

# The Expanding Democracy Way For Indigenous Papuans As Regional Government Actors *(Lessons Learned From Affirmative Policy Concerning "The Special Autonomy Seats" In The Regional People's Representative Councils In Papua, Indonesia)*

**Rozi Beni**

Ministry of Home Affairs  
Medan Merdeka Street, No.7-Central Jakarta  
rozibeni@gmail.com

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## **Abstract**

In Papua, in addition to having membership of the Regional People's Representative Council (RPRC) elected through general elections, there is also membership of the Regional People's Representative Council which is filled with an appointment mechanism from Indigenous Papuans (IP), that commonly known as the "kursi otsus". After the revision of Papua's special autonomy law in 2021, special autonomy seats are not only in provincial parliaments, but also in district/city parliaments in Papua, including in 4 new provinces in Papua, namely South Papua, Central Papua, Papua Mountains, and Southwest Papua. Indigenous Papuans are people who come from the Melanesian race group consisting of indigenous tribes in Papua Province and / or people who are accepted and recognized as IP by the Indigenous Peoples of Papua.



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In order to recognize, protect, and empower indigenous Papuans, affirmative policies are enacted, including appointing their representatives to occupy positions in the RPRC so that they can play an active role in decision-making and the implementation of local government in Papua. However, in its application, the affirmative policy of IP appointment is still faced with various problems both in the appointment recruitment process and during the implementation of its duties and functions in the RPRC institution which conflicts with the RPRC membership elected through General Elections. These problems are interesting to be researched, and will be reviewed in this paper, in order to find legal solutions, in the implementation of the RPRC appointment process from IP and the implementation of its duties and functions in the RPRC.

### **Keywords**

*Indigenous Papuans, Papua Special Autonomy, Special Autonomy Seats, Regional People's Representative Council*

## **I. Introduction**

At In the midst of the excitement of holding the 2024 National Simultaneous Elections in Indonesia - to elect the President / Vice President, members of the House of Representatives of the Republic of Indonesia, Regional Representative Councils, and Regional People's Representative Councils - there is an important and interesting event in the implementation of democracy in Indonesia, namely the recruitment of Regional People's Representative Councils (DPRD) with an appointment

mechanism in Papua.

In Papua, the composition of the DPRD membership consists of members elected through general elections, and appointed members of the DPRD. DPRD membership with the appointment mechanism is commonly known as the "special autonomy seat". This special autonomy chair is a special seat provided for indigenous Papuans. They are not selected in the general election, but are selected and appointed from their respective customary territories as areas of appointment. In addition to having special autonomy seats, the DPRD in Papua has a special designation / nomenclature. The DPRD at the provincial level is called the Papuan People's Representative Council (DPRP), while at the regency/city level DPRD is called the District/City People's Representative Council (DPRK).

The Papua Special Autonomy Chair has been recognized since 2001 in Law Number 21 of 2001 concerning Special Autonomy for Papua Province.<sup>1</sup> In the 2001 Special Autonomy Law, Special Autonomy Seats are only reserved for provincial legislatures. 20 years later, in the second amendment to the Papua Special Autonomy Law<sup>2</sup>, the existence of special autonomy seats is not only in the Provincial DPRD, but also in the Regency / City DPRD in Papua, including in 4 New Provinces in Papua, namely South Papua, Central Papua, Mountain Papua, and Southwest Papua.

This special autonomy chair is intended to provide wider opportunities for indigenous Papuans to play an active role in the implementation of local government in Papua. However, when traced in the historical formation of the special autonomy law in 2002, this "special autonomy chair"

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<sup>1</sup> Law Number 21 of 2001 concerning Special Autonomy for Papua Province. Furthermore, this paper is called the "2001 Special Autonomy Law".

<sup>2</sup> Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for Papua Province. Furthermore, this paper is called the "2021 Special Autonomy Law".

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originally did not get much discussion. Institutions of concern and intended for the active participation of indigenous Papuans in the administration of government in Papua at that time were the Papuan People's Council and Local Political Parties. In the discussion of the 2001 Special Autonomy Law, the proposed local political party was seen as less compatible with the Papuan context which has ethnic diversity and has the potential to weaken social cohesion. The need for aspiration distribution is considered more adequate with the Papuan People's Assembly and DPRD Members appointed.

