



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 110/PUU-XXII/2024**

Concerning

**Expansion of the Authority of the Papuan People's Assembly
to Provide Consideration and Approval for Prospective Candidates
for Regent/Vice Regent and Mayor/Vice Mayor**

- Petitioner** : **Papuan People's Assembly of Central Papua Province**, represented by Agustinus Anggaibak (Chairperson of the Papuan People's Assembly of Central Papua Province)
- Type of Case** : Material review of Law Number 2 of 2021 concerning Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for Papua (Law 2/2021) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Article 11 paragraph (3), Article 20 paragraph (1) letter a and letter e, and the Elucidation of Article 20 paragraph (1) letter e of Law 2/2021 are contrary to the 1945 Constitution and do not have binding legal force to the extent that it is not interpreted as the provisions regarding the procedures for electing the governor and vice governor are included in the duties and authorities of the Papuan People's Assembly to provide considerations and approval for the prospective candidates for regents/vice regents and mayors/vice mayors as referred to in the Elucidation of Article 20 paragraph (1) letter e of Law Number 2 of 2021 concerning Second Amendment to Autonomy Law Number 21 of 2001 concerning Special Autonomy for Papua Province
- Verdict** : To dismiss the Petitioner's petition in its entirety
- Date of Decision** : 26 September 2024
- Overview of Decision** :

Whereas the Petitioner is a member of the Papuan People's Assembly (Majelis Rakyat Papua or MRP) of Central Papua Province pursuant to the Decree of the Minister of Home Affairs of the Republic of Indonesia Number 100.2.2.2- 4231 of 2023, dated 26 October 2023 concerning the Ratification of the Appointment of Members of the Papuan People's Assembly of Central Papua Province for the 2023-2028 Term. The person concerned was then appointed as the Chairperson of the Papuan People's Assembly of Central Papua Province pursuant to the Decree of the Governor of Central Papua Province Number 12 of 2024, dated 31 January 2024 concerning the Ratification and Inauguration of the Leaders of the Papuan People's Assembly of Central Papua Province for the 2023-2028 Term, and in accordance with Article 16 letter f of the Papuan People's Assembly of Central Papua Province Regulation Number 1 of 2024 concerning the Procedure of the Papuan People's Assembly of

Central Papua Province which states that one of the duties of the Leaders of the Papuan People's Assembly of Central Papua Province is to represent the MRP of Central Papua Province or the MRP Supporting Apparatus of Central Papua Province before the Court. Therefore, the Petitioner has the right to represent the MRP of Central Papua Province to submit a petition for judicial review of Law 21/2021.

The Petitioner believes that he is at a disadvantage due to the enactment of Article 11 paragraph (3), Article 20 paragraph (1) letter a and letter e and the Elucidation of Article 20 paragraph (1) letter e of Law 2/2021 due to the unclear meaning of the duties and authority of the MRP in providing consideration and approval for and/or determination on the prospective candidates for regent and vice regent and mayor and vice mayor in the regional head elections in Papua Province, especially in relation to the candidates from the indigenous Papuan communities. According to the Petitioner, the *a quo* article is contrary to Article 28D paragraph (1) and paragraph (3) and Article 28H paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

Regarding the Court's authority, because the Petitioner petitions for a judicial review of the statutory law, *in casu* Article 11 paragraph (3) Article 20 paragraph (1) letter a and letter e, and Elucidation of Article 20 paragraph (1) letter e of Law 2/2021 against the of 1945 Constitution, since it is one of the authority of the Court, therefore it has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioner, the Court is of the opinion that the Petitioner is able to prove that there is a causal relationship (*causal verb*) between the alleged constitutional loss of the Petitioner and the enactment of the norms and elucidation submitted for a review. Therefore, regardless of whether the unconstitutionality issue of the norms being petitioned for review is proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the *a quo* petition.

