

LEGAL STANDING OF THE PAPUA PEOPLE'S ASSEMBLY AND RATIO DECIDENDI OF THE CONSTITUTIONAL COURT:A STUDY OF COURT DECISION

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LEGAL STANDING OF THE PAPUA PEOPLE'S ASSEMBLY AND RATIO DECIDENDI OF THE CONSTITUTIONAL COURT: A STUDY OF COURT DECISION

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Abstrak. This study aims to analyze the legal standing and interest of the MRP as an embodiment of asymmetrical decentralization policies and the ratio decidendi of the Constitutional Court in Decision Number 47/PUU-XIX/2021. This normative legal study uses the statute and case approaches and collects data through a literature study technique. Results showed that asymmetrical decentralization policy prioritizes the specificity, uniqueness, diversity of regions, and unity of society through indigenous law and traditional rights. The granting of special autonomy to Papua aims to reduce disparities and improve living standards for the indigenous people. The MRP, established as a cultural representation with specific authority in protecting the rights of the indigenous people of Papua, evaluated that some provisions in Law Number 21 of 2001 and Law Number 2 of 2021 contradict the 1945 Constitution. In contrast, MRP's request does not contain constitutional issues, and some are in line with the interests of the Local Government. In Decision 47/PUU-XIX/2021, the Constitutional Court stated that part of the complainant's request could not be accepted and rejected the complainant's request other than the rest. Therefore, it is recommended that the MRP collaborate with the Local Government to promote the interests of the indigenous people of Papua. The Government must also continuously monitor the progress and evaluate the asymmetrical decentralization policy in reducing disparities and improving the standard of living for the indigenous people of Papua. Furthermore, the Government should ensure that the rights of the indigenous people of Papua remain protected and respected.

Keywords:

Asymmetrical
Decentralization;
Constitutional Court;
Legal Standing;
Papua People's Assembly;
Ratio Decidendi.

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INTRODUCTION

The Indonesian Government grants special autonomy due to the disparities between regions within the country, with some regions developing faster and others lagging due to various factors such as geography, historical background, and government handling.¹ To address these imbalances, the central Government creates

¹Murti, M. S. (2014). Urgensi Otonomi Khusus Batam Dikaitkan dengan Pelaksanaan Masyarakat Ekonomi Asean 2015. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 3(2), p. 221.

asymmetrical decentralization policies, which provide different treatment to regions and ultimately lead to stronger national unity and peaceful resolution of specific issues with more satisfactory results.²

Given Indonesia's highly diverse character, it is not easy to design an appropriate relationship between the central and local governments that guarantees effective governance.³ Since the end of the Orde Baru regime in 1998, the centralistic approach to politics, economy, and development has shifted to a decentralized approach.⁴ Papua Province is a manifestation of the decentralization approach based on Law Number 21 of 2001⁵, which has been amended more than once (Government Regulation in Lieu of Law Number 1 of 2008⁶ for the first amendment, which is enacted with Law Number 35 of 2008⁷; Law Number 2 of 2021⁸ for the second amendment).

However, this change in approach and policy has not automatically solved the problems in Papua. Many parties in Jakarta and Papua believe that the special autonomy of Papua is an ideal decentralization format and that it is the right way to trust building between Jakarta and Papua.⁹ The granting of special autonomy to Papua is also monitored by international parties, especially to see how far it can improve the welfare of the Papua people.¹⁰ The Indonesian Government designed special autonomy to empower the people of Papua to manage and utilize their natural resources to improve their welfare and prosperity.¹¹

The Province of Papua has numerous special rights not held by other regional autonomies, including political, cultural, economic, governance, and social rights.¹² One of the substantial aspects of Papua's specialty is the existence of the Papua People's Assembly, which oversees and monitors the implementation of special autonomy and

²Ayunda, R. (2021). Dampak Rill Implementasi Status Otonomi Khusus di Provinsi Papua, Indonesia: Kajian Hukum Perspektif Good Governance. *Jurnal Komunikasi Hukum*, 7(1), pp. 389-390.

³Harsasto, P. (2020). Desentralisasi dan Resentralisasi: Upaya Menyeimbangkan Pendulum Pusat-Daerah. *JlIP: Jurnal Ilmiah Ilmu Pemerintahan*, 5(2), pp. 152-153.