Although its existence has been recognized in law since 2001, the filling of the Special Autonomy Chair has not gone smoothly. After passing through various obstacles, the filling of the special autonomy seat can only be carried out in 2014 in West Papua Province, and in 2017 in Papua Province.<sup>3</sup> The dynamics of the arrangement and upheaval of DPRD membership in Papua raised from indigenous Papuans is interesting to study. In this research with a normative approach, the author will discuss aspects of regulation and implementation of "special autonomy chairs" in Papua.

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<sup>3</sup> John Roy Purba, (Kompas.com - 14/12/2017, 08:21 WIB), "Despite Polemics, 14 Members of the Papuan House of Representatives for the Appointment Line Are Still Inaugurated", in <<< <https://regional.kompas.com/read/2017/12/14/08215381/meski-tuai-polemik-14-anggota-dpr-papua-jalur-pengangkatan-tetap-dilantik>>>> accessed 13/10/2023.

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## II. DISCUSSION

### *Formal Recognition of "Special Autonomy Chair"*

- a. "Special Autonomy Chair" in the 2001 Special Autonomy Law

As mentioned earlier, the arrangement of the "special autonomy seat" of the DPRD being appointed, was not actually included in the substance proposed and intended specifically for indigenous Papuans. Instead, it follows the regulatory content in the regime of the Election Law and the Composition of DPRD Membership in force at that time, namely Law Number 3 of 1999 concerning General Elections ("1999 Election Law") and Law Number 4 of 1999 concerning the Composition and Position of the People's Consultative Assembly, People's Representative Council, and Regional People's Representative Council ("Susduk Law 1999"). In both laws, it is stipulated that the filling of members of the DPR, Provincial DPRD and Regency / City Level DPRD is carried out based on the results of General Elections and appointments. The members of the DPR, DPRD Level I, and DPRD Level II consist of: (a) members elected through elections, and (b) members appointed from the Armed Forces of the Republic of Indonesia (ABRI).<sup>4</sup>

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<sup>4</sup> The arrangement of the composition of the DPR and DPRD consisting of the results of the election and appointed from ABRI can be seen in the provisions:

*General Elections Law (Law No.3/1999):*

Article 1 paragraph (4), states that General Elections are held to elect Members of the People's Representative Council, Regional People's Representative Council Level I, and Regional People's Representative Council Level II hereinafter referred to as DPR, DPRD I, and *DPRD II*, *except* for members of the House of Representatives, DPRD I, and DPRD II from the Armed Forces of the Republic of Indonesia (ABRI).

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In the 2001 Papua Special Autonomy Bill, the regulation regarding the mechanism and composition of DPRD members is similar to the regulatory content in the regime of the Election Law and the 1999 Susduk Law. This as stated in Article 1 letter f of the 2001 Papua Special Autonomy Bill is <sup>5</sup> defined that, the Papuan People's Representative Council, hereinafter referred to as the DPRP is the legislative body of Papua province consisting of representatives of political parties elected through general elections, and representatives of the TNI / Polri appointed in accordance with applicable laws and regulations. Furthermore, based on the results of the discussion and approval of the 2001 Special Autonomy Bill, the regulations regarding the membership of the Papuan House of Representatives are regulated in Article 1 letter f and Article 6 of the 2001 Special Autonomy Law, becoming:

- a. The Papuan People's Representative Council, hereinafter referred to as the DPRP, is the Regional People's

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*Law No.4/1999:*

Article 11:

The filling of DPR Members is carried out based on the results of General Elections and appointments. Members of DPRD I consist of: (a) members of political parties resulting from elections; (b) appointed members of ABRI.

Article 18:

The filling of Members of DPRD I is carried out based on the results of the General Election and appointment. Members of DPRD I consist of: (a) members of political parties resulting from elections; (b) appointed members of ABRI

Article 25:

regarding the filling of DPRD II Members is carried out based on the results of General Elections and appointments. Members of DPRD II consist of: (a) members of political parties resulting from elections; (b) appointed members of ABRI

<sup>5</sup> Papua Special Autonomy Bill 2001 DPRD initiative proposal, submitted by the DPR to the President through the Letter of the Speaker of the House Number RU.02/4656/DPR RI dated September 20, 2001

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Representative Council of Papua Province as the legislative body of Papua Province.

