

Optimizing the Role of Papua People's Assembly (MRP) in Government Administration of Papua Province

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Abstract: *The existence of MRP in accordance with the provisions of Law No. 21 of 2001, is expected to affect the development policies in Papua Province, so that it can provide support to the Papua natives, but during the 2001-2018 period, MRP has not been optimal in carrying out its duties and authorities, as indicated by the absence of a strategic and fundamental policy for the Papua natives. In connection with the importance of the existence of MRP, MRP institution shall be strengthened that it shall ideally only consist of 1 MRP representing customs and cultures of the Papua natives. In addition, the authority of MRP shall be strengthened by being positioned as a legislative body such as Provincial House of Representatives, only differentiated based on the scope of its authority, that the scope of DPRD authority covers aspects relating to the protection of population rights, while the MRP's authority only covers aspects related to the protection of the rights of the Papua natives. Thus, the legislative body at the provincial level shall consist of 2 (two) rooms, namely the Provincial House of Representatives representing the population, and the MRP representing the Papua natives.*

Keywords: *Strengthening of the MRP; the Protection of the Rights of the Papua Natives*

INTRODUCTION

Law No. 21 of 2001 concerning Special Autonomy for Papua Province contains a special policy that aims to provide opportunities for the people of Papua to take part in their territory, not only as an object of development but also as a subject of development. The noble goal contained in the consideration section of the letter i, regulates: "...that the implementation

of the special policy concerned is based on the basic values covering protection and respect of the basic rights of the natives, Human Rights, the supremacy of law, democracy, ethics and morals, pluralism, and equality in position, rights and obligations as a citizen...".

The implementation of the consideration section is further elaborated in Article 5 paragraph (2) of

Law No. 21 of 2001 concerning the formation of the Papua People's Assembly (MRP), namely:

In executing the Special Autonomy in the Papua Province, a Papua People's Assembly shall be formed which is the cultural representation of the Papua natives with certain authorities to protect the rights of the Papua natives, based on respect to customs (*adat*) and culture, empowerment of women and stabilization of a harmonious religious life.

The mandate of the consideration section of letter i and Article 5 paragraph (2) of Law No. 21 of 2001 shows that there is an order from the law to form MRP positioned as a formal political institution (political superstructure)¹ at the provincial level with certain authorities to protect rights of Papua natives, based on respect to customs and culture, empowerment of women, and stabilization of a harmonious religious life.

The existence of MRP is expected to realize the development policies in Papua Province that support the Papua

natives as stated in the consideration section of letter g of Law No. 21 of 2001: that the management and use of the natural wealth of Tanah Papua has not yet been optimally utilized to enhance the living standard of the natives, causing a deep gap between the Papua Province and the other regions, and violations of the basic rights of the Papua natives”.

This means that the MRP through the authorities granted by Law No. 21 of 2001 has a great responsibility in providing protection for the rights of Papua natives in order to realize equality and maintain diversity of lives of the people of Papua. This positions the MRP as a formal political institution in addition to Governor and House of Representatives of Papua (DPRP) and is involved in the process of formulating, implementing and evaluating regional policies.

On the basis of this description, the MRP should be positioned as a partner equal to the Governor and Provincial DPR. However, the formulation of the consideration

¹ The representation of MRP membership resembles the representation of the members of the Regional Representative Council of the Republic of Indonesia (DPD RI). If the MRP membership is a cultural representation, then DPD RI membership, as stated by Jimly

Asshiddiqie in Asshiddiqie, Jimly. (2006). *Pengantar Ilmu Hukum Tata Negara*. Volume III. MKRI (not for sale). p. 40. I, is an embodiment of the territorial representation system.

section and Article 5 paragraph (2) containing these large responsibilities are not followed by the elaboration in the subsequent Article in granting the authority². This has caused the MRP to be positioned as an institution of cultural representation instead of a political institution. As a result, the MRP has a weak bargaining position when dealing with the Governor and DPRD.

METHOD

This research type used normative legal research or library legal research, including researches on legal principles, legal systematics, the level of legal synchronization, and legal history. Legal materials used as analytical material consist of: primary legal materials, namely all legal rules established and/or formally made by a state institution, and/or government agencies and their enforcement is carried out through official force by state officials, including: the 1945 Constitution of the Republic of Indonesia, Law No. 21 of 2001 and Government Regulation No. 54 of

2004 concerning MRP. Secondary legal materials were all information about the applicable or applied law, including: textbooks, legal research reports, legal journals, and other reports related to research objects.

