

Legal Analysis of Prerogative Rights of Papua Representative Council Members Appointed Under The Special Autonomy Framework to Nominate Governor and Deputy Governor Candidates in Regional Elections

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Abstract

This study aims to analyze, from a legal perspective, the rights of members of the Papua Representative Council (DPRP) appointed under the Special Autonomy framework to nominate candidates for Governor and Deputy Governor in regional elections in Papua Province. This type of research is normative juridical, using a statutory approach. The legal materials used consist of three types: primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include central and regional legislation, particularly the Papua Special Autonomy Law, the Second Amendment to the Papua Special Autonomy Law, and Government Regulation No. 106 of 2021. Secondary legal materials consist of research findings on Special Autonomy that have been published in academic journals. Tertiary legal materials include references such as the Kamus Besar Bahasa Indonesia (KBBI). The findings of this study indicate that (1) Both elected and appointed members of the DPRP hold equal status in terms of duties, authority, and function as representatives of the people at the regional level. However, in terms of the right to nominate candidates for Governor and Deputy Governor in the regional elections within the context of Special Autonomy in Papua Province, appointed DPRP members do not have equal status with elected DPRP members. (2) Although the appointed DPRP members meet the numerical requirements to propose candidates for Governor and Deputy Governor, they are not granted such rights under Law No. 21 of 2001 concerning Special Autonomy for Papua Province, its Second Amendment through Law No. 2 of 2021, or Law No. 1 of 2015 concerning Regional Head Elections.

1. Introduction

The constitutional basis for Papua's Special Autonomy is stipulated in Article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that: "The state recognizes and respects regional government units that are special or distinctive in nature, as regulated by law." This provision serves as the legal foundation for the enactment of Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua (commonly abbreviated as the Papua Special Autonomy Law), which was officially promulgated on November 21, 2001.¹ Since then, the Provincial Government of Papua and the Regency/Municipal Governments have implemented governance and regional development not only based on general regional autonomy (Otonomi Daerah Umum) as regulated by general regional government laws, but also based on the Special Autonomy granted specifically to the Province of Papua.

Papua Province is one of the provinces granted Special Autonomy status based on the Papua Special Autonomy Law. Article 1 letter (b) of the Law defines Special Autonomy as a special authority recognized and granted to the Province of Papua to regulate and manage the interests of the local community based on its own initiative, in accordance with the aspirations and fundamental rights of the Papuan people. The concept of "Special Autonomy" first emerged when President B.J. Habibie, through Minister of Foreign Affairs Ali Alatas, offered two options to the people of East Timor on January 27, 1999: first, the granting of a special status with broad autonomy as a final solution to the East Timor issue; and second, if the people of East Timor rejected the special status with broad autonomy, the Indonesian Government would ask the elected representatives from the 1999 general election to consider the possibility of East Timor's separation through a People's Consultative Assembly (MPR) General Session in 1999.² The Special Autonomy for Papua is a form of asymmetric decentralization implemented by the Government, initially regulated under Article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia, in an effort to maintain the integrity of the unitary

¹ Kendala Hukum and Perlindungan Hak-hak Dasar, "Tugas Dan Fungsi Lembaga Majelis Rakyat Papua Barat Dalam Upaya Perlindungan Hak-Hak Dasar Orang Asli," *Diponegoro Law Journal* 13 (2024).

² Ni'Matul Huda, *Desentralisasi Asimetris Dalam NKRI : Kajian Terhadap Daerah Istimewa, Daerah Khusus dan Otonomi Khusus*, Nusa Media, Bandung, 2014, page. 205.

state.³ In a study conducted by the Department of Politics and Government, Faculty of Social and Political Sciences, Gadjah Mada University (JPP-UGM, 2010), as cited by Gunawan A. Tauda, it is noted that there are five (5) reasons why the Central Government implemented asymmetric decentralization:⁴

- a. Conflict and separatist demands;
- b. Capital city considerations;
- c. Historical and cultural reasons;
- d. Border region concerns; and
- e. Potential as an economic development hub.