- b. The DPRP consists of members who are elected and appointed under the rules of law.
- c. The number of DPRP members is 1 1/4 (one quarter) times the number of members of the Papua Provincial DPRD as stipulated in laws and regulations.

From the formulation of the Article mentioned above, there is no special arrangement that the DPRP members appointed are from Indigenous Papuans, but are appointed based on laws and regulations. At that time in the Election Law and the 1999 Susduk Law, the DPRD appointed came from ABRI members. The specificity of the regulation regarding the DPRP in Article 6 paragraph (4) of the 2001 Special Autonomy Law is in the aspect of the number of DPRP members, namely the number of DPRP members is 1 1/4 (one quarter) times the number of members of the Papua Provincial DPRD as stipulated in the laws and regulations. There was no further explanation regarding the DPRP's provisions. This shows that the arrangement is "quite clear" that the mechanism and composition of the DPRP are in accordance with the laws and regulations in force at that time and apply to all DPRD throughout Indonesia.

If traced further in the minutes of discussion of the 2001 Papua Special Autonomy Bill, the aspirations of indigenous Papuans are through the institution of the Papuan People's Council (MRP). The presence of MRP accommodates Papuan groups who have felt marginalized - namely Religious Groups, Indigenous Peoples' Groups, and Women's Groups - to appear active and be able to make a meaningful contribution

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to development in the Papua region.<sup>6</sup> This aspiration is stated in the 2001 Special Autonomy Bill and approved by the 2001 Papua Special Autonomy Law which is formulated that, the Papuan People's Assembly, hereinafter referred to as MRP, is a cultural representation of indigenous Papuans, who have certain authorities in the context of protecting the rights of indigenous Papuans based on respect for customs and culture, empowering women, and strengthening religious harmony as stipulated in the Papua Special Autonomy Law.<sup>7</sup>

Thus, it can be understood that, if traced historically and juridically, there is no aspiration and arrangement regarding the "special autonomy seat" of the DPRD filled by members of the DPRD specially appointed for Indigenous Papuans in the 2001 Special Autonomy Law. In order to protect the rights of indigenous Papuans and institutionalize the active role of indigenous Papuans, at that time the Assistance Team from among the Papuan people proposed the establishment of an institutional Papuan People's Assembly. The proposal was approved and stipulated in the 2001 Special Autonomy Law. So in this paper the author wants to submit a finding that, in the 2001 Special Autonomy Law, the "special autonomy chair" is basically not a Papuan specificity, which is filled through the appointment of indigenous Papuans. This author's view is also to provide clarification to the inappropriate view of some researchers, that the "special autonomy chair" is a specificity in the 2001 Papua Special Autonomy Law. "Special Autonomy Chair" is known as a specificity of Papua and is filled with an

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<sup>6</sup> The purpose of the presence of the Papuan People's Assembly was among others conveyed by August Kafiari / Papua Governor Assistance Team regarding the Papua Special Autonomy Bill. Further see in Secretariat General of the DPR RI, *Process of Discussion of the Draft Law on Special Autonomy for Papua Province*, (Jakarta: Setjen DPR RI, 2002), p. 150

<sup>7</sup> Article 1 letter g of the 2001 Papua Special Autonomy Law

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appointment mechanism from Indigenous Papuans after the Constitutional Court Decision Number 116/PUU-VII/2009 dated February 1, 2010.

- b. "Special Autonomy Seats" based on Constitutional Court Decision Number 116/PUU-VII/2009

Article 6 paragraph (2) of the 2001 Special Autonomy Law stipulates that, the DPRP consists of members elected and appointed based on laws and regulations. The legislation referred to in Article 6 at that time was the 1999 Election Law and the 1999 Susduk Law, which regulated the membership of the DPRD appointed from ABRI members. In 2003, the 1999 Election Law was amended by Law Number 12 of 2003 ("Election Law 2003"<sup>8</sup>) and the Susduk Law of 1999 amended by Law Number 22 of 2003 ("Susduk Law 2003")<sup>9</sup>. In the 2003 Election Law and the 2003 Susduk Law, the provisions regarding the membership of the DPR and DPRD appointed from ABRI were removed. The composition of the membership of the DPR, Provincial DPRD, and District/City DPRD consists of members of political parties participating in the general election who are elected based on the results of the general election.<sup>10</sup>

This law change carries juridical implications for the provisions of Article 6 paragraph (2) of the 2001 Special Autonomy Law, which stipulates that the DPRP consists of

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<sup>8</sup> Law Number 12 of 2003 concerning the General Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council. Furthermore, this paper is called the "2003 Election Law".