Whereas furthermore, regarding the constitutionality issue of the norm questioned by the Petitioner as mentioned above, the Court considers the following:

1. Regarding the argument of the unconstitutionality of the norms of Article 11 paragraph (3) and Article 20 paragraph (1) letter a and letter e of Law 2/2021, which are linked to the Elucidation of Article 20 paragraph (1) letter e of Law 2/2021 by the Petitioner, the Petitioner believes that the MRP should have the authority to provide consideration and approval for the candidates for regent/vice regent and mayor/vice mayor, therefore, the Petitioner petitions for the Court to give the MRP additional authority to provide the consideration and approval for the candidates for regent/vice regent and mayor/vice mayor from the indigenous Papuan communities, so that the fundamental rights of indigenous Papuans can be guaranteed, the Court is of the opinion that:

First, the Court will consider the special autonomy for Papua Province as regulated in Law 21/2001 as amended by Law 2/2021 which states that "special autonomy is a special authority recognized and granted to Papua Province to regulate and manage the interests of the local communities in accordance with its own initiative pursuant to the aspirations and fundamental rights of the Papuan people." This means that the specificity is given or placed by the legislators at the provincial level. The Special Autonomy for Papua in Law 21/2001 as amended by Law 2/2021 is in line with the provisions of Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Article 2 and Article 339 of Law 23/2014 concerning the division of the territory of the Republic of Indonesia and the implementation of central and regional government; The consequence of special autonomy in the Papua Province is the authority to issue the special regional regulations as stated in Article 1 number 10 of Law 2/2021 which in principle states that the special regional regulations is a regional regulation of the Papua Province which is issued in the context of implementing certain

articles in Law 21/2001 as amended by Law 2/2021. In addition to these special articles, the Papua Provincial Government continues to exercise the authority stipulated in Law 23/2014 by issuing provincial regulations as issued in other autonomous regions [*vide* Article 1 number 11 of Law 2/2021]. Therefore, it is impossible for district/city regions to also be given the authority to issue regional regulations. Because it will actually open up the possibility of inconsistency between provinces and districts/cities in implementing special autonomy within the context of a unitary state. As a special regional regulation, Law 21/2001 as amended by Law 2/2021 stipulates that its establishment must also involve the MRP as a cultural representation of indigenous Papuans who have certain authorities 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 5 of Law 2/2021]. In relation to the special autonomy of Papua which is placed at the provincial level, the position of the MRP is only at the provincial level and not at the district/city level, however, the scope of the MRP's duties and authorities extends to the district/city level [*vide* Article 20 paragraph (1) letter e of Law 2/2021].

2. Regarding the Petitioner's concerns that the candidates for regents/vice regents and mayors/vice mayors who do not receive consideration and approval from the MRP will result in the rights of Indigenous Papuans not being guaranteed in the districts/cities, the Court is of the opinion that:

Law 2/2021 emphasizes that the granting of special autonomy is intended to provide support for indigenous Papuans, including to protect and uphold the dignity, provide affirmation, and protect the fundamental rights of indigenous Papuans [*vide* the "Considering" letter a of the consideration and Law 2/2021] and is directed at reducing disparities between regions in Papua by opening up a regional planning approach that is both *bottom up* and *top down* while still prioritizing the principles of democracy and efficiency" [*vide* General Elucidation of Law 2/2021]. This emphasis is actually within the duties and authority of the MRP to implement, because the MRP has the duties of providing consideration and approval for the draft of special regional regulations submitted by the Papuan House of Representatives together with the governor [*vide* Article 20 paragraph (1) letter b Law 2/2021]. Because the special regional regulation is the only legal framework for regulating any special matters given to Papua Province in order to provide protection for the rights of Indigenous Papuans.

