

# THE CONSTITUTIONAL POSITION OF THE PAPUAN PEOPLE'S ASSEMBLY IN THE IMPLEMENTATION OF GOVERNMENT IN THE LAND OF PAPUA

## A POSIÇÃO CONSTITUCIONAL DA ASSEMBLEIA DO POVO PAPUANO NA IMPLEMENTAÇÃO DO GOVERNO NA TERRA DE PAPUA

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**Dorsinta Rita Lasmawati Hutabarat\***

\*Pattimura University, Ambon, Maluku, Indonesia  
[writa1237@gmail.com](mailto:writa1237@gmail.com)

**S. E. M. Nirahua\***

\*Pattimura University, Ambon, Maluku, Indonesia  
[salmonnirahua@gmail.com](mailto:salmonnirahua@gmail.com)

**J. Tjiptabudi\***

\*Pattimura University, Ambon, Maluku, Indonesia  
[jtjiptabudy@gmail.com](mailto:jtjiptabudy@gmail.com)

**J. J. Pietersz\***

\*Pattimura University, Ambon, Maluku, Indonesia  
[jjpietersz@gmail.com](mailto:jjpietersz@gmail.com)

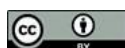
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### Resumo

Background: The enactment of Law No. 21 of 2001 on Special Autonomy for Papua Province grants broad authority to the government and the Papuan people to autonomously manage their territory within the framework of the Unitary State of the Republic of Indonesia. This special autonomy entails significant responsibility for the provincial government and its people to administer governance and regulate natural resources to achieve maximum prosperity for Indigenous Papuans. Methods: This study employs normative legal research supported by an empirical approach. The research identifies legal rules, principles, and doctrines to address specific legal issues, particularly concerning the impact of the *Hawear* (Sasi) cultural practices on marine resource management under statutory provisions. Secondary data were analyzed juridically and complemented by primary field data. Results: The findings indicate that Special Autonomy strengthens the position of the Papuan People's Assembly (MRP) as a cultural representation institution with strategic authority. The MRP's role is reflected in its "Veto" power or binding considerations regarding certain matters, including the approval of Gubernatorial and Vice-Gubernatorial candidates (who must be Indigenous Papuans),

### Abstract

*Contexto: A promulgação da Lei nº 21 de 2001 sobre a Autonomia Especial para a Província de Papua concede ampla autoridade ao governo e ao povo papuano para gerir de forma autónoma o seu território no quadro do Estado Unitário da República da Indonésia. Esta autonomia especial implica uma responsabilidade significativa para o governo provincial e para o seu povo na administração da governação e na regulação dos recursos naturais, visando alcançar a máxima prosperidade para os Indígenas Papuanos. Métodos: Este estudo utiliza a investigação jurídica normativa apoiada por uma abordagem empírica. A investigação identifica regras, princípios e doutrinas jurídicas para abordar questões legais específicas, particularmente no que diz respeito ao impacto das práticas culturais Hawear (Sasi) na gestão dos recursos marinhos ao abrigo das disposições estatutárias. Os dados secundários foram analisados juridicamente e complementados por dados primários de campo. Resultados: Os resultados indicam que a Autonomia Especial reforça a posição da Assembleia do Povo Papuano (MRP) como uma instituição de representação cultural com autoridade estratégica. O papel da MRP reflete-se no seu poder de "Veto" ou considerações*



the protection of indigenous rights, and policies regarding natural resource utilization. The MRP serves as an official aspiration channel for indigenous communities, women, and religious leaders to ensure that government policies align with cultural preservation and the welfare of Indigenous Papuans.