<sup>9</sup> Law Number 22 of 2003 concerning the Composition and Position of the People's Consultative Assembly, House of Representatives, Regional Representative Council, and Regional People's Representative Council. The next in this paper is called the "Susduk Law 2003".

<sup>10</sup> See Article 16, Article 52, and Article 68 of the 2003 Susduk Law.

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members elected through general elections and appointed. After the issuance of the 2003 Susduk Law, there were different interpretations of the existence of Article 6 paragraph (2) of the 2001 Special Autonomy Law. For the Papua Provincial Government and the Government, the existence of appointed DPRP members is no longer relevant after the issuance of the 2003 Susduk Law.<sup>11</sup> Viewed from the normative aspect, the views expressed in Constitutional Court Decision Number 116/PUU-VII/2009 can be understood as an effort to build a systematic and harmonious regulatory construction between laws and regulations.

The perspective of systematic construction and harmonization of laws and regulations has also been used by the Constitutional Court when it stated that the mechanism for selecting governors and deputy governors by the DPRP as stipulated in the 2001 Special Autonomy Law is not part of the specificity of Papua. This opinion was stated in the Constitutional Court Decision Number 81 / PUU-VIII / 2010 dated March 2, 2011 which rejected a request from the DPRP which submitted a request that the mechanism for electing governors and deputy governors in Papua be carried out by election by the DPRP, as stipulated in the 2001 Special Autonomy Law. At that time, the Court held that the mechanism for the election of Papuan governors and deputy governors by the DPRP was not Papua-specific, but only based on the election mechanism stipulated in the laws and regulations of the time and generally applicable to all regions. When the law undergoes changes, namely the mechanism for

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<sup>11</sup> The views of the Government (Ministry of Home Affairs) and Provincial Government (Papua Governor) can be seen among others in Constitutional Court Decision Number 116/PUU-VII/2009, pp.42-43; and pp.46-47.

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electing regional heads and deputy governors to be directly elected, the regulation of the mechanism for electing governors and deputy governors by the DPRP in the 2001 Special Autonomy Law, becomes irrelevant and must be adjusted to the election mechanism adopted in the new legislation, namely being elected by the people directly. Not through by DPRD.

After the issuance of amendments to the Election Law and the 2003 Susduk Law and before the issuance of the Constitutional Court Decision Number 116 / PUU-VII / 2009 dated February 1, 2010, the filling of all DPRP members for the 2004-2009 period was carried out by the mechanism of general elections and came from members of political parties. The filling of DPRP membership appointed as stipulated in Article 6 paragraph (2) of the 2001 Special Autonomy Law, was not implemented. This is in accordance with the provisions of the Election Law and the 2003 Susduk Law, which no longer regulates the membership of the DPRD appointed from ABRI (TNI/Polri). The appointment of DPRD members from TNI/Polri members is considered irrelevant and contrary to the 2003 Election Law and the 2003 Susduk Law. From the historical aspect of its formation, Article 6 paragraph (2) of the Special Autonomy Law refers to the election legislation when the 2001 Special Autonomy Law was formed. Aspirations for the protection and empowerment of indigenous people in the framework of special autonomy are channeled through the institution of the Papuan People's Assembly.

However, along the way, there are groups of Papuan people, who are gathered in the "Red and White Front (BMP)" conveying aspirations and views that, the membership of the DPRP appointed under the provisions of Article 6 paragraph (2) of the 2001 Special Autonomy Law must still exist and be filled from indigenous Papuans. This aspiration was fought through judicial *review* to the Constitutional Court. After going

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through the trial process and with various considerations, the Constitutional Court granted the homonan Barisan Merah Putih, which in essence requires DPRP members appointed as stipulated in Article 6 paragraph (2) of the 2001 Special Autonomy Law to be filled from indigenous Papuans, as a form of affirmation policy.

