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## Legal Interpretation of the Position of the Papuan People's Assembly in the Expansion of Provinces within the New Autonomous Region of Papua

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**Abstract:** The purpose of this study is to analyze changes in the legislation on Papua's special autonomy with the aim of expanding the province of Papua. The purpose of expansion is carried out by first making changes to the legislation related to Papua's special autonomy with fast track legislation). This study uses a normative method, which traces the legislation related to interpreting the changes in the regulations. The results of the study on changes to the Law by means of fast track legislation (FTL), provide an interpretation that the expansion of the province of Papua can be carried out by changing Article 76 in the Special Autonomy Law before the change by placing the word "can" which is the interpretation that the formation of a new province in Papua can be done without going through the approval of the MRP as required by the Special Autonomy Law before the change. Based on the findings, the Amendment to the Special Autonomy Law provides space for FTL, the central government and the DPR to be carried out top-down in the expansion of the province in Papua without the involvement of the MRP. The central government and the DPR view Papua in a political context to reduce the political turmoil that occurs in Papua by viewing the expansion as a solution to improve the welfare of indigenous Papuans without looking at the social and cultural impacts on indigenous Papuans who are represented in the MRP Institution.

**Keywords:** Fact Track Legislation, Papua Expansion, Special Autonomy

### INTRODUCTION

There are differences regulations in Papua compared to other regions in Indonesia No let go from guaranteed specificity in Article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia so that existing regulations different with regulation general. Law Number 23 of 2014 concerning Local Government. Policy specifically for Papua is form asymmetric and purposeful decentralization No only For overcome problem conflict but also for speed up development in Papua province. Breakthrough political This expected can make it easier realization regional expansion in Papua. This is important Because expansion area No only effective increase welfare society, but it is also one of the form embodiment autonomy area. No less importance of autonomy area is one of method the intertwining harmonious relationship between area with government, meaning through the implementation form government area the so the integrity of the country's territory can awake and expected still

maintained. The existence of the unitary state of the Republic of Indonesia for reach objective national ( Proceedings of the Focus Group Discussion Agency, 2021).

There are 2 (two) perspectives the underlying law search base law expansion of New Autonomous Regions (DOB) in Papua, namely (1) perspective law normative which sees expansion of DOB in Papua Land as must Because has based on regulations legislation. Perspective This tend give birth to top down model; and (2) perspective law empirical view expansion of DOB as part from aspiration society that must legitimized by the state through regulation legislation. Perspective This tend give birth to bottom up model or regulary model. (Proceedings of the Agency's Focus Group Discussion, 2021).

DOB Papua 4 of provinces that were ratified, 3 of them reap polemic until culminating in a judicial review at the Supreme Court Constitution (MK). Application the performed by E. Ramos Petege with number registration case 92/PUU-XX/2022. Loss applicant among them, first, the a quo law is considered No reflect existence transparency, no aspirational, and not implemented in a way fair and responsible answer. Second, the formation of the law No in accordance with the methods and procedures regulated in Law Number 12 of 2011 concerning Formation Regulation Legislation so that considered disabled formal and defective procedural. Third, the formation of the a quo law is considered No accommodate principle autonomy special given to Papua because regional expansion is carried out in a way centralistic with domination government too central big so that cause participation Papuan people do not involved in a way full (Rini Maisari , 2022).

Related No there is a preparation period expansion of Papua, According to Director of the Indonesian Parliamentary Center (IPC) Ahmad Hanafi said that the position of the Papua Autonomous Region Law is indeed part from lex specialist, however discussion of the law No may in progress in a way fast. Referring to the discussion of other DOBs, there are there is a period of transition and preparation before the law is discussed. Although the Papua Autonomous Region Law is a cumulative bill open, but No means principles of governance the formation of a bill of a nature transparent, participatory and accountable set aside. The number of Papuan people protesting related with the expansion of Papua should be be heard moreover before. Therefore that, Draft Bill, script academic, DIM, and documents other legislation though announced in a way proactive ( Rini Maisari, 2022).

Looking Back at Special Autonomy yet be the Solution in finish part resolution development. There is no room For think about design For finish conflict in Papua,said Adriana in discussion held Coalition Humanity for Papua at Graha Oikumene, Jakarta. According to Adriana, the Papua problem is getting worse complex . Based on LIPI study – now BRIN, there is four root problems in Papua. The four of them namely aspect development, discrimination, fulfillment about Human Rights Human (HAM), and problems political history Papua integration. In addition to the four problem That, Adriana saw, the Papua problem was getting worse. complicated. It assess, appear conflict source Power nature, conflict social, and conflict politics. On the other hand, the government during This only using two approaches For overcome problems in Papua. Approach That precisely No finish Papua problem. Both namely approach development and approach security in nature repressive ( BRIN Researcher, 2024).