The objects used in this research were divided into material and formal objects. The material object in this research is the law concerning the implementation of regional government in Indonesia focused on Law No. 21 of 2001, and Government Regulation No. 54 of 2004, while the formal object in this research was the 1945 Constitution of the Republic of Indonesia. The analytical technique was performed by identifying all legal materials according to the research objectives, then conducting a review by describing, systematizing, and explaining the applicable laws prescriptively.

² In addition to the representation of membership, MRP resembles the position of DPD RI, as stated by Jimly Asshiddiqie in Asshiddiqie, Jimly. *Perkembangan dan Konsolidasi Lembaga Negara Pasca*

Reformasi, Sekretariat Jenderal dan Kepaniteraan MKRI. 2006. p. 138, that DPD RI is not a full pledged legislative body as in DPR RI, because DPD RI does have a regulatory function (legislation).

DISCUSSION

Implementation of Duties and Authorities

Relationship between Governor/DPRP and MRP

In accordance with Article 20 of Law No. 21 of 2001, the relationship between the Governor/DPRP and MRP can be assessed from 2 (two) aspects, namely: in terms of providing consideration and approval to the draft *Perdatus* (Special Regional Regulation) submitted by the Provincial DPR together with the Governor; and in providing advice, consideration and approval of plan for cooperation agreement made by the Government and the provincial government with third parties applicable in Papua Province specifically concerning the protection of the rights of Papua natives.

In relation to the consideration and approval of the draft *Perdatus*, it has implications for the existence of two legal products in the governance of Papua Province, the implications are: (1) *Perdatus* as a provincial regulation which further regulates certain Articles in Law No. 21 of 2001 (Article 1 letter i of Law No. 21 of 2001), and (2) *Perdasi* as a provincial regulation which regulates Articles in

Law No. 21 of 2001 and legislation beyond Law No. 21 of 2001 or as *Perda* (Regional Regulation) in other provinces in Indonesia (Article 1 letter j of Law No. 21 of 2001).

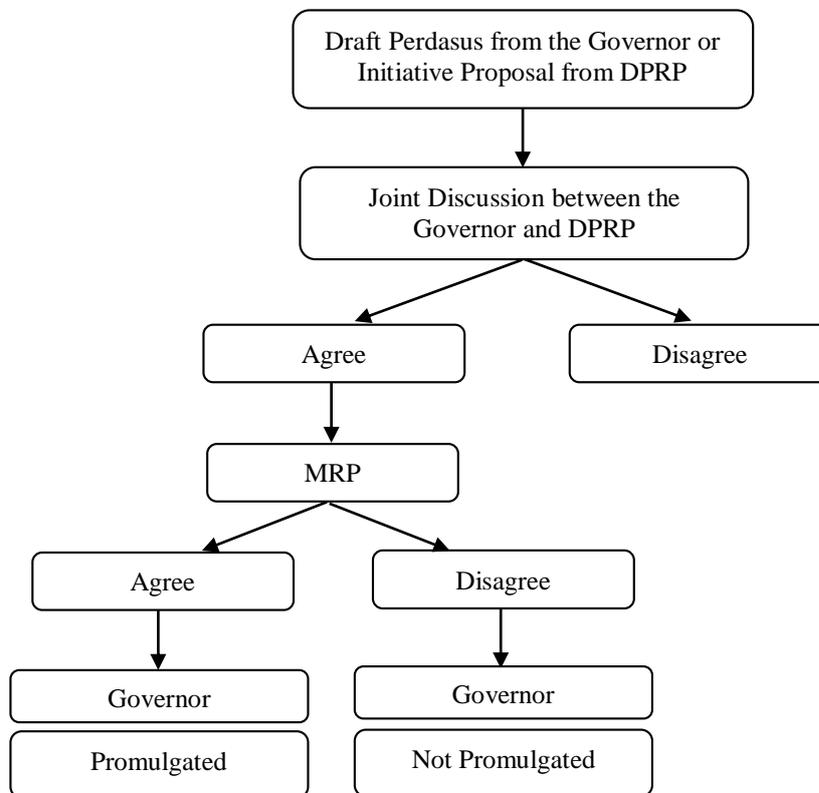
Perdasi is formed and determined by DPRP together with the Governor, while *Perdatus* is formed and stipulated by DPRP together with the Governor with consideration and approval of MRP (Article 29 of Law No. 21 of 2001).