In contrast to the perspective of the construction of systematic arrangements and laws and regulations used in Constitutional Court Decision Number 81 / PUU-VIII / 2010, which states that the mechanism for electing Papuan governors and deputy governors regulated in Article 7 paragraph (2) of the 2001 Special Autonomy Law is not part of the specificity of Papua, but is subject to general regulations in legislation, in Decision Number 116 / PUU-VII / 2009, The Constitutional Court considers that the existence of DPRP members appointed in addition to being elected through general elections, is a special (affirmative policy) to encourage active involvement of indigenous Papuans through their representatives in the DPRP. The "Special Autonomy Chair" which is filled with the appointment mechanism of indigenous Papuans is reaffirmed in Constitutional Court Decision Number 81 / PUU-VIII / 2010.

In Decision Number 81/PUU-VIII/2010, the Constitutional Court held that in the field of government, the specifics of Papua include, among others:

- a. The existence of the Papuan People's Council (MRP), which is a cultural representation of indigenous Papuans who have certain authorities in the context of protecting the rights of indigenous Papuans, based on respect for cultural customs, women's empowerment, and strengthening religious harmony;
- b. The Papuan People's Representative Council (DPRP) is a different nomenclature from other regions in

Indonesia, namely provincial parliaments. Similarly, there are differences in the recruitment of DPRP members, where some members **are appointed**, while some are elected through general elections;

- c. The existence of Special Regional Regulations (Perdatus) in addition to Provincial Regional Regulations (Perdasi), in the context of implementing certain articles in this Law;
- d. The difference in nomenclature, namely the existence of districts that are basically sub-districts in other provinces;
- e. The candidate for governor and candidate for deputy governor must be indigenous Papuans.

Previously, in Decision Number 116/PUU-VII/2009, regarding "special autonomy seats" filled with appointment mechanisms from Indigenous Papuans, one of the considerations (*ratio decidendi*) of the Constitutional Court was that, granting special autonomy to Papua Province is basically a wider delegation of authority for the Province and the Papuan people to govern and manage themselves within the framework of the Unitary State of the Republic of Indonesia. This authority also means the authority to empower the socio-cultural and economic potential of the Papuan people, including providing an adequate role for the Papuan people to participate in formulating regional policies and determining development strategies. One of the roles of indigenous Papuans in formulating regional policies and determining development strategies, especially in the socio-political field, is to become a member of the DPRP. In this regard, the general explanation of the 20001 Special Autonomy Law expressly encourages indigenous Papuans to be involved in both thoughts and actions for the interests of Papua Province in the hope that there will be changes in the quality of indigenous

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Papuans in controlling and managing natural, social, political, economic, and cultural resources. The General Explanation of the 2002 Special Autonomy Law clearly shows the existence of *an affirmative action policy*, namely privilege for a while aimed at providing opportunities for indigenous Papuans to have representatives in the DPRP through appointment.<sup>12</sup>

With the issuance of Constitutional Court Decision Number 116/PUU-VII/2009, the channels of active involvement for indigenous Papuans in the administration and development in Papua, increased to 3 (three) local government institutions, namely: (a) Governor and Deputy Governor who are required to be from indigenous Papuans; (b) the Papuan People's Assembly; and (c) the Papuan People's Representative Council (DPRP). The presence of "special autonomy chairs" appointed from among indigenous Papuans in the Constitutional Court Decision, complements the affirmation policy previously regulated in the 2001 Special Autonomy Law, namely to encourage the involvement of indigenous Papuans in the administration and development of Papua, including in managing and controlling natural, social, political, economic, and cultural resources.

Previously, in the explanation delivered in the Constitutional Court Decision Number 116 / PUU-VII / 2009, both the Papua Provincial Government and the Central Government gave the view that, the aspirations of indigenous Papuans are the institution of the Papuan People's Assembly, the DPRP "special autonomy chair" appointed from indigenous Papuans in Article 6 paragraph (2) of the 2001 Special Autonomy Law has become irrelevant and the development of laws and regulations that remove or eliminate

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<sup>12</sup>Court Judgment Point [3.16.3] in Constitutional Court Decision Number 116/PUU-VII/2009, pp. 63-64.