In addition, according to Bayu Dardias Kurniadi, asymmetric decentralization deals with fundamental issues related to the structure of central-local relations, particularly in terms of the design of authority, institutions, financing, and differentiated control mechanisms.⁵

Regarding the concept of asymmetric decentralization, Charles Tarlton of the University of California, USA, was the first scholar to introduce and initiate scholarly debate on this concept.⁶ Tarlton categorized asymmetric decentralization into two types of asymmetrical federations, namely *de jure* asymmetry and *de facto* asymmetry, which are distinguished by differences in the degree of autonomy. The term *de jure* asymmetry refers to a condition in which the practice of asymmetry is explicitly affirmed in the constitution. This means that the official constitution recognizes the existence of constituent units that are treated differently under the established law. In a *de jure* asymmetric federation, the policies and determination of asymmetric treatment for each region are based on certain conditions set by the central government. On the other hand, *de facto* asymmetry refers to actual practices or inter-regional relations that arise due to differences in social, cultural, and economic conditions. In the application of *de facto* asymmetric federations,

³ Safiudin, "The Legal Policy Of The Appointments Of Indigenous Papuans In The Regional People's Representative Institutions In Papua," *Jurnal Poros Hukum Padjadjaran*, 2023, 129–48, <https://doi.org/10.23920/jphp>.

⁴ Gunawan A, Tauda, *Desain Desentralisasi Asimetris Dalam Sistem Ketatanegaraan Republik Indonesia*, *Administrative Law & Governance Journal* Vol. 1 Edisi 4 Nov 2018, page. 416-417

⁵ Bayu Dardias Kurniadi, *Desentralisasi Asimetris di Indonesia*, Jurusan Politik dan Pemerintahan Universitas Gadjah Mada, presented at a seminar at LAN Jatinangor tanggal 26 November 2012, page. 10

⁶ Robert Endi Jaweng dalam Ni'Matul Huda, *Desentralisasi Asimetris Dalam NKRI : Kajian Terhadap Daerah Istimewa, Daerah Khusus dan Otonomi Khusus*, Nusa Media, Bandung , 2014, page. 59

there is no legal guarantee or relevant standard; rather, such practices have become customary and widely accepted.⁷

The enactment of the Papua Special Autonomy Law (UU Otsus Papua) has led to a change in the nomenclature of the Provincial Regional House of Representatives (DPRD Provinsi) to the Papuan People's Representative Council (DPRP). This change in nomenclature is due to the existence of two models of popular representation within the DPRP institution: members elected through general elections and members appointed under the framework of Papua's Special Autonomy. These two forms of representation are unified within the structure of the DPRP.

Referring to the provisions stipulated in Article 6, paragraphs (2) and (4) of the Papua Special Autonomy Law (UU Otsus Papua), the appointment of DPRP members under the framework of Papua's Special Autonomy was carried out for the 2014–2019 period with 14 (fourteen) appointed members, and similarly, for the 2019–2024 period, 14 (fourteen) members were appointed. However, during the 2004–2009 and 2009–2014 periods, the government did not realize the appointment of members to fill the additional seats in the DPRP as mandated by the Papua Special Autonomy Law, during the 2004 and 2009 legislative elections. In the 2014 legislative elections, following strong demands from the community, particularly the Indigenous Papuans (OAP), the Papua Provincial Government began to establish legal instruments for the recruitment process, following a ruling by the Constitutional Court. Subsequently, the provision for appointing OAP representatives to fill the additional DPRP seats as regulated in Article 6 of the Papua Special Autonomy Law was declared applicable by the government after the Constitutional Court of the Republic of Indonesia issued Decision Number 116/PUU-VII/2009.⁸ At the time the Constitutional Court delivered its ruling, the additional DPRP seats had already been filled by representatives of political parties that participated in the 2009 legislative elections. As a result, the appointment process for DPRP members representing the OAP was implemented after the 2014 legislative elections.⁹ For the 2014–2019 period, the total number of DPRP members was 69 (sixty-nine), consisting of 55 (fifty-five) members elected through general elections and 14 (fourteen) members appointed under the Papua Special Autonomy framework. Similarly, for the