Expansion regions in Indonesia have a number of objective as stated in a number of regulation namely For increase welfare public through: improvement service to society, acceleration growth life democracy, acceleration implementation development economy area, acceleration management potential area, and improvement security as well as order. Behind ideal goal of expansion area said, it turns out can also be tucked away interest politics and power which is actually deny objective expansion area in a way overall. This step will result in failure expansion area. Failure in expansion area can to worsen service public, lack of accountability government, the rise corruption in regional elections, and boundary disputes ( Muhammad Addi Fauzani, 2023).

## METHOD

Research methods is method For get truth in study supported by analysis using appropriate theories and approaches in the problems that will investigated as well as source that becomes material law in do study study law For help disclose breakdown issue the law that arises namely, the problems position Papuan People's Assembly in Expansion Provinces in the New Autonomous Region of Papua reviewed from Law of the Republic of Indonesia Number 2 of 2021 Concerning Change Secondly, under the Law Number 21 of 2001 Concerning Autonomy Especially for Papua Province.

Study This use method study namely, research law normative functioning For give argumentation legal when happen emptiness, ambiguity and conflict of norms. Research law normative play a role For maintain aspect critical from science law as sui generis science.

## RESULTS AND DISCUSSION

### Position Papuan People's Assembly in Expansion Provinces in Papua

Papuan People's Assembly or MRP asked plan expansion or formation area autonomous new (DOB) in Papua postponed . Aspiration This submitted by MRP to President Joko Widodo or Jokowi through the Coordinating Minister Politics , Law and Security , Mahfud Md. According to the MRP, at the moment This Lots public native Papuan who stated rejection to plan said . Most of them reject expansion or formation area autonomous new (DOB) because done with approach "centralistic which refers to the new provisions , namely Article 76 paragraph (2) of Law Number 2 of 2021 concerning Special Autonomy for Papua," said Deputy Chairman of the MRP Yoel Luiz. Yoel explained that his party regret step Commission II of the Indonesian House of Representatives, which he assessed in a hurry push expansion of the Papua region . Yoel explained , the Indonesian House of Representatives Legislative Body fast agree three DOB bills on April 6, 2022, then not enough from a week Then or precisely on April 12, 2022, the bill approved in Meeting The DPR RI Plenary Session becomes the proposed bill DPR initiative This section must answer the problems or research hypotheses that have been formulated previously (tempo, 2022).

There are three DOB bills including the Bill on Formation South Papua Province , Bill on Formation Central Papua Province , and the Bill on Formation Papua Province of Central Mountains . According to Yoel, the discussion of this bill was very rushed and did not participatory . Jakarta always claim decision expansion This based on aspiration figures and communities in the three regions . A claims that since beginning questioned by his opponents . They consider expansion That precisely can trigger conflict new and human rights violations in Papua. Papuan People's Assembly (MRP) - institution official representative public Papuan customs - is one of the the party that refuses expansion that . " With objective main For speed up development in Papua for increase welfare Papuan society , especially indigenous Papuans," he added. Minister of Home Affairs Tito Karnavian at the Meeting Plenary Session of the DPR ( bbc , 2022).

Adriana Elisabeth, a LIPI researcher , said situation the conflict that still exists will happen in Papua make it difficult plan regional expansion or DOB, even though government Already make Constitution Number 2 of 2021 as replacement Constitution Number 21 of 2001 concerning autonomy special for Papua Province . "There are elements the rush here . What is noticed government That only development . Development is No the only one problem . There are other problems that are mutually related , that's what doesn't Once responded to in a way open ," said Adriana ( bbc , 2021).

MRP also opposes mandated regional expansion in Law Number 2 of 2021, which is new legalized last July . Chairman of MRP Timothy Student say regional expansion is too much forced , even though Actually Good For done . He said , it is necessary There is evaluation in a way comprehensive to implementation special autonomy for 20 years lastly , which is set in Constitution previously , namely Law Number 21 of 2001. " Previously we asked for it

independent, not autonomy special. Just take it off more okay, *what to do* We You're welcome Keep going We suffer? But Then government center give autonomy special For solution, way middle For repair the fate of the Papuan people," said Timotius. "But in journey government center No in a way consistent dSan consequent in carry out Constitution autonomy specifically (Law Number 21 of 2001) with good. From 26 promises only 4 are running" (bbc, 2021).