⁴Hidayat, W., & Taufikurrahman, T. (2020). Aktivisme Politik Mahasiswa Islam Membangun Demokrasi Pasca Orde Baru. *Sangkép: Jurnal Kajian Sosial Keagamaan*, 3(2), p. 140.

⁵Law of the Republic of Indonesia Number 21 of 2001 on Special Autonomy for the Province of Papua, hereinafter referred to as Law Number 21 of 2001.

⁶Government Regulation In Lieu of Law of the Republic of Indonesia Number 1 of 2008 on Amendment Law Number 21 of 2001 on Special Autonomy for the Province of Papua, hereinafter referred to as Government Regulation in Lieu of Law Number 1 of 2008.

⁷Law of the Republic of Indonesia Number 35 of 2008 on Enactment of Government Regulation In Lieu of Law Number 1 of 2008 on Amendment to Law Number 21 of 2001 on Special Autonomy for the Province of Papua In Lieu of Law, hereinafter referred to as Law Number 35 of 2008.

⁸Law of the Republic of Indonesia Number 2 of 2021 on the Second Amendment to Law Number 21 of 2001 on Special Autonomy for the Province of Papua, hereinafter referred to as Law Number 2 of 2021.

⁹Simangunsong, F. (2016). Kajian Desain Penataan Daerah Bidang Manajemen Pemerintahan di Provinsi Papua Barat. *JIP (Jurnal Ilmu Pemerintahan): Kajian Ilmu Pemerintahan dan Politik Daerah*, 1(1), p. 49.

¹⁰Rohim, N. (2014). Optimalisasi Otonomi Khusus Papua dalam Peningkatan Kesadaran Hukum Masyarakat Guna Meredakan Konflik dan Kekerasan. *Fiat Justitia: Jurnal Ilmu Hukum*, 8(1), p. 82.

¹¹Citrawan, H. (2015). Problematika Hak Menentukan Nasib Sendiri: Mengurai Hubungan antara Regulasi dan Konflik Sumber Daya Alam di Papua. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 4(2), p. 287.

¹²Marpaung, L. A. (2013). Urgensi Kearifan Lokal Membentuk Karakter Bangsa dalam Rangka Pelaksanaan Otonomi Daerah. *Yustisia*, 2(2), pp. 120-121.

advocates for the actual conditions of the indigenous people of Papua. Article 1 point 8 of Law Number 2 of 2021 explains that:

"The Papua People's Assembly, hereinafter referred to as the MRP, is the cultural representation of the indigenous people of Papua and has certain authority in protecting the rights of the indigenous people of Papua based on respect for customs and culture, empowering women, and promoting religious harmony as regulated in this Law."

The provisions above also align with establishing the MRP as regulated in Article 5 section (2) of Law Number 2 of 2021. The MRP has the authority and is involved in forming the Special Regional Regulations. However, it was not involved in forming the Provincial Regulation, as based on Article 29 section (1) and section (2) of Law Number 21 of 2001, which regulates that:

"The Special Regional Regulations are made and enacted by the DPRP and the Governor with the consideration and approval of the MRP. The Provincial Regulations are made and enacted by the DPRP and the Governor."

As referred to in section (1) above, the MRP's authority to provide consideration and approval cannot be considered a legislative authority, as the DPRP exercises legislative power. In contrast, even though the MRP is not involved in forming, as referred to in section (2), the MRP can request a judicial review of the Provincial Regulations to the Constitutional Court. In this case, Article 21 section (1) point b of Law Number 21 of 2001 regulates that:

"The MRP has the right to request a judicial review of the Provincial Regulations or the Governor's Decision that is deemed contradictory to the protection of the rights of the indigenous people of Papua."

In this case, the legal politics of forming Law Number 21 of 2001 positions the MRP as the cultural representation with specific authority to protect the rights of the indigenous people of Papua. On the other hand, the MRP evaluated that some provisions in Law Number 21 of 2001 and Law Number 2 of 2021 are deemed contradictory to the 1945 Constitution¹³. The MRP then requested a judicial review of Law Number 21 of 2001 and Law Number 2 of 2021 to the Constitutional Court, which was recorded in the e-BRPK on 7 September 2021 under Number 47/PUU-XIX/2021 and was improved and accepted by the Court on 4 October 2021.

