



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 93/PUU-XXII/2024**

Concerning

**Interpretation of Indigenous Papuans
in the Eligibility Criteria of Regional Heads**

- Petitioners** : **Bastian Buce Ijie, et al.**
- Type of Case** : Judicial Review of Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua (Law 21/2001) as amended by Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua (Law 2/2021) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
- Subject Matter** : Article 12 letter a of Law 21/2001 and Article 28 paragraph (3) of Law 2/2021 are contrary to the Fourth Paragraph of the Preamble, Article 18B paragraph (1) and paragraph (2), Article 26 paragraph (1), Article 28D paragraph (1), and Article 28I paragraph (3) of the 1945 Constitution.
- Verdict** : To dismiss the Petitioners' petition entirely.
- Date of Decision** : Tuesday, 20 August 2024.
- Overview of Decision** :

The Petitioners are individual Indonesian citizens who identify as indigenous Papuans from the Melanesian ethnic group. They argue that their constitutional rights have been violated, resulting in a lack of guarantee, protection, and fair legal certainty as well as treatment aligned with the special autonomy due to the norms of Article 12 letter a of Law 21/2001 and Article 28 paragraph (3) of Law 2/2021, which do not fully accommodate the needs of all Papuan communities, especially the customary law communities of the Melanesian race comprising native tribes in the Province of Papua. Furthermore, these articles fail to provide opportunities for the Petitioners and other indigenous Papuans who have the potential and eligibility to hold governmental positions in Papua on the basis of the philosophy of special autonomy granted to Papuan communities, given special autonomy is granted only to provinces in Papua, not including regencies/municipalities.

Regarding the Court's authority, because the Petitioners' petition is a review of Law, *in casu* Article 12 letter a of Law 21/2001 and Article 28 paragraph (3) of Law 2/2021 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding legal standing, the Petitioners have sufficiently explained their specific constitutional rights, which they deem to have been violated either actually or at least potentially, within the limits of reasonable reasoning, by the enactment of the norms of Article 12 letter a of Law 21/2001 and Article 28 paragraph (3) of Law 2/2021. The alleged constitutional loss arises because, in addition to individuals accepted and recognized as indigenous Papuans by the Papuan customary community being eligible to become candidates for governors and deputy governors, special autonomy is only granted at the provincial level and not at the regency/municipality level with respect to eligibility criteria in regional head elections. Moreover, the Petitioners have demonstrated a causal relationship (*causal verband*) between the Petitioners' alleged constitutional loss and the enactment of the norms being petitioned for review. Therefore, if the Court grants the *a quo* petition, the alleged constitutional loss will no longer occur or at least will be prevented. Accordingly, regardless of whether the unconstitutionality of the norms being petitioned for review is proven, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

Whereas because the *a quo* petition is evident, the Court is of the opinion that there is no urgency or relevance in hearing statements from other parties as referred to in Article 54 of the Constitutional Court Law.

Regarding the subject matter of the Petitioners' petition, the Petitioners argue that the provision concerning individuals accepted and recognized as indigenous Papuans by the Papuan customary community for eligibility as candidates for governors and deputy governors of provinces in Papua, but not for eligibility as candidates for regents and deputy regents as well as mayors and deputy mayors, is contrary to the 1945 Constitution. The Court considers the following:

- 1) whereas membership in a customary law community can arise either naturally, by descent from indigenous tribal members, or through recognition as a member of the customary law community. Therefore, from the perspective of the Unitary State of the Republic of Indonesia, grouping areas/regions based on tribes or customary communities that reject outsiders is no longer relevant because allowing outsiders may bring improvement to the region/area. In other words, rejecting outsiders to become part of tribes or customary communities may hinder progress in the region/area, because outsiders can bring positive influences and strengthen human resources for mutual benefits. Thus, the acceptance and recognition of outsiders as members of customary law communities, determined by the respective customary communities based on customary norms, meet the principle of fair legal certainty, and therefore, are not contrary to Article 28D paragraph (1) of the 1945 Constitution.
- 2) whereas the Court is of the opinion that the tradition of recognizing outsiders as members of customary law communities, along with the relevant rights, aligns with the spirit of special autonomy in Papua Province, which guarantees the recognition of indigenous Papuan tribes and their traditional rights. Moreover, this practice is consistent with the spirit of affirmative policies that are temporary and, as considered in the previous legal consideration, the acceptance and recognition of outsiders as members of customary law communities should be adjusted to needs and carried out in line with the development of the times and the principles of the Unitary State of the Republic of Indonesia. Thus, the acceptance and recognition of outsiders based on internal provisions or customary norms of respective customary law communities, are in accordance with Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution. Furthermore, the acceptance and recognition of

outsiders are consistent with the principle of acquiring Indonesian citizenship for foreign residents, as stipulated in Article 26 paragraph (1) of the 1945 Constitution.