In the case of drafting *Perdatus*, it is based on Article 20 of Law No. 21 of 2001 and Article 38 of Government Regulation No. 54 of 2004 concerning MRP, the draft *Perdatus* may originate from the Governor or DPRP. In addition, MRP can draft *Perdatus*, but it can only be proposed through the Governor or DPRP, because MRP is not authorized to submit a draft *Perdatus*.

The draft *Perdatus* proposed by the Governor or DPRP is then discussed together, after which it is submitted to MRP for consideration and approval. If MRP does not provide consideration and approval for more than 30 (thirty) days, then the draft *Perdatus* is deemed to have received MRP consideration and approval.

Then, the Provincial Government together with DPRD set the draft Perdasus into a Perdasus. However, if the draft Perdasus is rejected by MRP, then Perdasus cannot be promulgated.

Thus, MRP has a strong position in drafting Perdasus if MRP performs its duties and authority optimally. The description can be seen in the chart below:



As an illustration, at the time of giving consideration and approval to the draft Perdasus on Appointment of DPRD Members, MRP refuses to give an agreement arguing that it has not fully accommodated the interests of the Papua people, the implication is that the draft Perdasus is then returned to the Governor. This means that the draft Perdasus must be corrected according to the results of MRP's

correction and after that a re-discussion process can be carried out together with DPRD, and then it needs to re-request the MRP's consideration and approval.

The refusal of MRP may led to the delay in the appointment of DPRD members from the cultural representation element. Due to the protracted discussion in the DPRD which is full of political interests and

MRP's limited authority, MRP may not participate in conducting discussion on draft Perdasus, so that MRP cannot affect DPRP to give approval.

Next, the relationship between the Governor and MRP is related to the cooperation agreement. However, it is only related to the Governor since DPRP does not participate in giving approval to the cooperation agreement. MRP in accordance with Article 20 letter d of Law No. 21 of 2001 provides advice, consideration and approval of plan for cooperation agreement made by the government and provincial government with third parties applicable in Papua Province specifically concerning the protection of the rights of Papua natives.

In this context, since the formation of MRP, the Provincial Government and the Government shall receive MRP's consideration and approval in each cooperation agreement. The urgency of MRP's involvement in giving consideration and approval is to provide protection for the rights of Papua natives, both rights relating to the control of customary rights, the use of natural resources and the empowerment of

human resources. Implementation of this authority during the application period of Law No. 21 of 2001 has never been done.

In addition to the above authority, MRP also has the right to request information from the Governor regarding policies related to the protection of the rights of Papua natives and request a review of a Perdasi or Governor's Decree considered contrary to the protection of the basic rights of Papua natives. The implementation of this right is further elaborated in Article 42 and 43 of Government Regulation No. 54 of 2004. However, as in the MRPs authority, MRP has never exercised its rights.

Relationship between MRP and Regency/City Head

The existence of MRP is not only related to the Governor and DPRP, but also related to the Regent/Mayor, when considering the same aspect of "the protection of the rights of the Papua natives, as stipulated in Article 21 paragraph (1) letter a of Law No. 21 of 2001, that MRP shall have the right to ask for information from the Provincial, Regency/City Government

on matters related to the protection of the rights of the Papua Natives.

This article is further elaborated in Article 41 of Government Regulation No. 54 of 2004 that regional policy formulated by the Regency/City government concerning matters relating to the protection of the rights of the Papua natives shall be forwarded to the MRP for consideration. As a result of this provision, MRP does not have a bargaining position with the Regent/Mayor since MRP has limited time in providing answers, MRP shall provide answers no later than 14 (fourteen) days after receiving the

proposed policy. This means that if the MRP does not provide an answer within given period, then MRP is deemed to agree the proposed policy.

Based on the description above, the duties and authority as well as the rights granted to MRP are in order to provide protection for the rights of the Papua natives, but it is unfortunate that these rights cannot be exercised optimally, because the MRP has a weak bargaining position when dealing with the Governor and the Provincial DPR, even with the Regent/Mayor. This is due to unoptimal³ MRP authority granted by Law No. 21 of 2001.