Decision Number 47/PUU-XIX/2021¹⁴ states that the complainant's request throughout the review of Article 38 section (2), Article 59 section (3), Article 76 section (1), section (2), and section (3) of Law Number 2 of 2021, and Article 77 of Law Number 21 of 2001 cannot be accepted. Furthermore, rejected the complainant's requests other than the rest.

¹³The 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution.

¹⁴Decision of the Constitutional Court of the Republic of Indonesia Number 47/PUU-XIX/2021, hereinafter referred to as Decision Number 47/PUU-XIX/2021.

Based on the description above, this study aims to examine and analyze the MRP's legal standing and interest as an embodiment of asymmetrical decentralization policies and the *ratio decidendi* of the Constitutional Court in Decision Number 47/PUU-XIX/2021.

METHOD

This study uses normative legal research with the statute and case approaches.¹⁵ The legal materials used in this study include legislation, books, scientific law articles, and online materials discussing special autonomy. The collection of legal materials is carried out using a literature study technique. The collected legal material is then qualitatively analyzed to describe the problem and answer study purposes.¹⁶

RESULTS AND DISCUSSION

A. Asymmetrical Decentralization

An outline of the concept of regional autonomy in Indonesia, based on Article 18 section (2) and section (5) of the 1945 Constitution, which regulated that:

"(2) The local governments of the provinces, regencies and municipalities administer and manage their own affairs according to the principles of regional autonomy and the duty of assistance. (5) The local governments exercise wide-ranging autonomy, except in matters specified by law to be the affairs of the Central Government."

The 1945 Constitution outlines the legal policy of decentralization, emphasizing the need for asymmetrical decentralization that focuses on the specificity, uniqueness, diversity of regions, and unity of society regulated by indigenous law and traditional rights as regulated under applicable legislation. This type of decentralization delegates special authority only to specific regions in a country to preserve their existence. It is considered an alternative solution to the relationship between the central and local governments.

The concept of regional autonomy, as a manifestation of power decentralization, gives regions the authority to regulate and manage their household, which is inherent in both unitary and federal states.¹⁷ However, regional autonomy is more limited in unitary states than in federal states. On the other hand, the authority to regulate and manage the region's household in the unitary state includes all government powers except for some matters held by the central government.¹⁸

¹⁵Qamar, N. & Rezah, F. S. (2020). *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal*. Makassar: CV. Social Politic Genius (SIGn), pp. 47-48.

¹⁶Sampara, S., & Husen, L. O. (2016). *Metode Penelitian Hukum*. Kretakupa Print.

¹⁷Simandjuntak, R. (2015). Sistem Desentralisasi dalam Negara Kesatuan Republik Indonesia Perspektif Yuridis Konstitusional. *De Jure: Jurnal Hukum dan Syar'iah*, 7(1), p. 63.

¹⁸Said, A. R. A. (2015). Pembagian Kewenangan Pemerintah Pusat-Pemerintah Daerah dalam Otonomi Seluas-Luasnya Menurut UUD 1945. *Fiat Justisia: Jurnal Ilmu Hukum*, 9(4), pp. 581-582.

The asymmetrical decentralization policy is not only implemented in Indonesia but also in several other countries. In Spain, asymmetrical decentralization strengthens the local government and facilitates public participation in decision-making. Catalonia has more autonomy than other provinces, such as the right to make legislation and impose taxes.¹⁹ In Canada, asymmetrical decentralization is also implemented. Quebec has more autonomy than other provinces, such as the right to determine the official language, make legislation and lead the education and health sectors.²⁰ Although Indonesia has a higher level of decentralization than other countries, some challenges still need to be addressed to ensure the effective implementation of an asymmetrical decentralization policy.²¹

In Indonesia, special autonomy means the distribution of power to each region while maintaining the belief in the unity of the state, with certain limitations on jurisdiction. In the context of special autonomy, the distribution of power does not indicate dividing power in the framework of the Republic of Indonesia. In contrast, C. F. Strong emphasizes that the supremacy granted by the House of Representatives at the center and the absence of other sovereign bodies is the fundamental characteristic of a unitary state.²²