⁷ Krismiyanti Tasrin, etc, dalam Ni'Matul Huda, *Desentralisasi Op, Cit* page. 59 - 60

⁸ Safiudin Safiudin, *Politik Hukum Pengangkatan Orang Asli Papua Dalam Lembaga Perwakilan Rakyat Daerah di Papua*, Jurnal Poros Hukum Padjajaran, 30 November 2022, page, 131.

⁹ Diakses dari: https://id.wikipedia.org/wiki/Dewan_Perwakilan_Rakyat_Papua, tanggal 4 April 2025

2019–2024 period, the total number of DPRP members remained 69 (sixty-nine), comprising 55 (fifty-five) elected members and 14 (fourteen) appointed members within the Papua Special Autonomy framework.

The provision of Article 6 paragraph (4) of the Papua Special Autonomy Law underwent an amendment in 2021 with the enactment of Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 on Special Autonomy for the Province of Papua (Second Amendment to the Papua Special Autonomy Law).¹⁰ The revised Article 6 stipulates the following provisions:

- a. The Papuan People's Representative Council (DPRP) consists of members who are:
 - 1) Elected through general elections in accordance with the prevailing laws and regulations; and
 - 2) Appointed from among Indigenous Papuans (Orang Asli Papua).
- b. The number of DPRP members appointed as referred to in paragraph (1)(b) shall be one-fourth ($\frac{1}{4}$) of the total number of DPRP members elected as referred to in paragraph (1)(a).
- c. The appointed DPRP members as mentioned in paragraph (1)(b) shall serve a term of five (5) years and their tenure shall end concurrently with that of the elected DPRP members as referred to in paragraph (1)(a).
- d. The status, structure, duties, authorities, rights and responsibilities, membership, leadership, and internal bodies of the DPRP shall comply with the provisions of the applicable laws and regulations.

The provisions in Article 6 paragraph (1)(b) and paragraph (2) of the Second Amendment to the Papua Special Autonomy Law result in a change in the number of appointed DPRP members for the 2024–2029 period, which now totals 11 (eleven) members. Meanwhile, the number of DPRP members elected through the general election amounts to 45 (forty-five) members. Thus, the total number of DPRP members for the 2024–2029 period is 56 (fifty-six)

¹⁰ Fierman Sjafirial Agustus et al., "Strengthening the Papua Steering Committee Strategy: Reducing Instability for Accelerated Development in Papua, Indonesia," *Social Sciences and Humanities Open* 11, no. March (2025): 101413, <https://doi.org/10.1016/j.ssaho.2025.101413>.

members.¹¹ At the time this research was conducted, the eleven appointed DPRP members had not yet been inaugurated.

According to the provision of Article 1 point 7 of the Second Amendment to the Papua Special Autonomy Law (UU Otsus Papua Perubahan Kedua), the Papuan People's Representative Council (DPRP) is defined as "a provincial regional representative body that serves as one of the components in the administration of the provincial government of Papua."

The DPRP members appointed under the framework of Papua's Special Autonomy represent the Indigenous Papuan People (Orang Asli Papua/OAP), as their representation is specifically derived from the OAP community. Despite this special arrangement, Article 6 paragraph (4) of the Second Amendment to the Papua Special Autonomy Law stipulates that "the position, structure, duties, authority, rights and responsibilities, membership, leadership, and internal bodies of the DPRP shall be in accordance with the provisions of prevailing laws and regulations."¹²