³ The same thing is stated by Jimly Asshiddiqie in Muhammad Musa'ad. 2010. *Quo Vadis UU Otsus Papua: Diantara Tuntutan "Referendum" dan "Rekonstruksi"*. Bandung. p. 27, that the existence of MRP has unwittingly developed into an 'intermediate structure' and an intermediary facility that has not been effective in the relationship between the community and the government, both local government and especially with the central government. MRP like DPD at the central level has not succeeded in placing itself appropriately in the existing government system. In relation to DPRP and the Governor, MRP tends to be regarded as a hindrance and even a disturbance that is only troublesome in the process of local political decision making. As a result, psychologically MRP is not 'acknowledged' in the association between official government functions. Therefore, the only field of its association is with civil society with a variety of activities that have a lot of contact with foreign NGOs. As a result, it complicates the formal work mechanism between MRP and the official government. Thus, MRP can easily develop into a kind of

symbol of public resistance to the official government. This phenomenon can be viewed in a negative or positive way. The negative way is that the institutionalization of the regional government system of Papua Province, and West Papua is hampered that may affect the process of healthy government institution and bureaucratic function that is in accordance with the aims and objectives of the state. But, at the same time, it can also be seen in a positive way, that it has succeeded in transferring and channeling critical aspirations of people from outside the system into the government system, through the MRP institution. If MRP can function properly, the dynamics of the battle and the battle of ideas can be organized and channeled through the internal dynamics of the MRP, not on the streets without control. Therefore, in the future, the position and role of the MRP needs to be reorganized and strengthened so that it truly becomes an effective means to accommodate the cultural aspirations of the people of Papua into an effective regional government system. See also in Lily Bauw. 2011. *Kedudukan MRP dalam Sistem*

This condition is weakened by the view that MRP is not a formal political institution that carries out legislative functions, but as a cultural institution, only because MRP is a cultural representation. The presence of wrong view weakens the implementation of MRP's duties and authority, so that in its implementation, MRP tends to be more dominant as a consultative institution than as a legislative body in its position as a political superstructure institution in the government administration of Papua Province.

Moreover, the institutional weakness of this MRP is aggravated by Government policy through the effectiveness of the existence of West Papua Province, that the Government through Government Regulation Substituting Law No. 1 of 2008 concerning Amendment to Law No. 21 of 2001 concerning Special Autonomy for Papua Province in which the status has been upgraded through Law No. 35 of 2008 concerning Stipulation of Government Regulation Substituting Law No. 1 of 2008 concerning Amendment to Law No. 21 of 2001 concerning Special

Autonomy for the Papua Province Becoming an Act, seeking to expand the territory of the enactment of Law No. 21 of 2001 which does not only cover Papua Province, but also West Papua Province.

The government expects that these changes will improve relations of authority between the Government, Papua Province and West Papua Province, as well as between Papua Province and West Papua Province. Instead, the existence of the law raises legal problems.

The legal issue is: the consideration section letter a stating that: "Papua Province is Irian Jaya Province which later become the Papua Province and West Papua Province granted Special Autonomy in the framework of the Unitary State of the Republic of Indonesia", while letter c states that: "Law Number 21 of 2001 concerning Special Autonomy for the Papua Province is a special policy in the context of improving services, accelerating development, and empowering all people in the Papua Province to be equal to other regions ". On the one hand, this law

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Studies of the Faculty of Law UNCEN, Jakarta.

states that Papua Province does not only consist of Papua Province, but also West Papua Province, but on the other hand, the next consideration is letter c, and the elaboration in the Article only mentions Papua Province.

As an illustration, Article 1 letter a states that: “Papua Province is Irian Jaya Province which later become the Papua Province and West Papua Province granted Special Autonomy in the framework of the Unitary State of the Republic of Indonesia”, but letter b mentions: Special Autonomy is a special authority acknowledged and granted to the Papua Province to regulate and manage the interests of the local people according to its own initiative based on the aspiration and fundamental rights of the people of Papuan. The formulation of the following Articles also contains arrangements for the Papua Province.

This implies that this law has a legal defect, because the consideration letter a to enact Law No. 21 of 2001 for the Papua Province and West Papua Province is not supported by the formulation of the following letters, and is not further supported by the elaboration in the Articles. In this context, Law No. 21 of 2001 only

applies to Papua Province, and not West Papua Province. Thus, the budget receipt of West Papua Province in the context of implementing special autonomy shall not be valid.

