CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 115/PUU-XX/2022

Concerning

Area Coverage and Territorial Boundaries of Tambrauw Regency

Petitioners	:	**Hermus Indou, et al.**
Type of Case	:	Judicial review of Law Number 14 of 2013 concerning Amendments to Law Number 56 of 2008 concerning the Establishment of Tambrauw Regency in West Papua Province (Law 14/2013) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	:	Article 3 paragraph (1) and Article 5 paragraph (1) are contrary to Article 18B paragraph (1) and paragraph (2), Article 28D paragraph (1), and Article 28I paragraph (3) of the 1945 Constitution
Verdict	:	To dismiss the Petitioner's petition entirely
Date of Decision	:	Tuesday, January 31, 2023
Overview of Decision	:	

The Petitioner is the Regional Government, consisting of the Manokwari Regent and the Regional Legislative Council (*Dewan Perwakilan Rakyat Daerah* or DPRD) of Manokwari Regency. The Petitioner argue that the provisions of Article 3 paragraph (1) and Article 5 paragraph (1) of Law Number 14 of 2013 concerning Amendments to Law Number 56 of 2008 concerning the Establishment of Tambrauw Regency in West Papua Province (Law 14/2013) have harmed the Petitioner's constitutional rights as provided in Article 18 paragraph (2) of the 1945 Constitution;

Regarding the authority of the Court, because Petitioners petition for a review of the constitutionality of the norms of Law, *in casu* Article 3 paragraph (1) and Article 5 paragraph (1) of Law 14/2013 against the 1945 Constitution, then under Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of the Constitutional Court Law and Article 29 paragraph (1) of the Judicial Powers Law, the Court has the authority to hear the *a quo* petition.

Regarding the Petitioner's legal standing, the Court considers that the Petitioners has clearly described and were able to explain its qualifications as a regional government consisting of the Regional Government/Regent and the Regional

Legislative Council, which has the authority to administer government affairs in its area because they represent the Regional Government, *in casu* the Regional Government of Manokwari Regency. In such qualifications, even though the Petitioners are the administrator of government affairs in Manokwari Regency, not in Tambrauw Regency, the constitutional issues of such *a quo* norms are not solely regarding regional interests but also regarding the coverage of expanded territorials which concerns the interests of services for the welfare of the people who are the residence of the expanded area. Therefore, the determination of legal standing is not only based on authority but also on the loss of constitutional rights. The Petitioners have also specifically explained their constitutional rights, which, in their opinion, have been harmed or may be potentially harmed, by the enactment of the norms being petitioned for review, namely to govern and manage government affairs on their own in accordance with the principles of autonomy and assistance task. Therefore, it is evident that there is a causal relationship (*causal verband*) between the Petitioners presumption regarding the loss or potential loss of their constitutional rights and the enactment of the norms of the law being petitioned for judicial review. Thus, in accordance with that consideration, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the *a quo* petition.

Whereas because the *a quo* petition is clear, under Article 54 of the Constitutional Court Law, the Court is of the opinion that there is no urgency and relevance to hear the statements of the parties referred to in Article 54 of the Constitutional Court Law.

Regarding the Petitioner's argument concerning the territorial boundaries of Tambrauw Regency as set forth in Article 3 paragraph (1) and Article 5 paragraph (1) of Law 14/2003, the Court through the Decision of the Constitutional Court Number 105/PUU-XI/2013 has considered, among others, as follows:

> **[3.13]** Considering, whereas Article 3 paragraph (1) of Law Number 14 of 2013 concerning Amendments to Law Number 56 of 2008 concerning the Establishment of Tambrauw Regency in West Papua Province (State Gazette of the Republic of Indonesia of 2013 Number 85, Supplement to the State Gazette of the Republic of Indonesia Number 5416] provides, "Tambrauw Regency originates from a part of the area of Sorong Regency and a part of the area of Manokwari Regency which consists of the area coverage of a. Fef District b. Miyah District; c. Yembun District; d. Kwoor District; e. Sausapor District; f. Abun District; g. Amberbaken District; h. Kebar District; i. Senopi District; j. Mubrani District; and k. Moraid District". As for the territorial boundaries of Tambrauw Regency as provided in Article 5 paragraph (1) of Law Number 56 of 2008, due to the inclusion of five new districts which were not previously included in the area coverage of Tambrauw Regency, under Article 5 paragraph (1) of Law Number 14 of 2013 has also changed;
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> **[3.14]** Considering, whereas the intention of the Petitioners' petition in the *a quo* petition is that Amberbaken District, Kebar District, Senopi District, and Mubrani District originating from Manokwari Regency should be re-removed from the area coverage of Tambrauw Regency and that a new district is established, namely West Manokwari Regency;
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> **[3.15]** Considering Article 1 paragraph (1) of the 1945 Constitution provides that the state of Indonesia is a Unitary State in the form of a Republic; Article 18 paragraph (1) of the 1945 Constitution provides, "The Unitary State of the Republic of Indonesia is divided into provincial regions and those provincial regions are divided into regencies and municipalities, whereby every one of those provinces, regencies, and municipalities has its regional government,