Asymmetrical decentralization, which includes political, economic, fiscal, and administrative decentralization, provides provinces with space for implementing and organizing creativity in local government outside of general and specific provisions. In this case, as determined by Law Number 23 of 2014²³, which has been amended more than once (Government Regulation in Lieu of Law Number 2 of 2014²⁴ for the first amendment, which is enacted with Law Number 2 of 2015²⁵; Law Number 9 of 2015²⁶ for the second amendment) or other legislation. There are five reasons why asymmetrical decentralization should be implemented in Indonesia.

¹⁹Palop, A. B. (2017). The Catalunya Conundrum, Part 3: Protecting the Constitution by Violating the Constitution. *Verfassungsblog: On Matters Constitutional*, p. 1.

²⁰Bosetti, L., Pelt, D. V., & Allison, D. (2017). The Changing Landscape of School Choice in Canada: From Pluralism to Parental Preference? *Education Policy Analysis Archives*, 25(School Diversification and Dilemmas across Canada), p. 4.

²¹Tauda, G. A. (2018). Desain Desentralisasi Asimetris dalam Sistem Ketatanegaraan Republik Indonesia. *Administrative Law and Governance Journal*, 1(4), p. 415.

²²Strong, C. F. (1966). *Modern Political Constitution: An Introduction to the Comparative Study of Their History and Existing Form*. Sidgwick & Jackson, p. 84.

²³Law of the Republic of Indonesia Number 23 of 2014 on Local Government, hereinafter referred to as Law Number 23 of 2014.

²⁴Government Regulation in Lieu of Law of the Republic of Indonesia Number 2 of 2014 on Amendment to Law Number 23 of 2014 on Local Government, hereinafter referred to as Government Regulation in Lieu of Law Number 2 of 2014.

²⁵Law of the Republic of Indonesia Number 2 of 2015 on Enactment of Government Regulation in Lieu of Law Number 2 of 2014 on Amendment to Law Number 23 of 2014 on Local Government Into Law, hereinafter referred to as Law Number 2 of 2015.

²⁶Law of the Republic of Indonesia Number 9 of 2015 on the Second Amendment to Law Number 23 of 2014 on Local Government, hereinafter referred to as Law Number 9 of 2015.

The first reason is conflict and separatist demands. Conflicts between the provinces in Papua and the Central Government, caused by the competition for resources, led to the granting of special autonomy to the region. In principle, the special autonomy for Aceh and Papua consists of several things. *First*, compensation is in the form of special autonomy funds, as the provinces still belong to the Republic of Indonesia. *Second*, the recognition of local identity is reflected in political institutions. In Aceh, the establishment of new institutions representing tradition and religion marks the progress of this process. In Papua, traditions and the church hold this power. *Third*, recognition of local symbols such as flags, languages, and other symbols. *Fourth*, local political parties. In Aceh, the growth of local political parties and election wins allowed the province to take advantage of this opportunity. The local political party is yet to happen in Papua despite space availability. *Fifth*, affirmative action is taken to become local leaders. In Aceh, this is seen in the Quranic reading activities, while in Papua, the indigenous people of Papua, approved by MRP, must lead. *The sixth* and most important reason is the regulation of resources. In addition to many special autonomy funds, there are specific issues, such as managing regional resources. In Aceh, specific exemptions include land, forests, and oil exploitation.

The second reason is the Capital Region. The only region receiving special treatment is Jakarta's Special Capital Region. This special treatment can be seen in the absence of regional elections for the election of Regents/Mayors. As a result, a conditional majority system is used in the regional election of the Governor. The winner is determined when they receive more than 50% of the votes.

The third reason is history and culture. The Special Region of Yogyakarta received special treatment from the state, given the history of the revolution and the struggle for independence. This special treatment can be seen in the election of the Governor and Vice Governor of the Special Region of Yogyakarta. They used Sultan for the Governor and Pakualam for the Vice Governor. The Sultan and Pakualam will be elected by their respective institutions. However, these leaders are not allowed to join political parties. In contrast, regional elections for the Regent/Mayor in Yogyakarta are the same as in other regions in Indonesia.