In relation to the above description, the redesign of Law No. 21 of 2001 is an urgent need, not only for the Papua Province, but also for national interests. Attention to the existence of the province is not only for the existing one, the formulation of the law to be formed needs to pay attention to the existence of new provinces, so that the law on special autonomy to be established is not only a ‘*firefighter*’, but is a real solution for the Papua Province. This means that when there is a new province, Perpu (Government Regulation in Lieu of Law) is issued to accommodate the existence of the new province. In fact, the act does not provide a solution, but it causes problems.

By taking into account the Government’s erroneous policy, the term to be considered in the amendment of Law No. 21 of 2001 is related to the parent province, namely: whether the Papua Province will become the parent province, or simply use the term region. Both of these

terms have serious implications.⁴ Therefore, the right solution is to use the term Tanah Papua, so the definition becomes: Tanah Papua is a regional unit consisting of several provinces, each of which is given general authority and special authority to administer the government in the NKRI system based on the 1945 Constitution of the Republic of Indonesia. The use of this term is based on the philosophy of land for the Papua natives, namely land as a means of unifying people and as a motherland.

The existence of MRP needs to take into account the possibility of new provinces. MRP needs to be strengthened as a unifying institution of the Papua natives. Hence, MRP shall ideally only consist of 1 MRP representing customs and culture of the Papua natives. The implication of the existence of MRP is that there is only 1 (one) institution for the entire Tanah Papua, MRP requires a

secretariat equipped with human resources who have competence in their fields, and is grouped based on the number of provinces in Papua. Thus, the existence of MRP secretariat in each province is no longer needed.

In addition, MRP's authority shall be strengthened by being positioned as a legislative institution as in the Provincial DPR, the difference is only on the scope of its authority, that the scope of DPRP authority covers aspects relating to the protection of population rights, while the MRP's authority only covers aspects related to the protection of the rights of the Papua natives. Thus, the legislative body at the provincial level shall consist of 2 (two) rooms, namely the Provincial House of Representatives representing the population, and MRP representing the Papua natives.

In connection with the representation, the duties and authority to submit Perdasi proposal and participate in the discussion of Perdasi

⁴ It is use the term Papua Province, so that the formula follows the formulation of Law No. 35 of 2008, that Papua Province is Irian Jaya Province which later become the Papua Province and West Papua Province granted Special Autonomy in the framework of the Unitary State of the Republic of Indonesia. The weakness is that there is no room for new provinces to be formed. The term Papua is used as in Law No. 11 of 2006, then the

formula becomes: Papua is a provincial area with a special legal community unit granted special authority to regulate and manage government affairs and the interests of the local community based on the 1945 Constitution of the Republic of Indonesia. The disadvantage is that the province cannot consist of provinces, as in Law No. 11 of 2006 that Aceh only consists of 1 (one) province divided into regencies/cities.

are only the authority of the Provincial DPR and the Governor, while the duties and authority in proposing Perdasus and participating to conduct the Perdasus discussion are the authority of the Provincial DPR, Governor and MRP.

The term rights of the Papua natives shall be formulated by using the term rights or fundamental rights, to be consistent and not cause multiple interpretations and to specify what aspects are related to rights or fundamental rights, such as the right to education, health and other rights relating to basic services, so that it does not cause new problems in the future.

Regarding the relationship between MRP and Regent/Mayor, MRP does not require duties and authority relating to the scope of regency/city, since it only requires the implementation of duties and authorities at the provincial level. Therefore, MRP only oversees Perdasus or Governor's policy as Perdasus will be explained at the district/city level along with Perda of regency/city.

CONCLUSION

There is a commitment to be fulfilled by the Government and the Papua Province together with the people of Papua in redesigning Papua's special autonomy policy, namely: providing recognition for the existence of the people of Papua manifested by the existence of a cultural representation organization in Papua Province in addition to the Governor and equal duties and authority.

The development policies to be implemented in the Papua Province shall be agreed upon, especially those relating to the policy of affirmative action (special treatment) for the Papua natives, carried out through changes to Law No. 21 of 2001 by redesigning: the position of MRP consisting of only 1 MRP for all provinces in Papua and as a legislative body in addition to DPRP with the authority to protect and empower the rights of Papua natives. Regarding this matter, it is necessary to make changes to the title of Law on Papua's Special Autonomy concerning the applicable territory into Tanah Papua.

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