which shall be regulated by laws.". Then Article 37 paragraph (5) of the 1945 Constitution confirms, "Particularly regarding the form of the Unitary State of the Republic of Indonesia no amendment can be made". The Court is of the opinion that whether an area, in this case, a district, is included in the area coverage of a particular province, regency/municipality highly depends on the objective effectiveness and efficiency in administering governmental functions for regional development and providing the best possible service to the community. This issue has been considered by the Court in the Decision of the Constitutional Court Number 127/PUU-VII/2009, dated 25 January 2010;

[3.16] Considering whereas the Court is of the opinion that the provisions of the articles of the 1945 Constitution as quoted above, in particular, Article 18 paragraph (1), which uses the phrase "The Unitary State of the Republic of Indonesia is divided into...", instead of using the phrase "consists of", confirm that the territories or the districts petitioned by the Petitioner to be declared as beyond the area coverage of Tambrauw Regency as provided in Article 3 paragraph (1) of Law Number 14 of 2013 concerning Amendments to Law Number 56 of 2008 concerning the Establishment of Tambrauw Regency in West Papua Province are still within the territory of the Unitary State of the Republic of Indonesia, whether they are part of the territory of Tambrauw Regency or other regencies. Prioritizing and confirming that the Unitary State of the Republic of Indonesia is the territorial owner can be understood from the provision of Article 18 paragraph (1) of the 1945 Constitution as quoted above;

Whereas concerning the same norms of *a quo* Law 14/2013, the Court in the Decision of the Constitutional Court Number 4/PUU-XII/2014 has also considered as follows:

[3.11] Considering whereas after the Court has carefully examined the *a quo* petition and the letters/written evidence submitted by the Petitioners, the Court is of the opinion as follows:

[3.11.1] Considering whereas Article 3 paragraph (1) of Law Number 56 of 2008 concerning the Establishment of Tambrauw Regency in West Papua Province (State Gazette of the Republic of Indonesia of 2008 Number 193, Supplement to the State Gazette of the Republic of Indonesia Number 4940), provides, "Tambrauw Regency originates from a part of the area of Sorong Regency and part of the area of Manokwari Regency which consists of the area coverage of a. Fef District; b. Miyah District; c. Yembun District; d. Kwoor District; e. Sausapor District; f. Abun District;" with the boundaries provided in Article 5 paragraph (1) of the Law. Then Maurits Major, et al submitted a petition for constitutional review of the two articles which was registered in the Court under Number 127/PUU-VII/2009 and decided by the Court on 25 January 2010; In the verdict of the Court Decision, which partially granted the Petitioners' petition, among other things, "Declaring Article 3 paragraph (1) of Law Number 56 of 2008 concerning the Establishment of Tambrauw Regency in West Papua Province (State Gazette of the Republic of Indonesia of 2008 Number 193, Supplement State Gazette of the Republic of Indonesia Number 4940) is contrary to the 1945 Constitution, to the extent that it does not include Amberbaken District, Kebar District, Senopi District, and Mubrani District, respectively of Manokwari Regency, and District Moraid of Sorong Regency as the area coverage of Tambrauw Regency, so that the entire area coverage of Tambrauw Regency includes Fef District, Miyah District, Yembun District, Kwoor District, Sausapor District, Abun District, Amberbaken District, Kebar

District, Senopi District, Mubrani District, and Moraid District; Declaring Article 5 paragraph (1) of Law Number 56 of 2008 concerning the Establishment of Tambrauw Regency (State Gazette of the Republic of Indonesia of 2008 Number 193, Supplement to the State Gazette of the Republic of Indonesia Number 4940) is contrary to the 1945 Constitution to the extent that it is not adapted according to this verdict;

[3.11.2] Considering whereas to follow up on the decision of the Court, Law Number 14 of 2013 concerning Amendments to Law Number 56 of 2008 concerning the Establishment of Tambrauw Regency in West Papua Province was formed (State Gazette of the Republic of Indonesia of 2013 Number 85, Supplement to the State Gazette of the Republic of Indonesia Number 5416), which among other things, can be read in the preamble (considering) letter a stating, “whereas to implement the decision of the Constitutional Court Number 127/PUU-VII/2009, dated 25 January 2010, it is necessary to amend Law Number 56 of 2008 concerning the Establishment of Tambrauw Regency in West Papua Province”;