Appointed DPRP members constitute a manifestation of the unique characteristics of Papua's Special Autonomy. The number of appointed DPRP members is one-fourth ($\frac{1}{4}$) of the total number of members elected through general elections.¹³ Based on the provisions of Article 7 paragraph (1), points (a) and (b) of the Second Amendment to the Papua Special Autonomy Law, the DPRP has the following duties and authorities in relation to the election of the Governor and Deputy Governor:

- a. To propose the appointment of the elected Governor and/or Deputy Governor to the President of the Republic of Indonesia (Article 7 paragraph (1)(a));
- b. To propose the dismissal of the Governor and/or Deputy Governor to the President of the Republic of Indonesia (Article 7 paragraph (1)(b)).

¹¹ A. Sakti R.S.Rakia, "Kewenangan Khusus Majelis Rakyat Papua Terhadap Pembentukan Perdasus," *JUSTISI Journal* 44, no. 8 (2021): 1-14, <https://doi.org/10.1088/1751-8113/44/8/085201>.

¹² Lesnussa, "Tugas Dan Fungsi Lembaga Majelis Rakyat Papua Barat Dalam Upaya Perlindungan Hak-Hak Dasar Orang Asli."

¹³ Yasunori Ichimura et al., "Effectiveness of Immunization Activities on Measles and Rubella Immunity among Individuals in East Sepik, Papua New Guinea: A Cross-Sectional Study," *IJID Regions* 3, no. January (2022): 84-88, <https://doi.org/10.1016/j.ijregi.2022.03.001>.

These provisions signify that both elected DPRD members and those appointed under the framework of Papua's Special Autonomy, within the institutional structure of the DPRD, have equal rights in carrying out the duties and authorities mentioned in points (a) and (b). However, these provisions do not grant appointed DPRD members the right to nominate a candidate pair for Governor and Deputy Governor in the regional head election process, specifically the election of the Governor and Deputy Governor of Papua Province. In the context of regional head elections in Papua, candidates for Governor and Deputy Governor are nominated by political parties that hold seats in the DPRD based on the results of the general election.¹⁴ Papua's Special Autonomy has been implemented since 2002, following the enactment of the Papua Special Autonomy Law on November 21, 2001. The Special Autonomy Law came into effect before the introduction of direct regional elections under Law Number 32 of 2004 on Regional Government.

Since the enforcement of the Papua Special Autonomy Law and the implementation of direct regional elections starting in 2004—through the enforcement of Law Number 23 of 2014 on Regional Government and Law Number 1 of 2015 (which ratified Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors into law)—candidates for Governor and Deputy Governor have been nominated by political parties or coalitions of political parties that hold seats in the DPRD. The prevailing laws and regulations governing regional government and regional elections do not provide appointed DPRD members with the same rights as political parties to nominate candidate pairs for Governor and Deputy Governor in regional head elections.

Since the implementation of regional head elections—including the election of the Governor and Deputy Governor of Papua Province as a candidate pair—from 2004 to 2024, the nominations have been carried out by political parties or coalitions of political parties that hold seats in the DPRD, as stipulated in the laws and regulations governing regional governance and the election of Governors, Regents, and Mayors. Meanwhile, DPRD members appointed under the framework of Papua's Special Autonomy, from the 2004–2009 period up to the 2024–2029 period, have not been granted the right—either under the Papua Special Autonomy Law, the Second Amendment to the Papua Special Autonomy Law, or the Regional Election Law—to nominate a

¹⁴ Sulistya Ekawati et al., "Policies Affecting the Implementation of REDD+ in Indonesia (Cases in Papua, Riau and Central Kalimantan)," *Forest Policy and Economics* 108, no. May (2019): 101939, <https://doi.org/10.1016/j.forpol.2019.05.025>.

candidate pair for Governor and Deputy Governor in the regional head elections of Papua Province.