**Palavras-chave:** Special Autonomy, Papua, Papuan People's Assembly (MRP), Customary Law, Hawear.

*vinculativas sobre determinadas matérias, incluindo a aprovação de candidatos a Governador e Vice-Governador (que devem ser Indígenas Papuanos), a proteção dos direitos indígenas e as políticas relativas à utilização dos recursos naturais. A MRP serve como um canal de aspiração oficial para comunidades indígenas, mulheres e líderes religiosos, garantindo que as políticas governamentais estejam alinhadas com a preservação cultural e o bem-estar dos Indígenas Papuanos.*

**Keywords:** *Autonomia Especial. Papua. Assembleia do Povo Papuano (MRP). Direito Consuetudinário. Hawear.*

## 1 INTRODUCTION

Papua Province is one of the provinces in Indonesia that has been granted Special Autonomy by the government of the Republic of Indonesia. The Special Autonomy of Papua Province has been going on since 2001 after the issuance of Law Number 21 of 2001 which has been amended by Law Number 35 of 2008 concerning the Special Autonomy of Papua Province. The establishment of special regions can be seen in the fourth amendment to the Constitution of the Republic of Indonesia in 1945, which is regulated in Chapter VI concerning Regional Government.

Papua Province is also one of the regions in eastern Indonesia that has special autonomy. The constitutional basis for the establishment of special regions is regulated in Article 18 B Chapter VI of the 1945 Constitution Fourth Amendment concerning Regional Government, namely:

- a) a) The State recognizes and respects special or special local government units regulated by Law.
- b) b) The State recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the Law.

The special autonomy owned by the Province of Papua is regulated in Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua which was amended by Government Regulation in Lieu of Law (Perpu) Number 1 of 2008

concerning Amendments to Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua.

The law was established to improve the protection of the human rights of the Papuan people. In accordance with the mandate of Law Number 21 of 2001, the special autonomy of Papua Province was established to provide broader authority to the Government and People of Papua Province to regulate and manage its territory as stated in Article 4 paragraph (1) of Law Number 21 of 2001, which states that:

"The authority of Papua Province includes authority in all fields of government, except for the authority in the fields of foreign policy, defense and security, monetary and fiscal, religious, and judicial as well as certain authorities in other fields determined in accordance with laws and regulations."

Special Autonomy for Papua Province is basically the granting of broader authority for Papua Province and the Papuan people to govern themselves within the framework of the Unitary State of the Republic of Indonesia. Wider authority means greater responsibility for the Province and the people of Papua to administer government and regulate the use of natural resources in Papua Province to the greatest extent possible for the prosperity of the Papuan people, as part of the Indonesian people in accordance with laws and regulations.

With the special autonomy owned by the Province of Papua, there is a different bureaucratic system owned by the Papua region compared to other regions in Indonesia. In Chapter V on the Form and Composition of Government in Law Number 21 of 2001, it is explicitly stated that the main pillars in the administration of the government of Papua Province consist of three components, namely the Papuan People's Representative Council (DPRP), the Regional Government (Governor and its apparatus), and the Papuan People's Assembly (MRP).

As is known, the Papuan People's Assembly in the land of Papua is a colleague of the DPRP and the Regional Government, so in carrying out its duties it emphasizes more on the interests of the Papuan people. Based on the Great Dictionary of the Indonesian Language, the Assembly is a council that carries out certain tasks regarding the state and so on on a limited basis. The people are the inhabitants of a country, so the people's assembly is a council that carries out certain tasks, in this case as a representative of the Papuan population whose power is limited, namely in the Papua region only. MRP is what distinguishes Papua Province from other regions in Indonesia. One of the privileges

that exists in the MRP is that its membership is only filled by indigenous Papuans consisting of traditional representatives, religious representatives, and female representatives whose elections are elected by the people.

Based on the provisions of Article 2 and Article 74 paragraph (1) of Government Regulation Number 54 of 2004 concerning the Papuan People's Assembly, it is stated that:

#### CHAPTER 2:

MRP is established under this Government Regulation and is domiciled in the Provincial Capital. Article 74:

- a) In terms of the expansion of Papua Province into new provinces, the MRP was formed, which is domiciled in each provincial capital.
- b) The procedures for the formation, composition, position, membership, implementation of duties and authorities of the MRP as intended in paragraph (1) are guided by the provisions of this Government Regulation.