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the membership of the appointed DPRD. However, after the stipulation of the Constitutional Court Decision Number 116/PUU-VII/2009, the Government must in principle respect and comply with the Constitutional Court Decision which is final and binding.

This form of compliance is by facilitating the establishment of a Special Regional Regulation ("Perdatus") which regulates the filling of DPRD members appointed from among indigenous Papuans in accordance with the mandate of Constitutional Court Decision Number 116 / PUU-VII / 2009. After the Constitutional Court Decision, the filling of newly appointed DPRD membership from the Indigenous Papuan community can be carried out completely until the inauguration of DPRD members "Special Autonomy Chair" in 2014 in West Papua Province, and in 2015 in Papua Province.

c. "Special Autonomy Seat" in the 2021 Special Autonomy Law

After going through ups and downs in its implementation, the existence of "special autonomy chairs" increasingly gained a place and expanded not only at the provincial level but expanded to the district / city level in Papua. The estimation and expansion of the "special autonomy chair" to the district/city level are outlined in the 2021 Special Autonomy Law. This law reinforces the Government's alignment with indigenous Papuans.<sup>13</sup>In order to protect and improve the dignity and dignity of Indigenous Papuans, this Law also adds a new article, namely related to the composition of the Regency / City People's Representative Council (DPRK) which previously only consisted of members of the district /

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<sup>13</sup> See in Second Paragraph, General Roman Numerals I Explanation of the 2021 Special Autonomy Law.

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city DPRD elected through general elections, changed to consist of DPRK members elected through general elections and appointed from Indigenous Papuans.<sup>14</sup>

The regulation of the filling mechanism and the number of "special autonomy seats" in the 2021 Special Autonomy Law is relatively firmer. Article 6 and Article 6A and Article of the 2021 Special Autonomy Law formulate that, the DPRD and DPRK consist of members who: (a) are elected in general elections in accordance with the provisions of laws and regulations; and (b) raised from the elements of Indigenous Papuans. DPRD members appointed are 1/4 (one fourth) of the number of DPRD members elected in the election. Furthermore, the position, structure, duties, authorities, rights and responsibilities, membership, leadership, and fittings of the DPRD and DPRK are in accordance with the provisions of laws and regulations.

The implementation of the "Special Autonomy Seat" Filling based on the 2021 Special Autonomy Law is further regulated in Government Regulation Number 106 of 2021 concerning the Authority and Institution for the Implementation of the Special Autonomy Policy of Papua Province and other laws and regulations. One of the technical regulations mandated in Government Regulation Number 106 of 2021 and currently prepared by the government is the Minister of Home Affairs Regulation concerning the Establishment of an Election Committee and Procedures for Selecting Candidates for Members of the Provincial Selection Committee in the context of filling members of the Papuan People's Representative Council through an appointment mechanism.

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<sup>14</sup> See in the Fourth Paragraph, General Roman Numerals I Explanation of the 2021 Special Autonomy Law.

Furthermore, in Government Regulation Number 106 of 2021, it is also determined that the appointed Members of the DPRP and DPRK occupy one of the elements of the deputy speaker. This setting is a new setting. Based on the 2001 Special Autonomy Law and its implementing regulations, DPRPs appointed by indigenous Papuans do not have the right to sit as deputy speaker of the DPRP.

### *Analysis of "Special Autonomy Seat" as Affirmation Policy in Papua*

Since the establishment of the 2001 Special Autonomy Law, there has been a strong demand to provide wider opportunities for respect, protection, and empowerment of the Papuan people, especially indigenous Papuans. One form of effort is through the active involvement of indigenous Papuans in government institutions, namely the Governor and Deputy Governor which requires indigenous Papuans, and the Papuan People's Assembly which is further regulated in the 2001 Special Autonomy Law. In its development, the Constitutional Court through Decision Number 116 / PUU-VII / 2009, added channels for the involvement of indigenous Papuans in the DPRP institution. Through the ruling, indigenous Papuans are also given the opportunity to occupy "special autonomy seats" in the DPRP. Finally, the existence of the "special autonomy chair" was emphasized and expanded to the district / city level in the 2021 Special Autonomy Law.