Therefore that, plan expansion of the Papua Autonomous Region does not Can it is said is desire society, but rather close the relation with interest politics. Political elite good at level center and also area Keep going push expansion land in Papua with promises well-being. Our goal is focus on the vastness of the Papua region and bring it closer our services to public local. However in fact, the expansion only bring in innovation in the form of benefit social and economic for elite group, while interest public ignored. On the other hand, things the to aggravate conflict between resident local in struggle remainder the power of the elite. This is in stark contrast with Spirit autonomy the area of aim For increase welfare public local at the level local. Very small the possibility that poverty and unemployment can removed If source limited power only managed by and for interest group elite (Dafrin Muksin, et al., 2021).

The expansion of the provincial region based on considerations of national strategic interests was carried out without going through the MRP and DPRP approval mechanism and without the preparatory regional stage. Given the government's commitment to development in Papua, where the formal government system must be built to be compatible with the customary-based government system. In addition, a breakthrough needs to be made so that the division of territory is adjusted to the customary system that applies in society. The top-down approach and other procedures that allow extraordinary actions that forget their legal basis by considering aspects of national strategic interests and other aspects as a legal basis that are formulated by special norms related to expansion (National Legal Development Agency, Ministry of Law and Human Rights Humans, 2020).

In the context Papuan specialties, mechanisms expansion area set up in Article 76 of the Papua Special Autonomy Law which states that "Expansion Papua province becomes provinces done on approval of the MRP and DPRP. After notice with truly unity social culture, readiness resource human and ability economy and future development". Based on the regulations in the Papua Special Autonomy Law as A *lex specialis*, specifically in Papua Province only know expansion through pattern *bottom up* added specificity conditions that are not owned other areas, namely existence approval of the MRP and DPRP. Based on matter mentioned above, it is necessary done breakthrough law For revise Article 76 above which allows Government can use approach *top down* in frame acceleration development in Papua (National Legal Development Agency of the Ministry of Law and Human Rights) Human. 2020).

For ensure acceleration development and improvement welfare in Papua Province through arrangement area with mechanism *top down* No hampered so need distinguish between requirement norms formation area between bottom up and *top down*, then need adding the norm operator can be inside the formulation of Article 76 of the Papua Special Autonomy Law so that agreement from MRP and DPRP no So too must There is pouring new norms in the form of a norm above exception to condition stages area preparations that must be made passed For formation Province new as regulated in Constitution Regional Government, considering If through stages area preparation will eat time is getting longer and is very dependent on ability area parent (National Legal Development Agency of the Ministry of Law and Human Rights) Human. 2020).

This revision will indirectly weaken the position of the MRP as a cultural representative institution for the indigenous Papuan people. It is no exaggeration if Hatta says that Indonesian imperialism through Papua is in the form of centralization of power, accumulation of capital, and political racism. The failure to realize special autonomy for Papua is not only the fault of the region, but also the inconsistent attitude of the government, which shows low trust in Papua



and the MRP. This is also related to the government's inconsistency in carrying out its obligations under the Special Autonomy Law, for example regarding the expansion of the West Papua region in 2003. The 1945 Constitution stipulates that "The state recognizes and respects regional government units that are special or special in nature which are regulated by law," and one of these provisions regulates the formation of institutions; One of these special bodies is the MRP ( Rini Maisari, 2022).

### **Fast Track Legislation In The Making Constitution Expansion Papua Province**

The role of power political in institution politics is very important in the process of formation regulation law . Institution politics that are official given authority For make law just A institutions that do not complete without individuals who have authority For do it . As a result , the institution political just tools used by the group holding power politics . Power political consists of from two sides : First is strength formal politics , or institution politics , which is visible in structure state institutions such as The President , the House of Representatives , and other state institutions . Both is strength political from infrastructure politics , namely party politics , figures society , organization society , institutions self-reliance society and organizations profession . Therefore that , can concluded that the political process in state institutions that are given authority to form legal products.<sup>30</sup>As has been mentioned previously , theory law positivism is the most influential theory to concept and implementation law in Indonesia. This can seen from his dominance draft codification law on various type the laws in force in Indonesia, which even has spread to system law international and traditional ( Iryana Anwar, et al., 2024).