The fourth reason is the border. Given its role as the border between territory and neighboring countries, special treatment must be given to the border region. This region holds a crucial function in addressing complex problems. Border regions cannot be treated as the backyard of the Republic of Indonesia, as they are its front yard. Border regions, such as the differences between North and South Kalimantan, require the Governor to have a military background due to the potential crossing of borders, besides strengthening infrastructure and providing education and health services. Therefore, further studies are needed to determine the details regarding asymmetrical border decentralization.

The fifth reason is economic development. To create high economic competitiveness, areas with geography that have the potential to become special economic autonomy must be developed, such as Batam, which can be developed and shaped to compete with Singapore. For example, special allocation is related to the economy's customs and infrastructure development, such as ports and port systems.²⁷ Due to its strategic location, Tanjung Priok in Jakarta, which is currently the largest port in Indonesia, can be used to meet domestic needs. Meanwhile, Batam can be developed into a modern port with a better system. In that case, it is possible to capture the potential of ports in Singapore, where Singapore has limited space in its territory. Therefore, further study is needed to understand the asymmetrical decentralization of economic development.

Moreover, the asymmetrical decentralization policy always has a purpose by considering each region's specialty. The granting of special autonomy to Papua, based on the elucidation of Law Number 21 of 2001, states that:

"The granting of special autonomy for the Province of Papua is meant to achieve justice, the enforcement of the rule of law, respect for human rights, acceleration of economic development, improvement of welfare and progress for the indigenous people of Papua in the context of equality and balance with the progress of other provinces."

The explanation of Law Number 21 of 2001 reveals that the Indonesian Government recognizes two crucial factors in granting of special autonomy to Papua. Firstly, the Government acknowledges ongoing issues in Papua across various fields, including politics, governance, economy, society, and culture. Secondly, the Government admits its past errors in policy-making and aims to resolve the difficulties in Papua. The Government recognizes that justice, welfare, law enforcement, and human rights, particularly for the indigenous people of Papua, have yet to be fulfilled.

The Government grants special autonomy to protect and elevate the dignity, honor, justification, and human rights of the indigenous people of Papua in all fields. Law Number 21 of 2001 clarifies that the special authority given to Papua to manage and regulate the interests of its community based on their initiative and the fundamental rights and aspirations of the indigenous people of Papua constitutes the meaning of Special Autonomy. It is worth noting that the granting of special autonomy to Papua is distinct from other regions in the framework of the Republic of Indonesia.²⁸

Law Number 21 of 2001 also dictates that the Papua, as a special autonomy, establishes the MRP as the cultural representation of the indigenous people of

²⁷Kamal, M. (2019). Hubungan Pemerintahan Daerah dalam Mengelola Pendapatan Asli Daerah (PAD) Berdasarkan Undang-Undang 23 Tahun 2014. *SIGN Jurnal Hukum*, 1(1), p. 21.

²⁸Rakia, A. S. R. S. (2021). Kewenangan Khusus Majelis Rakyat Papua terhadap Pembentukan Perdasus. *Justisi*, 7(1), p. 22.

Papua with the special authority to defend their rights. In this case, the Government respects customs and culture, empowers women, and promotes religious harmony among the indigenous people of Papua.

B. The *Ratio Decidendi* of the Constitutional Court in Decision Number 47/PUU-XIX/2021

As the cultural representation of the indigenous people of Papua, MRP evaluated that some provisions in Law Number 21 of 2001 and Law Number 2 of 2021 are deemed contradictory to the 1945 Constitution. The MRP then requested a judicial review of Law Number 21 of 2001 and Law Number 2 of 2021 to the Constitutional Court. In this case, Article 6 section (1) point b, section (2), section (3), section (4), section (5), and section (6); Article 6A section (1) point b, section (2), section (3), section (4), section (5), and section (6); Article 28 section (1), section (2) and section (4); Article 38 section (2); Article 59 section (3); Article 68A section (2); and Article 76 section (1), section (2) and section (3) of Law Number 2 of 2021, and Article 77 of Law Number 21 of 2001.