This special temporary policy for indigenous Papuans shows the country's commitment to accommodate the aspirations of the Papuan people to participate as a determining subject in decision-making and governance in Papua. The pattern of affirmation policy through active involvement as an organizer of this government is relatively

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unique. In many countries, protection for indigenous peoples is usually applied in the form of direct empowerment of aspects of their economic, social, and cultural life, without directly involving them as subjects in official government institutions through special policies.

There are various ways of legal recognition of the existence of indigenous peoples. It can take the form of recognition in constitutions, laws, in judicial decisions, treaties or other forms. This is as stated by Clavero, "*the rights of Indigenous peoples, of peoples who do not form states and are pre-existing in their own territory, and that have preserved their own culture, can be recognised and currently are recognised through a variety of legal means. These means may be, by way of example, judicial decisions, statutes, by-laws, constitutions or treaties*".<sup>15</sup> In the Indonesian context, affirmative policies for indigenous Papuans are recognized in laws and constitutional court decisions based on the constitution, especially Article 18B of the 1945 Constitution.

Affirmative policies to occupy government positions, especially "special autonomy chairs" are expected to still be relevant to efforts to protect and empower indigenous Papuans and provide great benefits for the development and welfare of the Papuan people as a whole. This affirmative policy relies on the active involvement of indigenous peoples as decision-makers for their own interests in accordance with their collective aspirations. This is as S.J. Anaya put it, "*... In keeping with the principle of self-determination, the duty of care*

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<sup>15</sup> Bartolomé Clavero, "Treaties with Peoples or Constitutions for States: a Predicament of the Americas" dalam René Kuppe and Richard Potz (editors), "*Law and Anthropology: Indigenous Peoples, Constitutional States and Treaties or Other Constructive Arrangements between Indigenous Peoples and States*", (Leiden/Boston: Martinus Nijhoff Publishers), hlm.1

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*toward indigenous peoples is to be exercised in accordance with their own collectively formulated aspirations".<sup>16</sup>*

According to S.J. Anaya, the pattern of involvement and decision-making by indigenous peoples is becoming a trend in countries around the world.

*"... core elements increasingly are confirmed and reflected in the extensive multilateral dialogue and decision processes focused on indigenous peoples and their rights. These core elements can be summarized as follows: self-determination, cultural integrity, lands and resources, social welfare and development, self-government, special duty of care. Full implementation of the foregoing norms, and the safeguarding of indigenous peoples' enjoyment of all generally accepted human rights and fundamental freedoms."<sup>17</sup>*

The application of affirmative policies for indigenous peoples boils down to the aim of preserving and guaranteeing indigenous peoples the enjoyment of all generally accepted and proportionate human rights and fundamental freedoms. But on the other hand, direct involvement of indigenous peoples must be anticipated so as not to be counterproductive, for example triggering conflicts between fellow indigenous Papuans, as well as between indigenous Papuans and the Papuan regional government. Such conflicts can result from differences in perception and not reaching a broader agreement or consensus. Regarding conflicts involving indigenous peoples, among others, can be seen in the study of Magdalena Gómez Rivera, who suggests the tension between

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<sup>16</sup> S. J. Anaya, "The Emergence of Customary International Law Concerning The Rights of Indigenous Peoples" dalam René Kuppe and Richard Potz (editors), " *Law and Anthropology: Indigenous Peoples, Constitutional States and Treaties or Other Constructive Arrangements between Indigenous Peoples and States*", (Leiden/Boston: Martinus Nijhoff Publishers), hlm. 139

<sup>17</sup> S. J. Anaya, "The Emergence of Customary ...*ibid.*", hlm. 137-138

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indigenous peoples and the Federal government in Mexico, as follows:

*“.. according to some constitutional interpretations, might constitute a breach of national unity insofar it presents a relation between the Mexican State, the Indigenous peoples and all Mexicans, when it only makes sense to establish relations among different entities; ... This would undoubtedly lead to more profound political conflicts arising from the failure to achieve consensus or necessary majorities for its approval”.*<sup>18</sup>