2. Research Method

This study employs a normative juridical approach, conducted by examining and analyzing the provisions of general laws and regulations. The approaches used include the statutory approach, the conceptual approach, and the historical legal approach.¹⁵ The statutory approach is applied to analyze the substantive provisions of the Law on the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and Regional Legislative Councils (Law on MD3), the Law on Regional Government (UU Pemda), the Papua Special Autonomy Law, the Second Amendment to the Papua Special Autonomy Law, and Government Regulation Number 106 of 2021, all of which are relevant to the research issue. The conceptual approach is used to examine the concepts of special autonomy, legal status, and rights. Meanwhile, the historical legal approach is employed to analyze the background of the legal provisions regarding the appointment of members of the Papuan People's Representative Council (DPRP) from among the Indigenous Papuans (OAP) within the framework of Papua's Special Autonomy.

3. Results and Discussion

The Status of DPRP Members Elected through General Elections and Those Appointed under the Framework of Papua's Special Autonomy within the DPRP Institution

The term "status" (kedudukan) according to the Kamus Besar Bahasa Indonesia (KBBI – the Great Dictionary of the Indonesian Language) refers to the position or place of an object,¹⁶ rank or dignity, actual condition, or legal standing.¹⁷ Meanwhile, the term "right" (hak) is defined as ownership, authority, or the power to do something. Article 1 point 7 of the Second Amendment to the Papua Special Autonomy Law defines the Papuan People's

¹⁵ Husna Nashihin Syaiful Anam, *Metode Penelitian (Kualitatif, Kuantitatif, Eksperimen, Dan R&D)* (Padang: PT GLOBAL EKSEKUTIF TEKNOLOGI, 2023), https://books.google.co.id/books?hl=id&lr=&id=w-bFEAAAQBAJ&oi=fnd&pg=PA1&ots=vRP1bKcVRG&sig=dA4E7fb8uf45B7Uv87JkztTGviQ&redir_esc=y#v=onepage&q&f=false.

¹⁶ Departemen Pendidikan Nasional, 2007, *Kamus Besar Bahasa Indonesia*, Edisi Ketiga Balai Pustaka, Jakarta, page. 278.

¹⁷ Departemen Pendidikan Nasional, 2007, *Kamus Besar Bahasa Indonesia*, Edisi Ketiga Balai Pustaka, Jakarta, page. 381.

Representative Council (Dewan Perwakilan Rakyat Papua, abbreviated as DPRD) as a provincial representative body that serves as one of the elements in the administration of regional government in the Province of Papua. The DPRD as an institution comprises two forms of representation as stipulated in Article 6 paragraph (1) of the Second Amendment to the Papua Special Autonomy Law: (a) members elected through general elections, and (b) appointed members who originate from Indigenous Papuans (Orang Asli Papua, or OAP).

If a person assumes a seat in a representative institution through general elections, their form of representation is referred to as political representation. In general, Jimly Asshiddiqie identifies three principles of representation recognized globally: political representation, territorial representation, and functional representation.¹⁸ Members of the Papuan People's Representative Council (DPRD), whether elected or appointed under the framework of Papua's Special Autonomy, are both considered representatives of the people. From a theoretical perspective, Jean-Jacques Rousseau introduced the mandate theory of representation. According to this theory, a representative holds their position in the legislative body by virtue of a mandate from the people, and is thus considered a mandatary.¹⁹

Thus, members of the DPRD (Papuan People's Representative Council) elected through general elections are considered political representatives. In addition to those elected, there are also DPRD members appointed from among the Indigenous Papuans (OAP) to serve in the representative body. These appointments are based on the individuals' functions or expertise within society, and such individuals are referred to as functional groups. Their position in the representative body is known as functional or occupational representation. Even if an individual is a member of a political party, if they are appointed to the representative body based on their expertise or leadership, they are still regarded as functional representatives.

The membership of the DPRD consists of political party representatives determined through general elections, as well as appointed members within the framework of Papua's Special Autonomy (Otsus Papua). Both groups hold equal status as representatives of the people. This implies that, in terms of "rights," both types of representation should have equal entitlements.