The term *fast-track legislation* is not a new term in the legal sciences. However, terms similar to *fast-track legislation* are quite numerous or varied. In the United States, *the term expedited or legislative procedures is used* to indicate a fast procedure in discussing draft laws (RUU). England uses the term *fast track legislation*, although in practice or development, the terms *rapid legislation, instant legislation, expedited legislation or emergency legislation are often used* , which indicate the formation of fast-track laws due to emergencies. Germany uses the term *fast track procedure* , related to procedures and time limits for resolving legal problems ( Mohammad Fadli, et al., 2023).

*Fast track legislation* cannot be interpreted as the same process as the power of *constitutional decree authority* , such as the issuance of PERPPU in Indonesia or known as *medidas provisorias ( provisional measure )* in Argentina, and the term *decreto de necesidad urgencia ( decree of necessity and urgency )* in Brazil. *Constitutional decree authority* is the executive power to issue decisions or regulations that apply immediately without discussion in the legislative body. Meanwhile, the term *fast-track legislation* emphasizes the path or stages that can be achieved quickly in the formation of a bill through the legislative body. Various terms have been developed in academic literature, namely the terms *expedited, majoritarian exception, or fast-track legislative procedures* that have developed in practice in the United States, and the term *motion urgency* in New Zealand ( Anggrenia Mamesah, et al ., 2023).

Reviewing several forms of terminology and regulations in various countries as described in this section shows that there are two conclusions, namely, first, there are various terminologies but in general they are attached to a causal relationship, namely with the existence of urgent conditions for their use so that they can result in a *fast-track legislation mechanism* . Second, there are two forms of regulation, namely (1) the regulation is in the constitution and (2) the regulation is in technical regulations governing the formation of laws. In addition, it can also be observed that there are at least two methods in using fast-track legislation. First, by cutting certain discussion stages in the discussion stage of the draft law, or second, limiting the time for discussing the draft law to be qualified using the *fast-track legislation route* ( Ibnu Sina Chandranegara, 2021).

Urgent need not necessarily refer to a dangerous threat . Simply put, the phrase “urgent need” means a condition interpreted by the President as the need to make arrangements on the one hand and on the other hand the limited time to carry out the regular legislative process. In various countries, similar phrases have also been found as the president's reasons for issuing a Perppu or *Constitutional Decree Authority (CDA)*. In Brazil, there is the phrase “*relevance and urgency*” and in Argentina, there is the phrase “*exceptional circumstances*” or “necessity and urgency”. Interestingly, these phrases can be equated with the phrase “hal hikwal kepentingan harus” in Indonesia. The word “relevance ” in Brazil or “*necessity*” in Argentina can be interpreted as the need due to conditions that require arrangements and urgency which is associated with the limited time for the regular legislative process in parliament ( Fitra Arsil and Qurrata Ayuni, 2020).

In Indonesia, guidelines for the use of the phrase "compelling urgency" have now been provided by the Constitutional Court. Based on the Court's Consideration ( *ratio decidendi* ) in the Constitutional Court Decision No. 138/PUU-VII/2009, there are three conditions as parameters for the existence of "compelling urgency" for the President to issue a Perppu, namely: (i) There is a situation, namely an urgent need to resolve legal problems quickly based on the Law; (ii) The required Law does not yet exist so that there is a legal vacuum, or there is a Law but it is inadequate; (iii) The legal vacuum cannot be overcome by making a Law through the usual procedure because it will take a long time while the urgent situation requires certainty to be resolved ( Fitra Arsil and Qurrata Ayuni, 2020).

In Indonesia itself, there is no such thing as *Fast Track Legislation* , *expedited*, or *majoritarian exception* in the creation of laws and regulations, but this mechanism seems to adopt *fast track procedures such as the first example* . Law No. 19 of 2019 concerning the Corruption Eradication Commission (UU KPK), the discussion of the law was only carried out within 12 days, *Second* Law No. 3 of 2020 concerning Minerals and Coal (Minerba Law) which was discussed in less than 3 months in a closed meeting, *Third* Law No. 7 of 2020 concerning the Constitutional Court (UU MK), the discussion of which was carried out for only 7 days and its formation was carried out behind closed doors, *Fourthly* Law No. 11 of 2020 concerning Job Creation (UUCK), the discussion of which only lasted 167 days, while the creation of the law was a revision of 79 laws, and *the Fifth* Law No. 3 of 2022 concerning the National Capital (IKN Law) which was discussed for only 34 days. All of the laws above are clear examples of laws that are suspected of being worked on quickly and in a hurry or *fast track* ( Juliantz Ilham Prasetyo, 2024).