3. Regarding the Petitioner's argument that questions the MRP's failure to provide consideration and approval for the prospective candidates for regents/vice regents and mayors/vice mayors due to the unclear norms of Article 11 paragraph (3) of Law 2/2021, so that the Petitioner petitions for Article 11 paragraph (3) of Law 2/2021 be given the same meaning as the one for Article 20 paragraph (1) letter a and letter e and the Elucidation of Article 20 paragraph (1) letter e of Law 2/2021 so that it is interpreted as "the provisions regarding the procedures for electing the governor and vice governor are included in the duties and authorities of the Papuan People's Assembly to provide considerations and approval for the prospective candidates for regents/vice regents and mayors/vice mayors as referred to in the General Elucidation of Article 20 paragraph (1) letter e of Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for Papua Province", the Court is of the opinion that:

The interpretation requested by the Petitioner regarding Article 11 paragraph (3) of Law 2/2021 is not related to the norms regulated in Article 11 of Law 2/2021 as a whole. Because the norms of the *a quo* Article regulate the leaders of the Papua provincial government which is led by a governor and assisted by a vice governor. In this context, the procedures for electing the governor and vice governor are regulated in accordance with the provisions of the laws and regulations [*vide* Article 11 paragraph (3) of Law

2/2021]. The said provisions of the laws and regulations are as regulated in the provisions of Article 199 of Law 1/2015 Law Number 1 of 2015 concerning the Determination of Government Regulation in Lieu of Law concerning the Election of Governors, Regents, and Mayors into Law (Law 1/2015) and also the provisions of Article 226 of Law Number 32 of 2004 concerning Regional Government (Law 32/2004). This means that the procedures for electing the regional heads, *in casu* the governor and vice governor, regent and vice regent, and mayor and vice mayor in Papua Province may only be exempted to the extent that it is regulated in Law 21/2001 as amended by Law 2/2021.

Pursuant to the Elucidation of Article 20 paragraph (1) letter e of Law 2/2021, the Petitioner petitions for the norms of Article 11 paragraph (3) and Article 20 paragraph (1) letter a and letter e of Law 2/2021 be interpreted as the MRP has the duties and authority to provide consideration for the approval of prospective candidates for regent/vice regent and mayor/vice mayor from the indigenous Papuan communities. Regarding the *a quo* petition, by referring to number 176 of Appendix I of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation (Law 13/2022), the Court is unable to grant the petition to expand the authority in the form of providing the "approval" for the prospective candidates for regents/vice regents and mayors/vice mayors, because this is not a mandate in the norm of Article 20 paragraph (1) letter e of Law 2/2021. Moreover, in the legal regulatory system, elucidation is not a legal norm. In addition, in relation to the norm of Article 20 paragraph (1) letter e of Law 2/2021, to expand the authority of MRP to also include the prospective candidates for regents/vice regents and mayors/vice mayors, this is within the authority of the legislators provided that it is not contrary to the 1945 Constitution of the Republic of Indonesia, as this is the principle of a unitary state. In relation to this, the Court has also provided its legal considerations in Decision Number 34/PUU-XIV/2016 which was later strengthened by the Decision Number 93/PUU-XXII/2024.

Pursuant to the Decision Number 34/PUU-XIV/2016 and Decision Number 93/PUU-XXII/2024, in relation to the affirmative policy for indigenous Papuans which is not implemented in the form of the MRP providing approval for the prospective candidates for regents and vice regents and mayors and vice mayors, it does not necessarily mean that there is no protection for the rights of indigenous Papuans as part of the substance of the granting of special status to the Papua Province. The Elucidation given to Article 20 paragraph (1) letter e of Law 2/2021 is considered sufficient, because the MRP may provide its consideration to the DPRK (Regional People's Representative Council of Regency/City), where a total of $\frac{1}{4}$ (one quarter) members of DPRK are appointed from the indigenous Papuan communities, then the DPRK may take the MRP's considerations in determining the prospective candidates for regent and vice regent and mayor and vice mayor to be nominated in the regional head elections.

Pursuant to the entire description of the above legal considerations, the norms of Article 11 paragraph (3), Article 20 paragraph (1) letter a and letter e and the Elucidation of Article 20 paragraph (1) letter e of Law 2/2021 have been proven not to violate the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law and the right to receive special treatment as regulated in Article 28D paragraph (1) and paragraph (2) and Article 28H paragraph (3) of the 1945 Constitution, instead of as argued by the Petitioner. Therefore, the Petitioner's argument is entirely legally unjustifiable.

The Court subsequently passes down a decision which verdict states to dismiss the Petitioner's petition in its entirety.