¹⁸ Jimly Asshiddiqie, 2007, *Pokok – pokok Hukum Tata Negara Indonesia*, PT. Bhuna Ilmu Populer, Jakarta, page. 154.

¹⁹ Megawati dan Ali Murtopo, 2006, *Parlemen Bikameral Dalam Sistem Ketatanegaraan Indonesia: Sebuah Evaluasi*, UAD Press, Yogyakarta, page. 38

However, in practice, this ideal is not fully realized, as both groups share the same scope of duties, authorities, and functions. This arrangement is reflected in the provisions of Article 6, paragraphs (4) and (5) of Law Number 2 of 2021, which essentially stipulate that:

- a. The position, structure, duties, authority, rights and responsibilities, membership, leadership, and supporting bodies of the DPRP shall be in accordance with the provisions of the prevailing laws and regulations (paragraph 4).
- b. The financial and administrative status of the leadership and members of the DPRP shall be in accordance with the provisions of the prevailing laws and regulations (paragraph 5).

The provision in paragraph (4) also recognizes that appointed members of the DPRP (Papua Provincial People's Representative Council) have equal standing in terms of position, structure, duties, authority, responsibilities, membership, leadership, and the right to occupy institutional bodies within the DPRP, as stipulated by the prevailing laws and regulations. Regarding rights, except for the right to nominate candidates for Governor and Deputy Governor in regional elections, appointed DPRP members are granted the same rights as those elected through general elections. However, with respect to the right to nominate candidates for Governor and Deputy Governor to participate in regional elections in Papua Province, elected and appointed DPRP members do not have equal standing or the same rights.

The regulation concerning “rights” as referred to in paragraph (4) may be interpreted to mean that appointed DPRP members also have the right to nominate candidates for Governor and Deputy Governor. This interpretation is based on the phrase “in accordance with the provisions of the prevailing laws and regulations.” Although such an interpretation is possible, the Regional Election Law (UU Pilkada) does not provide for the granting of this right to appointed DPRP members under the framework of Papua’s Special Autonomy (Otsus Papua) to nominate candidates for Governor and Deputy Governor.²⁰ This indicates a vague formulation of legal norms, as the substance regarding appointed DPRP members is regulated under the Papua Special Autonomy Law, while general rights—including the right to nominate

²⁰ Najamuddin Gani and Yulianus Payzon Aituru, “Sinergitas Fungsi Kewenangan Antar Lembaga Pemerintahan Daerah Papua Dalam Penyelenggaraan Otonomi Khusus,” *Legal Pluralism: Journal of Law Science* 7, no. 2 (2017): 204–40.

candidates for Governor and Deputy Governor—are governed by other legislation.

Article 6 paragraph (4) of the Second Amendment to the Papua Special Autonomy Law stipulates that the rights of DPRP members shall be in accordance with the provisions of the prevailing laws and regulations. Based on this provision, the institutional and individual rights of Provincial DPRD members are regulated in Articles 323 and 324 of Law Number 17 of 2014 concerning the People's Consultative Assembly (MPR), the House of Representatives (DPR), the Regional Representative Council (DPD), and Regional People's Representative Councils (UU MD3), as well as Articles 106 and 107 of the Regional Government Law (UU Pemda), which govern both institutional and individual rights of Provincial DPRD members. Institutional rights include: the right of interpellation, the right of inquiry, and the right to express opinions. Meanwhile, individual rights of Provincial DPRD members include:²¹

- a. to propose draft provincial regulations;
- b. to submit questions;
- c. to express suggestions and opinions;
- d. to elect and be elected;
- e. to defend oneself;
- f. immunity;
- g. to participate in orientation and capacity-building programs;
- h. protocol-related rights; and
- i. financial and administrative rights.

Referring to the provisions regarding the rights of DPRP members as stipulated in the MD3 Law and the Regional Government Law, appointed DPRP members have equal rights, except for the right to nominate candidates for Governor and Deputy Governor in regional elections in Papua Province.

