



THE CONSTITUTIONAL COURT

REPUBLIC OF INDONESIA

SUMMARY OF DECISION

ON CASES NUMBER 4 / PUU-XVIII / 2020

Concerning

The Appointment of Members of the Papuan People's Representative Council

Petitioner: Penetina Cani Cesya Kogoya

Case: Review of Law Number 21 2001 concerning Special Autonomy for Papua Province (Law 21/2001) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).

Case of Lawsuit: Article 6 paragraph (2) of Law 21/2001 contradicts UUD 1945.

Injunction: Rejecting the Petitioners' Petition in its entirety.

Date Decision: Wednesday, 26 February 2020.

Decision Overview:

The Petitioner is an Indonesian citizen, comes from Papua Province, has constitutional rights. The Petitioner explains that his constitutional rights have been

impaired by the enactment of the word "appointed" Article 6 paragraph (2) Law 21/2001 is due to the process of filling in the members of People's Representative Council for Papua Province and West Papua Province as "appointed" based on statutory regulations, in casu Special Regional Regulations, namely by 3 (three) agencies, namely the Governor, the Office of National Unity (Kesbang) Provincial and Selection Committee (Pansel) formed by the Governor;

Related to the authority of the Constitutional Court, because what the Petitioners request is a review of the law, in casu, Law 21/2001, against the 1945 Constitution, which is one of its authorities, the Court has the authority to try the a quo petition; With regard to the Petitioner's legal standing, regardless of whether the Petitioners' argument is proven or not concerning a conflict of norms, in particular, the word "appointed" in Article 6 paragraph (2) of Law 21/2001 with the 1945 Constitution, according to the Court, the Petitioner has specified that with the enactment of the provision of the word "appointed" in Article 6 paragraph (2) of Law 21/2001 has harmed or potential harm to the Petitioner. Therefore, according to the Court, the Petitioner has a legal position to act as the Petitioner in the a quo petition; In relation to the main point of the petition, the Petitioner argues that the word "appointed" in Article 6 paragraph (2) of Law 21/2001 has the potential to contradict the 1945 Constitution and to harm the constitutional rights of the Papuan people, particularly the Petitioner, who have the right to equal position in law and government. In addition, according to the Petitioner, the election for members of the Provincial People's Representative Council in Papua which was carried out through an appointment mechanism as stipulated in the Special Regional Regulations which is the implementer of the provisions of Article 6 paragraph (2) of Law 21/2001 reduces the constitutional rights of the Papuan people, so that Article a quo is

contrary to the 1945 Constitution. With regard to the argument referred to, the Court needs to explain that the word "appointed" in Article 6 paragraph (2) of Law 21/2001 which states, "Papuan People's Representative Council consists of members who are elected and appointed based on laws and regulations", if they are placed in the special autonomy status granted to Papua (including West Papua as regulated in Law Number 35 Year 2008 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2008 concerning Amendments to Law Number 21 of 2001 concerning Special Autonomy for Papua Province Into Law) is part of the state's recognition of the special form of this region within the framework of the Republic of Indonesia. Such recognition is in accordance with the General Elucidation of Law 21/2001 which states:

The Special Autonomy for the Papua Province is basically the granting of broader authority 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. Wider authority also means greater responsibility for the Province and the people of Papua to organize the government and regulate the utilization of natural resources in the Papua Province to the greatest possible extent for the prosperity of the Papuan people as part of the Indonesian people in accordance with the laws and regulations. This authority also means the authority to empower the socio-cultural and economic potential of the Papuan people, including providing an adequate role for themindigenous Papuans through representatives of adat, religion and women. The role played is to participate in formulating regional policies, determining development strategies while respecting the equality and diversity of life of the Papuan people, preserving Papua's culture and natural environment, which is reflected in the change in the name Irian Jaya to Papua,

the regional symbol in the form of regional flags and regional songs as the form of actualization of the Papuan people's identity and recognition of the existence of customary rights, adat, indigenous peoples, and customary law.