In the provisions of Article 7 of the 2001 Special Autonomy Law as amended by the 2021 Special Autonomy Law, the DPRP - including DPRP members appointed from Indigenous Papuans - is a legislative body that exercises legislative power in Papua<sup>19</sup> has the following duties and authorities:

- a. propose the appointment of the elected Governor and Vice Governor to the President of the Republic of Indonesia;
- b. propose the dismissal of the Governor and/or Vice Governor to the President of the Republic of Indonesia;
- c. formulate and determine the direction of local government administration policies and regional

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<sup>18</sup> Magdalena Gómez Rivera, “Pending Constitutionality: An Analysis of The Mexican Legal Reform Process Concerning Indigenous Peoples” dalam René Kuppe and Richard Potz (editors), “ *Law and Anthropology: Indigenous Peoples, Constitutional States and Treaties or Other Constructive Arrangements between Indigenous Peoples and States*”, (Leiden/Boston: Martinus Nijhoff Publishers), hlm.184

<sup>19</sup> Article 6 paragraph (1) of the 2001 Special Autonomy Law

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development programs and performance benchmarks together with the Governor;

- d. discuss and determine the Regional Revenue and Expenditure Budget together with the Governor;
- e. discuss the draft Perdasus and Perdasi together with the Governor;
- f. establish Perdasus and Perdasi;
- g. prepare and determine regional development planning documents with the Governor based on the national development planning system and taking into account the specifics of Papua Province;
- h. provide opinions and considerations to the Regional Government of Papua Province on plans for international agreements that concern regional interests;
- i. Carry out supervision of:
  1. implementation of Perdasus, Perdasi, Governor's Decree and other Local Government policies;
  2. implementation of government affairs that are the authority of the Papua Province Region;
  3. implementation of the Regional Revenue and Expenditure Budget;
  4. implementation of international cooperation in Papua Province.

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- j. pay attention to and channel aspirations, as well as receive complaints and complaints from residents of Papua Province; and

The duties and authorities that will be carried out by representatives of indigenous Papuans in the DPRP are very strategic and provide flexibility for indigenous Papuans to determine the direction of Papua's special autonomy policy.

### **III. Conclusion**

From the previous discussion, it can be concluded that the arrangement regarding the special autonomy seat of the DPRD has experienced upheaval and ups and downs. Initially, the regulation regarding the membership of the provincial parliament through appointment was not a specificity proposed and agreed upon in the 2001 Special Autonomy Law. The specificity of the DPRP in the Special Autonomy Law is related to the number of DPRD members which are 1/4 more than the DPRD elected through elections. Based on the laws and practices at that time, the appointed DPRD membership came from the ABRI (TNI/Polri). This is reinforced by tracing the historical formation and normative content in the 2001 Special Autonomy Law. At that time, based on the 2001 Special Autonomy Law, the distribution of the aspirations of indigenous peoples (indigenous Papuans) was through the Papuan People's Assembly. In other words, the DPRP arrangements adopted in the 2001 Special Autonomy Law copy the DPRD arrangements that are generally accepted in all regions based on the rules of the election law and the 1999 Susduk Law.

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In 2003, following changes to the Election Law and the Susduk Law, the provisions regarding appointed DPRD seats were removed. Referring to the Election Law and the 2003 Susduk Law, the filling of DPRD membership for the 2004-2009 period was carried out with the General Election mechanism. In its journey, based on the Constitutional Court Decision Number 116/PUU-VII/2009 the "special autonomy seat" is legally recognized as a special seat filled from among indigenous Papuans. Furthermore, in the 2021 Special Autonomy Law, the existence of the "special autonomy seat" is emphasized and expanded not only at the provincial DPRD level but also at the district/city DPRD level in Papua.

The dynamics of special autonomy seats in Papua is a form of state commitment in improving the dignity and dignity of indigenous Papuans to be actively involved in controlling and managing Papua's special autonomy authority. According to experts, formal legal recognition and the provision of a direct role for indigenous peoples in decision-making is a trend and approach in several countries around the world, to ensure the protection and fulfillment of the basic rights of indigenous peoples. In the midst of the rapid demand for democracy, what must be anticipated is that recognition and affirmative treatment of indigenous peoples must not be a source of conflict both internally and externally among indigenous peoples.

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