On the other hand, analyzing the *ratio decidendi* of a Constitutional Court decision is crucial as it highlights the underlying reasoning and principles behind the decision. Understanding the *ratio decidendi* helps ensure consistency and fairness in applying the law. Michael Zander explains that the *ratio decidendi* can be understood as a proposition of law that decides the case in the light or the context of the material facts.²⁹

The MRP submitted a request for judicial review, which the Constitutional Court rigorously evaluated in Decision Number 47/PUU-XIX/2021. About the MRP's arguments regarding Article 6 section (1) point b, section (2), section (3), section (4), section (5), and section (6), Article 6A section (1) point b, section (2), section (3), section (4), section (5), and section (6) of Law Number 2 of 2021, the Court considers that the request was motivated by the presence of indigenous people of Papua as members of the DPRP and the DPRK. However, Law Number 21 of 2001 did not regulate the appointment of indigenous people of Papua as members of the DPRK. The amendment to Law Number 21 of 2001, resulting in Law Number 2 of 2021, aimed to elevate the dignity and honor of the indigenous people of Papua by adding provisions related to different compositions. Before the amendment, the DPRK consisted only of members of the Regency/Municipal DPRD elected through general elections. However, the amendment changed the composition, allowing the indigenous people of Papua to elect and appoint the members of the DPRK through general elections. As a result, one-quarter of the DPRP in the Province and the DPRK in the Regency/Municipal were appointed from the indigenous people of Papua after the implementation of Law Number 2 of 2021.

²⁹Zander, M. (2004). *The Law-Making Process*. Cambridge University Press, p. 271.

The Constitutional Court found that appointing members to the DPRP is a tangible expression of Article 18B section (1) of the 1945 Constitution. The presence of the indigenous people of Papua in the DPRP as part of the Papua Regional Government, which operates through a collective or collegiate system, distinguishes it from the House of Representatives, which is filled through general elections. This distinction highlights the specific quality of the Province. Furthermore, the appointment standard of DPRP members was designed as an affirmative policy. Therefore, Article 6 section (1) and Article 6A section (1) of Law Number 2 of 2021 state that the DPRP and the DPRK consist of members elected through general elections and indigenous people of Papua appointed specifically, reflecting the Province's unique characteristic. The appointment of the indigenous people of Papua as members of the DPRP/DPRK provides legal certainty and encouragement. It accommodates their participation in representative institutions at the Provincial and Regency/Municipal levels, as in Decision Number 116/PUU-VII/2009³⁰ and Decision Number 4/PUU-XVIII/2020³¹.

The MRP requested a judicial review of Article 28 section (1) and section (2) of Law Number 2 of 2021. The Court found that the development of local political parties was not included in the specialty of Papua. According to the Court, the MRP's argument that Papua is similar to Aceh Province concerning local political parties cannot be compared because each special autonomy has its specialty and advantages. Article 18B section (1) of the 1945 Constitution aligns with the state's recognition of some areas in Indonesia that have been given specialties. Therefore, the Court found no unconstitutionality in the norms despite removing Article 28 section (1) and section (2) of Law Number 2 of 2021.

The MRP requested a judicial review of Article 38 section (2) of Law Number 2 of 2021. The requested review concerns the part of the Chapter that regulates Papua's economy and utilization of natural resources. This provision is indirectly aligned with the MRP's representation of the indigenous people of Papua as regulated in Article 1 point 8 and Article 5 section (2) of Law Number 2 of 2021. In contrast, the MRP failed to elaborate on its evidence of actual, specific, or potential constitutional losses and the assumption that these losses were caused by the implementation of Article 38 section (2) of Law Number 2 of 2021.

The MRP requested a judicial review of Article 59 section (3) of Law Number 2 of 2021. The requested review concerns the government's regional autonomy in the health field. Other articles that deal with the allocation of health service funds and those responsible for health services in Papua have already been regulated by Law Number 2 of 2021, as considered by the Court in Sub-paragraph [3.13.4]

³⁰Decision of the Constitutional Court of the Republic of Indonesia Number 116/PUU-VII/2009, hereinafter referred to as Decision Number 116/PUU-VII/2009.