In the administration of government, the position of the MRP is on par with the DPRP and is located in the provincial capital. The purpose of the establishment of the MRP is to provide certainty for the indigenous rights of the Papuan people. The membership of the MRP consists of customary representatives, religious representatives, and female representatives of indigenous Papuan origin, which is not more than 3/4 (three-fourths) of the number of members of the DPRP and the membership period of the MRP is 5 years.<sup>1</sup>

The duties and authorities of the MRP are to give consideration and approval to the candidates for Governor and Deputy Governor proposed by the DPRP, candidates for members of the People's Consultative Assembly of the Republic of Indonesia, regional delegates for Papua Province proposed by the DPRP, and the draft Perdasus submitted by the DPRP together with the Governor. In addition, it also provides suggestions, considerations and approvals to the plan of cooperation agreements made by the Government and Provincial Governments with third parties, pays attention to and channels the aspirations and complaints of indigenous peoples, religious people, women and communities, facilitates follow-up on their completion, and gives consideration to

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<sup>1</sup> See Article 3 of Government Regulation No. 54 of 2004 concerning the Papuan People's Assembly

the DPRD. Governor. Regency/City DPRD and Regent/Mayor regarding the protection of the rights of indigenous Papuans.<sup>2</sup>

Apart from that, MRP also has the right to request information from the Provincial and Regency/City Governments regarding matters related to the protection of the rights of indigenous Papuans. request a review of the Perdasi or Regulations/Decrees of the Governor which are considered to be contrary to the protection of the rights of indigenous Papuans. submit the MRP Budget plan to the DPRD as a unit with the Regional Revenue and Expenditure Budget of West Papua Province. and establish the MRP Rules of Conduct.

The duties and authority possessed by the MRP make its position very important in the wheel of Papua Province government. This is because every decision taken in the Papua Provincial government needs consideration from the MRP. Therefore, it can be said that the function and position of the MRP as a cultural representative institution which is also an institution of community control over the implementation of governance is very influential in encouraging a good democratic process in the land of Papua.

Therefore, MRP is part of the implementation of the Papuan Special Autonomy that cannot be separated and stands alone. MRP is a working partner of the DPRD and the Papuan Regional Government in the implementation of the Papuan Special Autonomy, which emphasizes more on the protection of indigenous Papuans in the policy of implementing the Papuan Special Autonomy. The *sharing of power* in the context of the Special Autonomy of Papua is not only about the relationship between the central and the regions, but also about the division of power and authority in Papua Province. Distribution of authority between the Executive and the Legislature in the implementation of the Papuan Special Autonomy:<sup>3</sup>

- a) a)Executive Institutions. institutions at the provincial level are led by a Governor and at the Regency/City level are led by Regents and Mayors. Governors, Regents and Mayors are elected through a general election system that is directly elected by the people.

<sup>2</sup> See Articles 8 and 9 of the Papua Provincial Regulation No. 4 of 2008 concerning the Implementation of the Duties and Authorities of the Papuan People's Assembly. See also Article 36 of Government Regulation No. 54 of 2004 concerning the Papuan People's Assembly

<sup>3</sup> Agus Sumule, *Finding a Middle Way for Special Autonomy of Papua Province*, Gramedia, Jakarta, 2003, p. 65.

b) b)The Legislative Institution consists of 2 (two) bodies. namely the Papua Provincial Regional Representative Council (DPRP) and the Papuan People's Assembly (MRP). This system is commonly known as a bicameral system<sup>4</sup>. The membership of the DPRP representatives is representatives from political parties elected through general elections.

The membership of the MRP consists of traditional representatives. religious representatives and women representatives elected by the people. In addition to jointly supervising the implementation of government by the executive agency. the MRP also functions to supervise the implementation of the DPRP's duties.

One of the reasons in Papua is that there are 2 (two) representative (legislative) institutions of the bicameral system in Papua taking an example from one of the countries of the South Pacific and that have cultural similarities with Papua. using a bicameral system. consisting of *the House of Representatives* (parliament) and the senate. The parliament is elected through a system of communal elections combined with *cross-voting*. while the senate is governed by a certain means by authorizing the Grand Council of Tribal Chiefs. the Prime Minister of the opposition and the Rotuma Islands Council to nominate its figures based on a predetermined quota.<sup>4</sup>

The Papuan Special Autonomy provides protection for the political rights of indigenous peoples and indigenous Papuans by creating a certain chamber in the Papua Provincial Parliament. which is called the MRP which is only filled by indigenous Papuans who are representatives of customs. religions and women who each amount to one-third of the total number of members of the chamber.