[3.11.3] Considering whereas Article 3 paragraph (1) of Law Number 14 of 2013 concerning Amendments to Law Number 56 of 2008 concerning the Establishment of Tambrauw Regency in West Papua Province (State Gazette of the Republic of Indonesia of 2013 Number 85, Supplement to the State Gazette of the Republic of Indonesia Number 5416), provides, “Tambrauw Regency originates from a part of the area of Sorong Regency and a part of the area of Manokwari Regency which consists of the area coverage of a. Fef District; b. Miyah District; c. Yembun District; d. District Kwoor; 50 e. Sausapor District; f. Abun District; g. Amberbaken District; h. Kebar District; i. Senopi District; j. Mubrani District; and k. Moraid District.” As for the territorial boundaries of Tambrauw Regency as provided in Article 5 paragraph (1) of Law 56/2008, due to the inclusion of five new districts which were not previously included in the area coverage of Tambrauw Regency, under Article 5 paragraph (1) of Law Number 14/2013, it has also been changed

[3.11.4] Considering whereas the Petitioners' petition intends that Moraid District, which was originally within the territory of Sorong Regency and then under the petition of Maurits Major et al. as granted by the Court in decision Number 127/PUU-VII/2009, was included in the coverage area Tambrauw Regency, now at the Petitioners' petition (not Maurits Major et al.) is petitioned to be returned to the area coverage of Sorong Regency, West Papua Province;

[3.11.5] Considering Article 1 paragraph (1) of the 1945 Constitution provides that the state of Indonesia is a Unitary State in the form of a Republic. Article 18 paragraph (1) of the 1945 Constitution provides, “The Unitary State of the Republic of Indonesia is divided into provincial regions, and those provincial regions are divided into regencies and municipalities, whereby every one of those provinces, regencies, and municipalities has its regional government, which shall be regulated by laws.” Then Article 37 paragraph (5) of the 1945 Constitution confirms, “Particularly regarding the form of the Unitary State of the Republic of Indonesia no amendment can be made”. The Court is of the opinion that whether an area, in this case, a district, is included in the area coverage of a particular province, regency/municipality highly depends on the objective effectiveness and efficiency in administering governmental functions for regional development and providing the best possible service to the community. This issue has been considered by the Court in the Decision of the

Constitutional Court Number 127/PUU-VII/2009;

[3.11.6] Considering whereas the Court is of the opinion that the provisions of the articles of the 1945 Constitution as quoted above, in particular, Article 18 paragraph (1), which uses the phrase “The Unitary State of the Republic of Indonesia is divided into...”, instead of using the phrase “consists of”, confirm that Moraid District or territory which was petitioned by the Petitioners to be declared as beyond the area coverage of Tambrauw Regency as provided in Article 3 paragraph (1) of Law 14/2013 but then was included or put into the area coverage of Sorong Regency, are still within the territory of the Unitary State of the Republic of Indonesia, whether it is part of the territory of Tambrauw Regency or the territory of Sorong Regency, or the territory of other regencies.

Whereas apart from the decision relating to the boundaries of Tambrauw Regency, in terms of administrative boundaries, the Court has several times stated its stance regarding territorial boundaries. Among the recent decisions of the Court is the Decision of the Constitutional Court Number 11/PUU-XVII/2019, which was declared in a plenary session open to the public on 13 March 2019, in Sub-paragraph **[3.11.1]** the legal considerations state as follows:

[3.11.1] Whereas the constitutional rights of Petitioner I as provided in Article 18 paragraph (1) of the 1945 Constitution, which is as a unitary state, the entire territory of Indonesia is the territory of the Unitary State of the Republic of Indonesia (*Negara Kesatuan Republik Indonesia* or NKRI), the Court has declared its stance as stated in the Decision of the Constitutional Court Number 32/PUU-X/2012, dated 21 February 2013, in which the verdict was “Dismissing the Petitioners' petition entirely”, and the Court's considerations in Paragraph **[3.13.1]** state, among other things:

> **[3.13.1]** Whereas as a unitary state, the entire territory of Indonesia is the territory of the Unitary State of the Republic of Indonesia. Article 18 paragraph (1) of the 1945 Constitution provides, “*The Unitary State of the Republic of Indonesia is divided into provincial regions, and those provincial regions are divided into regencies and municipalities, whereby every one of those provinces, regencies, and municipalities has its regional government, which shall be regulated by laws*”. As for the meaning of the word ***“divided”*** in this article is to emphasize that which exists first is the territory of the Unitary State of the Republic of Indonesia. As for such division indicates that the provinces/ regencies/ municipalities are none other than the unitary territory of the Republic of Indonesia in which, for certain matters, the authority of regulating is delegated to the provinces/ regencies/ municipalities. The 1945 Constitution deliberately uses the word ***“divided”*** to avoid the word ***“consists”*** or ***“consists of”***. The aim is to avoid the legal construction stating that the existence of the territory of provinces/ regencies/ municipalities precedes the existence of the territory of the Unitary State of the Republic of Indonesia. Thus, the territory of provinces/ regencies/ municipalities is solely the administrative territory of the Unitary State of the Republic of Indonesia, which is different from a federal state;
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> The implementation of Article 18 paragraph (1) of the 1945 Constitution in terms of dividing territories, including determining territorial boundaries, is entirely under the authority of legislators …";

In accordance with the legal considerations in the Decision of the Constitutional Court Number 32/PUU-X/2012, administrative boundaries are entirely under the authority of legislators to divide and determine, including determining territorial boundaries. Such territorial division is also reflected in Law Number 23 of 2014 concerning Regional Government as lastly amended by Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government (State Gazette of the Republic of Indonesia of 2015 Number 58, Supplement to the State Gazette of the Republic of Indonesia Number 5679, hereinafter referred to as the Regional Government Law) which provides that in the implementation of decentralization, regional management is carried out consisting of regional expansions and regional adjustments. Such regional establishments are in the form of regional expansions and regional mergers [*vide* Article 31 and Article 32 of the Regional Government Law]. Thus, the context of expansions and mergers, as well as the establishment and determination of territorial boundaries within the Unitary State of the Republic of Indonesia, is under the authority of legislators.

Whereas in accordance with the legal considerations in the decisions above, the *a quo* Petitioner's case is evident concerning area coverage and administrative boundaries, which are legislators' authority in dividing and determining the area, including the territorial boundaries. Thus, the Court is of the opinion that the *a quo* petition regarding Article 3 paragraph (1) of Law 14/2013 is interpreted that Amberbaken District, Kebar District, Senopi District and Mubrani District are beyond the area coverage of Tambrauw Regency and within the area coverage of Manokwari Regency, and regarding the adjustment of the boundaries in Article 5 paragraph (1) Law 14/2013 as stated in the Petitioner's petition, the Court remains in its stance as stated in the previous decisions, especially in the legal considerations of the Decision of the Constitutional Court Number 105/PUU-XI/2013 and the Decision of the Constitutional Court Number 4/PUU-XII/ 2014.

Considering whereas, in addition to the legal considerations as described above, the Court needs to emphasize the arguments that are used as the basis for submitting the petition in the *a quo* case which is caused by, among other things, the Decision of the Constitutional Court Number 127/PUU-VII/2009 which was based on acts of manipulation of data and facts or deception, which, as the Petitioner argued, was conducted by the Petitioners in Constitutional Case Number 127/PUU-VII/2009. The Court is of the opinion that all the evidence and witness statements regarding the allegation of the manipulation have been examined and heard in a plenary session declared open to the public under the provisions of the procedural law of judicial review. Meanwhile, the factual conditions argued by the Petitioner, such as the regional government of Manokwari Regency having never carried out the transfer and handover of personnel, assets and documents related to Amberbaken District, Kebar District, Senopi District and Mubrani District to the Regional Government of Tambrauw Regency, cannot be used as a reason to cancel or correct the Decision of the Constitutional Court Number 127/PUU-VII/2009. Regarding this matter, the Court must emphasize that under Article 10 paragraph (1) of the Constitutional Court Law, the Decision of the Constitutional Court is final and binding. The final nature of the Decision of the Constitutional Court means that the decision of the Constitutional Court immediately obtained permanent legal force since its declaration in a plenary session open to the public. If the Court changes its stance specifically in the *a quo* case due to the reasons as argued by the Petitioner, this means that the Court is creating legal

uncertainty;

Considering whereas in accordance with all the legal considerations described above, the Petitioner's arguments that the area coverage of Tambrauw Regency does not include Amberbaken District, Kebar District, Senopi District and Mubrani District and that the adjustments of its territorial boundaries as set forth in the norms of Article 3 paragraph (1) and Article 5 paragraph (1) of Law 14/2013 have evidently created legal uncertainty and have not respected the rights of traditional communities as guaranteed by Article 18B paragraph (1) and paragraph (2), Article 28D paragraph (1), and Article 28I paragraph (3) of the 1945 Constitution, are entirely legally unjustifiable.

Accordingly, the Court passes down a decision in which the verdict is to dismiss the Petitioner's petition entirely.