- 3) whereas the special status of indigenous Papuans includes the eligibility as candidates for governors and deputy governors being indigenous Papuans and that political recruitment by political parties prioritizes indigenous Papuans [vide Article 12 letter a of Law 21/2001 and Article 28 paragraph (3) of Law 2/2021]. Meanwhile, with respect to the Province of the Special Region of Yogyakarta, where the special status lies on the provincial level [vide Article 7 paragraph (1) of Law Number 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta (Law 13/2012)], the *a quo* special status is essentially no different with the special autonomy granted to Papua on the provincial level [vide Article 1 letter a and letter b of Law 21/2001]. In other words, both the Province of Papua and the Province of the Special Region of Yogyakarta are granted privileged or special status in terms of eligibility as candidates for governors and deputy governors. However, due to the historical background of the Yogyakarta Sultanate as a distinct entity that existed before the establishment of the Indonesian state and its voluntary integration into the Unitary State of the Republic of Indonesia, this serves as the fundamental reason for the eligibility criteria for the governor candidate being granted to Indonesian citizen who hold the throne as Sultan Hamengku Buwono and for the deputy governor candidate being granted to Indonesian citizen who hold the throne as Adipati Paku Alam [vide Article 18 paragraph (1) letter c of Law 13/2012]. Therefore, this difference arises from the distinct background behind the determination of the special status for Yogyakarta as a special region and Papua Province as a special autonomy region. Both grant special or privileged status but with characteristics unique to each region. Accordingly, the provision of Article 12 letter a of Law 21/2001 cannot be deemed discriminatory, as it treats differently matters that are inherently different. Thus, the *a quo* Petitioners' argument is legally unjustifiable.
- 4) whereas regarding the affirmative policy for indigenous Papuans not being applied in the election of regents and deputy regents as well as mayors and deputy mayors, Constitutional Court Decision Number 34/PUU-XIV/2016, pronounced in a plenary session open to the public on 14 July 2016, states that the addition of the eligibility criteria for indigenous Papuans as candidates for regents and deputy regents as well as candidates for mayors and deputy mayors does not align with the intent of granting special autonomy, which is emphasized at the provincial level, and that this matter falls within the scope of open legal policy of the legislators. Meanwhile, in the *a quo* petition, the Court did not find any legal facts indicating that the affirmative policy for indigenous Papuans, which is not applied in the election of regents and deputy regents as well as mayors and deputy mayors, violates the provisions of the 1945 Constitution of the Republic of Indonesia. Moreover, this policy choice does not contravene morality, rationality, justice, or non-discrimination and does not result in institutional problems that ultimately lead to constitutional losses for citizens, *in casu* indigenous Papuans. In other words, there is no constitutional basis for the Court to alter the aforementioned stance because if the Petitioners' petition were granted, it would distance itself from the principles of the NKRI. Thus, the eligibility criteria for regents and deputy regents, as well as mayors and deputy mayors, automatically adhere to the provisions stipulated in Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning Elections for Governors, Regents, and Mayors into Law. Accordingly, the *a quo* Petitioners' argument is legally unjustifiable.

- 5) whereas subsequently, regarding the constitutional review of the norms of Article 28 paragraph (3) of Law 2/2021, it is evident that the substance of the issue questioned by the Petitioners is identical to the constitutional review of the norms of Article 12 letter a of Law 21/2001, namely concerning the phrase "Indigenous Papuans", whose constitutionality has been examined in the legal considerations above. Therefore, the Court's legal considerations concerning Article 12 letter a of Law 21/2001 as described above shall apply *mutatis mutandis* as legal considerations in examining the constitutionality of Article 28 paragraph (3) of Law 2/2021, which is also petitioned for review in the Petitioners' *a quo* petition. Consequently, the Petitioners' argument petitioning that the norms of Article 12 letter a of Law 21/2001 be interpreted as stated in the *petitum* of their petition is not consistent with Article 1 point 22 of Law 2/2021, which has been declared constitutional by the Court in the *a quo* decision. Accordingly, the Petitioners' petition concerning the review of Article 28 paragraph (3) of Law 2/2021 is legally unjustifiable.

According to the above legal considerations, Article 12 letter a of Law 21/2001 and Article 28 paragraph (3) of Law 2/2021 do not violate the right to recognition, guarantee, protection, and fair legal certainty, the right to equal treatment before the law, and the right to recognition and protection of customary law communities and cultural identity as guaranteed under the Fourth Paragraph of the Preamble, Article 18B paragraph (1) and paragraph (2), Article 26 paragraph (1), Article 28D paragraph (1), and Article 28I paragraph (3) of the 1945 Constitution, not as argued by the Petitioners. Thus, the Petitioners' argument is legally unjustifiable entirely.

The Court subsequently passed down a decision in which the verdict was to dismiss the Petitioners' petition entirely.