In this way. the system of supervision (*checks and balances*) of the MRP where the representation of indigenous peoples in political decision-making in a local government at the provincial level can be represented by taking into account the position and interests of indigenous Papuans distributed in the number of rooms that have duties and obligations.

The position of the MRP. by Jimly Assidique. suggested that the name of the parliament in Papua be the Papuan People's Assembly (MRP). The MRP consists of two chambers (bicameral). the first is the senate consisting of indigenous Papuans (representatives of customs. religions and women) and the second is a chamber composed

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<sup>4</sup> Agus Sumule, *Ibid*, p. 65.

of representatives of political parties elected through elections. which is called the DPRD (now called the DPRD).

With the establishment of the DPRD. it gives an idea that in Papua there are 2 (two) legislative institutions. namely the DPRD which is a representative of members of political parties who are directly elected by the community while the DPRD is a cultural/cultural institution whose members come from Indigenous peoples. Religions and Women where the appointment of DPRD members is carried out through democratic elections. DPRD is an institution that is a working partner of the Regional Government and the DPRD. The position of the DPRD with all its duties and authorities can provide benefits for the implementation of Special Autonomy which is expected to provide input to the interests of the indigenous Papuan people.

The problem in the DPRD is that there is an inequality in its implementation. In this case. the DPRD has not been able to fully carry out the rights and obligations contained in the Papua Special Autonomy Law. This happened because the DPRD and the DPRD were still running separately in the implementation of Papua's Special Autonomy. Thus. the DPRD. which should be a working partner. is only an institution created to fulfill what is stated in the Papuan Special Autonomy Law. and is also still not optimal in supervising the implementation of the Papuan Special Autonomy.

As a result. the alignment with the indigenous Papuans has become weakened. even though protecting and guarding the indigenous Papuans for the welfare and development of unity in the indigenous Papuan community is the responsibility of the DPRD.

The Papuan Special Autonomy Law gives a large and centralized role to the Papuan People's Assembly (DPRD). This assembly is a cultural representative institution of indigenous Papuans. The DPRD consists of representatives of customs. religions. and women spread throughout the district. especially traditional representatives representing 250 tribes in Papua.

Another strategic role of the DPRD is to give consideration and approval to the draft Special Regional Regulation submitted by the DPRD together with the Governor. The Special Regional Regulation in question is held in the context of implementing certain articles in the Special Autonomy Law. The article in question is Article 76 concerning "The expansion of the Provinces into provinces is carried out with the approval of the DPRD and the DPRD after paying serious attention to socio-cultural unity.

the readiness of human resources and economic capabilities as well as future developments".

In addition, MRP's task is also to pay attention to and channel the aspirations and complaints of indigenous peoples, religious people, women, and the community in general regarding the rights of indigenous Papuans, as well as facilitate follow-up on their resolutions. This duty and authority is very clearly a form of giving to the existence and identity of the indigenous Papuans.

Strengthening<sup>5</sup> the implementation of government in the era of Special Autonomy in Papua for the sovereignty of the indigenous Papuan people. Strengthening the MRP must be carried out, this is because there are weaknesses in its implementation. In this case, the members who are divided into the Working Group can maintain the implementation of the Papuan Special Autonomy. The role and supervisory function of the Governor and the DPRD must run well to maximize the role of the MRP in the implementation of the Papua Special Autonomy.

The weakness of the MRP can be seen by the running of the MRP to date based on several functions and authorities in supervision and as colleagues of the Governor and the DPRD have not run optimally. Based on Articles 20 and 21 of the Papuan Special Autonomy Law, the MRP has functions and duties, as a protection of the rights of indigenous Papuans, has not been running optimally. Some of the authorities owned by the MRP are such as giving consideration and approval to the draft Perdasus submitted by the DPRD together with the Governor. Provide suggestions, considerations, and approvals to the cooperation agreement plan carried out by the Papua provincial government, specifically related to the protection of the basic rights of indigenous Papuans. The authority possessed by the MRP is not only at the Provincial level but also at the Regency and City levels.