³¹Decision of the Constitutional Court of the Republic of Indonesia Number 4/PUU-XVIII/2020, hereinafter referred to as Decision Number 4/PUU-XVIII/2020.

of Decision Number 47/PUU-XIX/2021. Therefore, there is no direct connection between Article 59 section (3) of Law Number 2 of 2021 with the MRP's authority and responsibilities as regulated in Article 1 point 8 and Article 5 section (2) of Law Number 2 of 2021.

The MRP requested a judicial review of Article 76 section (1), section (2), and section (3) of Law Number 2 of 2021. The review concerns the expansion of the Province and Regency/Municipality in Papua. The MRP explained that its legal position and authority had been diminished, nullified, and severed in approving Province and Regency/Municipality expansions. However, the Court assessed a mutual agreement between the DPRP and MRP regarding expanding Province and Regency/Municipality. Nevertheless, the Court's consideration in Sub-paragraph [3.13.6] of Decision Number 47/PUU-XIX/2021 does not eliminate the role and authority of the MRP in conjunction with the DPRP in the approval of Province and Regency/Municipality expansions.

Similarly, the MRP requested a judicial review of Article 77 of Law Number 21 of 2001. The review concerns the amendment of the special autonomy law for the Papua Province. In request, while explaining its legal position, the MRP stated that it had no involvement in the process and formation of the amendment to the special autonomy law. MRP assesses that Article 77 should contain regulations where the amendment proposal of Law Number 21 of 2021 can be proposed through the MRP and DPRP. Nevertheless, the Court considered that the request was not an issue of norm constitutionality but rather the implementation of norms and the scope of formal reviewing. The character of formal is a review aimed at ensuring substantive participatory democracy.

After considering the MRP's legal position in the request for a judicial review of Article 38 section (2), Article 59 section (3), Article 76 section (1), section (2), and section (3) of Law Number 2 of 2021, and Article 77 of Law Number 21 of 2001, it can be understood that the substance of MRP's request aligns with the interests of the Local Government. The MRP cannot request a review of these articles alone. In addition, the MRP provided no clear explanation of specific or actual constitutional losses. Moreover, there was no minimal explanation that had the potential to have a causal relationship between the MRP's assumption of constitutional losses and the norms of the articles in question that were requested for review. Therefore, Decision Number 47/PUU-XIX/2021 states that the complainant's request throughout the review of Article 38 section (2), Article 59 section (3), Article 76 section (1), section (2), and section (3) of Law Number 2 of 2021, and Article 77 of Law Number 21 of 2001 cannot be accepted. Furthermore, rejected the complainant's request other than and the rest.

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussions above, it can be concluded that asymmetrical decentralization is a policy manifestation that prioritizes the specificity, uniqueness, diversity of regions, and unity of society regulated by indigenous law and traditional rights. This type of decentralization only delegates special authority to specific regions to preserve the unity of the state. The granting of special autonomy to Papua is one alternative to reduce the gap between the indigenous people of Papua and communities in other provinces. Additionally, this policy aims to improve living standards and provide more excellent opportunities for the indigenous people of Papua. To ensure the implementation of the asymmetrical decentralization policy in Papua, the MRP was established as a cultural representation that has specific authority in protecting the rights of the indigenous people of Papua. However, the MRP evaluated that some provisions in Law Number 21 of 2001 and Law Number 2 of 2021 contradict the 1945 Constitution. The dissenting opinion of the Constitutional Court believes that the MRP has specific authority derived from the construction of Article 18B of the 1945 Constitution. In contrast, the Constitutional Court found that there are provisions in which the substance of MRP's request aligns with the interests of the Local Government and that MRP's request does not contain constitutional issues. In Decision 47/PUU-XIX/2021, the Constitutional Court stated that part of the complainant's request could not be accepted and rejected the complainant's request other than and the rest. Based on the description of these conclusions, it is recommended that the MRP collaborate with the Local Government to promote the interests of the indigenous people of Papua. The Government must also continuously monitor the progress and evaluate the asymmetrical decentralization policy in reducing disparities and improving the standard of living for the indigenous people of Papua. Furthermore, the Government should ensure that the MRP's specific authority does not contradict the 1945 Constitution and that the rights of the indigenous people of Papua remain protected and respected.

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