The nomination of candidates for Governor and Deputy Governor is carried out by political parties or coalitions of political parties, as stipulated in Article 42 paragraph (1) of the Regional Election Law (UU Pilkada), which states that: "Candidates for Governor shall be registered with the Provincial KPU by a political party, a coalition of political parties, or as individuals." This regulation clearly establishes that only DPRP members who represent political parties and are elected through general elections have the right to nominate

²¹ Andreas M. W. Lesnussa, "Tugas Dan Fungsi Lembaga Majelis Rakyat Papua Barat Dalam Upaya Perlindungan Hak-Hak Dasar Orang Asli," *Diponegoro Law Journal* 13 (2024).

candidates for Governor and Deputy Governor. Considering the provisions regarding the rights of Provincial DPRD members in both the MD3 Law and the Regional Government Law, as well as the provisions in the Regional Election Law, there is no regulation that grants appointed DPRD members under the framework of Papua's Special Autonomy the right to nominate candidates for Governor and Deputy Governor. Therefore, DPRD members as regulated by the Papua Special Autonomy Law—both those elected through general elections and those appointed under the special autonomy framework—possess equal rights in terms of institutional and individual rights. However, regarding the specific right of appointed DPRD members under Papua's Special Autonomy to nominate candidates for Governor and Deputy Governor in regional elections, there is no equality or parity of rights with DPRD members elected through general elections.

This provision demonstrates the government's unfair and unequal treatment, as reflected in the Regional Election Law (UU Pilkada), between the two types of representation with regard to the equal right to nominate candidates for Governor and Deputy Governor. Ideally, the Second Amendment to the Papua Special Autonomy Law should have explicitly granted appointed DPRD members the right to nominate candidates for Governor and Deputy Governor of Papua in every regional election process in Indonesia, including in Papua Province. The absence of such a provision reflects the government's continued neglect and deliberate denial of equal political opportunity to Indigenous Papuans (OAP) who are represented through appointed seats. From a quantitative standpoint, the number of appointed DPRD members under the Special Autonomy framework is sufficient to justify the right to nominate regional head candidates.²² Appointed DPRD members representing OAPs under the Papua Special Autonomy framework are not merely complementary elements within the DPRD institutional structure; rather, they constitute a special representation of OAPs who must be granted equal rights with DPRD members elected through general elections, particularly in terms of nominating candidates for Governor and Deputy Governor. Furthermore, appointed DPRD members are specifically regulated under the Papua Special Autonomy Law and its Second Amendment. Therefore, their political rights—especially in regional elections—should not be weakened or diminished.

²² Nelwan Ronsumbre and Dede Sri K, "Perwakilan Masyarakat Adat Di Dewan Perwakilan Rakyat Papua: Dinamika Dan Relevansi Pembentukan Dengan Penguatan Demokrasi Deliberatif," *Jurnal Moderat* 6, no. 2 (2020): 331–49, <https://jurnal.unigal.ac.id/index.php/moderat>.

Equal Rights of Elected and Appointed DPRD Members in Nominating Candidates for Governor and Deputy Governor in Regional Elections in Papua Province

The Meaning of Special Autonomy as defined in Article 1 point 2 of the Second Amendment to the Papua Special Autonomy Law refers to a special authority recognized and granted to the Province of Papua to regulate and manage the interests of the local community based on its own initiative, in accordance with the aspirations and fundamental rights of the Papuan people. The granting of special autonomy status to Papua Province through the Papua Special Autonomy Law by the Government also includes the Government's consent to the addition of DPRD membership through appointments from Indigenous Papuans (OAP), in addition to those elected through general elections. Article 6 paragraph (2) of the Papua Special Autonomy Law serves as the basis for OAP representation in the DPRD institutional structure through an appointment mechanism. This provision has been revised and regulated further in Article 6 paragraphs (1), (2), and (3) of the Second Amendment to the Papua Special Autonomy Law.