In addition to the authority possessed by the MRP, there are also rights that must be exercised by the MRP such as requesting information from the provincial, regency/city governments regarding matters related to the protection of indigenous Papuans so far. Requesting a review of Provincial Regional Regulations or Governor's Decrees that are considered to be contrary to the rights of indigenous Papuans has not been implemented

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<sup>5</sup> In the Second Edition of the Great Dictionary of the Indonesian Language, the definition of strengthening is a process, method, act of strengthening or strengthening.

at all. This makes the MRP, which is a representative of the indigenous Papuan people, not have full power in providing protection for the indigenous rights of Papuans.

In general, MRP has a role in protecting the life of values in the culture of Papuan society. However, on the way, the MRP is unable to carry out the assigned tasks due to the limitations obtained in the provisions of laws and regulations.

The limitations of MRP can be caused by regulations that do not support the implementation of its function as a protector of values in indigenous Papuan communities. These obstacles can occur due to inadequate legal rules in the system of authority that must be carried out by the MRP, the ability of MRP members to carry out their functions so that it is memorable that the elected MRP members are only a complement in the implementation of Special Autonomy because the recruitment system to become MRP members does not have a clear measure which is not regulated in a legal regulation, and the last is a regulation that concerns the accountability of MRP members in carrying out their functions based on the applicable legal rules. This is to provide a sense of responsibility from MRP members as a form of representative of indigenous Papuans who have a responsibility to the Papuan people represented in protecting the basic rights of indigenous Papuans in the implementation of Papuan Special Autonomy. The formulation of the problem that will be studied in this study is: What is the essence of the constitutional position of the Papuan People's Assembly in the constitution of the Republic of Indonesia?

## 2 RESEARCH METHODS

This research is a *normative juridical research*. Normative juridical research is a method of legal research that is carried out by examining literature materials or mere secondary materials.<sup>6</sup> This research is a normative or doctrinal legal research complemented by empirical data, which will examine and analyze the Constitutional Position of the Papuan People's Assembly in the Implementation of Government in the Land of Papua. The approach used in the research is adjusted to the problem to be researched. The first problem uses normative legal research with a philosophical approach to examine and analyze the nature of the constitutional position of the Papuan People's

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<sup>6</sup> Soejono Soekanto and Sri Mamudji, *ibid*, p. 13.

Assembly in the constitutional system of the Republic of Indonesia. The second problem uses normative legal research using a conceptual approach and accompanied by case examples to examine and analyze the implementation of the authority of the Papuan People's Assembly in the administration of government.

### 3 DISCUSSION

The constitutional position of the Papuan People's Assembly (MRP) is a unique phenomenon in Indonesian constitutionality. The Papuan People's Assembly was born as a logical consequence of the status of Special Autonomy (Otsus) for Papua Province, which is based on Article 18B paragraph (1) of the 1945 Law on the State Sovereignty of the Republic of Indonesia concerning state recognition of special or special local government units. The following is a description of the position of the Papuan People's Assembly in our constitutional system:

- a) Cultural Representation. Not Politics Unlike the DPRD which is a political representative institution (containing party cadres), the Papuan People's Assembly is a cultural representation institution for the indigenous Papuan people. Membership: Consists of traditional representatives, religious representatives, and women's representatives. The essence of the Papuan People's Assembly is that it does not carry out legislative, budgetary, or supervisory functions in general like a parliament, but rather maintains the basics of protecting the rights of indigenous peoples.
- b) Elements of Special Regional Government Organizers Based on Law Number 21 of 2001 (which has been amended by Law Number 2 of 2021), the position of MRP is as an equal partner of the Regional Government and the DPRP (Papuan People's Representative Council) in the context of the implementation of Special Autonomy. At the national level, it is subject to the system of the Republic of Indonesia. At the local level, it has specific authority that other regions in Indonesia do not have.
- c) Special Constitutional Authority The essence of the MRP's position is reflected in the "Veto" authority or binding considerations in certain matters, namely: Consideration and Approval: Against prospective candidates for Governor and Deputy Governor (must be Papuan Orang Asli). Protection of Indigenous Rights:

Provide consideration to policies related to the rights of indigenous peoples and the use of natural resources. Aspiration Channeling: Become an official channel for indigenous peoples, women, and religious leaders to dialogue with the central and regional governments.