Referring to the intended General Elucidation, the filling of Papuan People's Representative Council Members is through the "appointment" mechanism as regulated in Article 6 paragraph (2) of Law 21/2001 is part of an effort to provide a greater role and recognition to indigenous Papuans in governance, including in the formulation of policies in representative institutions, *in casu*, Papuan People's Representative Council and West Papua People's Representative Council. If the effort to provide a greater role and recognition through the appointment mechanism is changed or interpreted as "elected by indigenous Papuans", as requested by the Petitioner, according to the Court it is not in line with the spirit of special autonomy as mandated by the 1945 Constitution;

Whereas furthermore with regard to the Petitioner's argument which states that the appointment of Papuan People's Representative Council members has caused conflict, however, the Governor of Papua Province wants Papuan People's Representative Council members who are appointed from the 2014-2019 period to be continued for the 2019-2024 period, so even though they are rejected by the Ministry of Home Affairs, the desire This shows an attempt to deviate from the democracy that has been adhered to in the Indonesian constitutional system. Likewise, attempts to deviate from democratic practices also took place at the West Papua People's Representative Council, where one of the Chairmen of the Papua People's Assembly of West Papua Province was appointed and became a member of the Selection Committee;

With regard to this argument, that the appointment mechanism is considered to have caused conflict, according to the Court, if it were true that the filling of Papuan

People's Representative Council members was through the appointment mechanism as regulated in Article 6 paragraph (2) of Law 21/2001 has created conflicts, this is not an issue of the constitutionality of the a quo norm, but rather an application or implementation of norms;

With regard to the application or implementation of these norms, the specificity of filling in members of the Provincial Papuan People's Representative Council members, both Papua and West Papua Provinces, through the appointment mechanism chosen by the Selection Committee is a democratic effort in filling in Papuan People's Representative Council members through the appointment mechanism. According to the Court, if there are problems, for example related to the existence of members of the Selection Committee who have "tendencies or tendencies to be close to political parties", such matter is not related to the constitutionality of the word "appointed" in Article 6 paragraph (2) of Law 21/2001. In fact, as an implementation of Article 6 paragraph (2) of Law 21/2001 in accordance with the legal considerations of the Constitutional Court Number 116 / PUU-VII / 2009, the arrangements regarding the composition of the Selection Committee membership can be adjusted without the need to question the constitutionality of the word "appointed" in Article 6 norms. Paragraph (2) of Law 21/2001, for example, takes into account "women's representation" in a professional manner and also considers "representation of indigenous peoples" in accordance with "customary territories" in Papua and West Papua Provinces. Likewise, to keep away from "tendencies or tendencies to be close to political parties", the members of the Selection Committee do not come from elements that can be considered as coming from political parties;

Whereas furthermore with regard to the Petitioner's argument states the

confusion in the “appointment” mechanism for Provincial People’s Representative Council members determined by the Special Regional Regulations, both the Papua and West Papua Special Regional Regulations there is a recruitment process that is unfair and undemocratic, so that it is contrary to the prevailing laws and regulations and the principles or principles of “direct”, “general”, “free”, “confidential”, “honest”, and "Fair" ones guarantee the constitutional rights of indigenous Papuans.

With regard to the Petitioner's argument, as part of the Papua special autonomy design, the existence of the Special Regional Regulations is a characteristic provided by Law 21/2001. In this case, regarding the substance or matter Special Regional Regulations is not the authority of the Court to evaluate it. Meanwhile, judgments or arguments stating that the filling in of Papuan People’s Representative Council and West Papua People’s Representative Council members through an appointment mechanism is contrary to the principles of "direct", "general", "free", "secret", "honest" and "fair" elections, according to the Court. it is not appropriate to use it to judge the constitutionality of the word "appointed" in the norms of Article 6 paragraph (2) of Law 21/2001. Because the appointment mechanism does not mean that its implementation will be carried out through a direct election process as meant in Article 22E paragraph (1) of the 1945 Constitution. Moreover, Article 6 paragraph (2) of Law 21/2001 is an affirmative action against indigenous Papuans in representative institutions in the regions, either Papuan People’s Representative Council and West Papua People’s Representative Council, in order to adopt Provincial government policies, both Papua Province and West Papua Province; In addition to these considerations, the Court needs to emphasize that the filling of representative institutions through the intended appointment mechanism order to provide opportunities for certain groups in society to

ensure that they have representatives in representative institutions, the appointment mechanism is not the same as the way elections are conducted directly by the people. When placed in the context of Papua's special autonomy, this mechanism is a manifestation of the specificity of Papua and West Papua and at the same time to provide greater space for indigenous Papuans to sit in the Papuan People's Representative Council and West Papua People's Representative Council. If the Petitioners' logic is followed, the word "appointed" means "elected by indigenous Papuans", in addition to reducing the specific character of Papua and West Papua within the framework of the Republic of Indonesia, this action could reduce the chances of indigenous Papuans to become members of the Papuan People's Representative Council and West Papua People's Representative Council. Based on all the legal considerations above,

Accordingly, the Court issued a decision which completely rejected the Petitioner's petition.