In simple terms, FTL is a term given to a bill that is accelerated through each required legislative stage to make it a law in a much shorter time than usual.<sup>28</sup> This mechanism is to meet the response to the community's need for law which is considered an immediate need so that laws or fast solutions are needed. The use of the FTL mechanism can be carried out with strict conditions and certain limitations. The UK is one of the countries that has this mechanism to respond to natural disasters or emergencies, some of the standard reasons underlying the use of FTL include ( Bayu Aryanto, et al., 2021):

- a. *To correct an error in legislation* (to correct errors in forming legislation);
- b. *To respond to a court judgment that means the law ceases to work as intended* (to respond to a court decision);
- c. *To ensure that legislation is in force for a particular event* (to ensure that the law applies to a particular moment);
- d. *To ensure that the UK continues to abide by its international commitments* (to maintain the UK's commitment to abide by its international commitments);
- e. *To implement changes contained in a budget* (to make changes in the budget);
- f. *To deal with economic crisis* (to overcome the economic crisis);
- g. *To implement counter-terrorism measures* (to implement counter-terrorism measures);

- h. To maintain the devolution settlements in Scotland, Wales and Northern Ireland (to maintain the unity of the UK);
- i. *To respond to public concerns* (to respond to public protests)

The government has passed laws related to the formation of new provinces in Papua, namely Law Number 14 of 2022 concerning the Establishment of South Papua Province, Law Number 15 of 2022 concerning the Establishment of Central Papua Province, Law Number 16 of 2022 concerning the Establishment of Papua Mountains Province on July 25, 2022 and Law Number 29 of 2022 concerning the Establishment of West Papua Province. With the enactment of the 4 (four) laws, Papua currently consists of 6 (six) provinces, namely Papua Province with the capital city of Jayapura, West Papua Province with the capital city of Manokwari, South Papua Province with the capital city of Merauke, Central Papua Province with the capital city of Nabire, West Papua Province with the capital city of Jayawijaya and West Papua Province with the capital city of Sorong (Arbi Nurcahyanto, Moh. Saleh, 2023).

Law of the Republic of Indonesia Number 2 of 2021 Concerning Change Secondly, under the Law Number 21 of 2001 Concerning Autonomy Specifically for Papua Province, Article 76 paragraph (1) Expansion area province and district / city become provinces and districts / cities can done on MRP and DPRP approval after notice with truly unity socio-cultural, readiness source Power human, ability economy and future developments come.

Article 76 paragraph (2): "The Government and the People's Representative Council may do expansion area province and district / city become area autonomous For speed up equalization development, improvement service public, in welfare society, and lift the dignity and honor of the indigenous Papuan people with notice aspect political, administrative, legal, unity socio-cultural, readiness source Power human, infrastructure basic, ability economics, developments in the future come, and/ or aspiration Papuan society".

Article 76 paragraph (4) Expansion must guarantee and provide room to the Papuan Indigenous People in activity politics, government, economy, and socio-culture.

Article 76 paragraph (5) Formation area autonomous done in accordance with provision in Constitution this and set with Constitution.

Republic of Indonesia Law Number 21 of 2001 Concerning Autonomy Specifically for Papua Province, Article 76 Expansion Papua Province becomes provinces done on MRP and DPRP approval after notice with truly unity socio-cultural, readiness resource human and ability economy and future development.

There is a change Constitution this, then the expression "mandatory" when the MRP approves expansion area will changed become the expression "may", and MRP as well government center can do it even though without MRP approval do That.

## CONCLUSION

The expansion of the Papua Province Autonomous Region was carried out with *Fast Track Legislation* (FTL), where government the center and the DPR carry out changes to Article 76 of the Republic of Indonesia Law Number 2 of 2021 concerning Change Secondly, under the Law Number 21 of 2001 Concerning Autonomy Especially for Papua Province for can realize expansion of Papua without involving Papuan People's Assembly (MRP) is protected by Article 76 before change there is the word "mandatory" in the recommendation to be "able", with thus if interpreted changes to Article 76 then expansion in Papua can done without existence MRP involvement / consideration. Amendments to the Special Autonomy Law provide room for FTL, the government the center and the DPR in general *top down* in expansion province in Papua without MRP involvement, Government the center and the DPR see Papua in context political For dampen turmoil politics that occur in Papua with see expansion as an improvement solution welfare of indigenous people Papua without see impact social and cultural aspects of indigenous Papuans represented in the MRP Institution.

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