- d) Manifestations of Asymmetric Decentralization Theoretically, the position of MRP is proof of the application of Asymmetric Decentralization. Indonesia recognizes that Papua needs a different legal approach for the sake of national integration, identity protection, and the acceleration of welfare. The Papuan People's Assembly is the "anchor" of this specialty. Summary of Position Aspects of Explanation of the Legal Basis of Article 18B paragraph (1) of the 1945 Law on the State of the Republic of Indonesia and the Law on Special Autonomy of Papua. The nature of cultural representation institutions (customs, religion, women). The Main Function is to protect the basic rights of the Indigenous Papuans (OAP). The power relationship of the Partners is on par with the Governor and the DPRD in the corridor of the Republic of Indonesia. Important Note: The Constitutional Court (MK) has repeatedly affirmed that the existence of the Papuan People's Assembly is constitutionally valid as long as its authority remains within the framework of state sovereignty and aims to benefit the Papuan people. Do you want me to delve deeper into how the selection process for members of the Papuan People's Assembly is carried out or how it affects the election of regional heads in Papua? The AI response may contain errors. For legal advice, contact a professional. Learn more. Try the suggestions below or type in a new question above.

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- b) Elements of Special Regional Government Organizers Based on Law Number 21 of 2001 (which has been amended by Law Number 2 of 2021). the position of the Papuan People's Assembly is as an equal partner of the Regional Government and the Papuan People's Representative Council (DPRP) in the context of the implementation of Special Autonomy. At the national level. it is subject to the Unitary State system of the Republic of Indonesia. At the local level. it has specific authority that other regions in Indonesia do not have.
- c) Special Constitutional Powers The nature of the MRP's position is reflected in the authority of "Veto" or binding considerations in certain matters. namely: Giving Consideration and Approval: Towards prospective candidates for Governor and Deputy Governor (must be Orang Orang Asli Papua). Protection of Indigenous Rights: Provide consideration to policies related to the rights of indigenous peoples and the use of natural resources. Aspiration Channeling: Become an official channel for indigenous peoples. women. and religious leaders to dialogue with the central and regional governments.
- a) d) Manifestations of Asymmetric Decentralization Theoretically. the position of the Papuan People's Assembly is proof of the implementation of Asymmetric Decentralization. Indonesia recognizes that Papua needs a different legal approach for the sake of national integration. identity protection. and the acceleration of welfare. The Papuan People's Assembly is the "anchor" of this specialty. Legal Basis Article 18B paragraph (1) of the Constitution of the Republic of Indonesia of 1945 and the Law on Special Autonomy of Papua. Nature of the Institution Representation. Cultural (Customs. Religion. Women). Main Functions Protect the basic rights of Indigenous Papuans (OAPs). Power Relations Equal partners of the Governor and the DPRP in the corridor of the Unitary State of the Republic of Indonesia.

#### 4 CONCLUSION

The conclusion that can be expressed in this writing is that the essence of the position of the Papuan People's Assembly is reflected in the authority of "Veto" or binding considerations in certain matters. namely: Giving Consideration and Approval: Towards prospective candidates for Governor and Deputy Governor (must be Papuan Indigenous).

Protection of Indigenous Rights: Provide consideration to policies related to the rights of indigenous peoples and the use of natural resources. Aspiration Channeling: Become an official channel for indigenous peoples, women, and religious leaders to dialogue with the central and regional governments.

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### Authors' Contribution

All authors contributed equally to the development of this article.

### **Data availability**

All datasets relevant to this study's findings are fully available within the article.

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