragraph (3), Article 76 paragraph (1), paragraph (2), and paragraph (3) of Law 2/2021, as well as Article 77 of Law 21/200, even though the Petitioner has the legal standing to submit the petition, the subject matter of the petition is legally unreasonable as described in the legal considerations of the *a quo* decision. Therefore, all the norms being petitioned for constitutional review by the Petitioner in the *a quo* petition should be declared as dismissed.