Appointed DPRD members within the framework of Papua's Special Autonomy are a special representation of Indigenous Papuans (OAP), as their status of representation differs from that of DPRD members affiliated with political parties and elected through general elections. Both elected and appointed DPRD members are part of the legislative body and serve as symbols of the people's sovereignty. According to Jimly Asshiddiqie, the fundamental concept of parliament as a representative body is closely linked to the term "le parle," meaning "to speak."²³ Thus, a people's representative is essentially a spokesperson for the people—voicing their aspirations, interests, and opinions. A representative may serve as a spokesperson for those they represent because they receive a mandate from them. Legislative members representing the people may either be elected through general elections or appointed. Nevertheless, those elected are generally regarded as legitimate representatives of the people.

The Regional Head Election (Pilkada) in Indonesia has undergone a transformation, shifting to a direct election system in 2004, as stipulated in Law Number 32 of 2004, which was later replaced by Law Number 23 of 2014 concerning Regional Government (the Regional Government Law). Specific provisions regarding Regional Head Elections are regulated under the

²³ Jimly Asshiddiqie, 2007, *Pokok – pokok Hukum Tata Negara Indonesia*, PT. Bhuana Ilmu Populer, Jakarta, page. 165.

Regional Head Election Law (UU Pilkada). The Papua Special Autonomy Law (UU Otsus Papua) was enacted in 2001, prior to the issuance of Law Number 32 of 2004 on Regional Government (the previous Regional Government Law) and the current Regional Government Law. However, in the implementation of Special Autonomy in Papua, the authority of the Papuan People's Representative Council (DPRP), as stipulated in Article 7 paragraph (1) letter a of the Papua Special Autonomy Law, was annulled by the Constitutional Court through Decision Number 116/PUU-VII/2009. This is despite the fact that the composition of the DPRP includes two elements of representation: members elected through General Elections and members appointed under the framework of Special Autonomy, as stipulated in Article 6 paragraph (1) of the Second Amendment to the Papua Special Autonomy Law.

This Constitutional Court ruling has been interpreted by many as implying that appointed members of the DPRP are also not granted the right to elect the Governor and Vice Governor. The legal consequence of the Court's decision is that the DPRP no longer has the authority to elect the Governor and Vice Governor. This annulment creates inconsistency, as the regulation in Article 7 paragraph (1) letter a was relevant under the regional head election system in place prior to 2004, including during the early implementation of Papua's Special Autonomy,²⁴ which adopted an indirect election model. The indirect election system, as stipulated in Law Number 22 of 1999, regulated that the nomination and election of regional heads were conducted by political parties within the Provincial Regional Representative Council (DPRD), including the election of regional heads by the DPRD.

The replacement of Law Number 22 of 1999 with Law Number 32 of 2004, which introduced direct regional head elections and designated the Provincial General Election Commission (KPU) as the organizing body, did not result in any changes to the provisions of Article 7 of the Papua Special Autonomy Law (UU Otsus Papua). This article previously granted the DPRP—particularly its appointed members—the authority to nominate candidates for Governor and Vice Governor to the Provincial KPU of Papua, who, if meeting the requirements, could participate in the regional head elections, particularly the gubernatorial election.

²⁴ Aines, Paula Zebedee, Kristen Graham, and Linda Sweet. "Factors Influencing Women's and Men's Place of Birth Decisions in Rural Western Highlands Province of Papua New Guinea: A Qualitative Descriptive Study." *Women and Birth* 38, no. 1 (2025): 101862. <https://doi.org/10.1016/j.wombi.2024.101862>.

The restriction of the appointed DPRP members' right to nominate gubernatorial candidates is also evident in the Second Amendment to the Papua Special Autonomy Law, which does not explicitly provide for the political rights of appointed DPRP members, including the right to nominate candidates for Governor and Vice Governor in regional elections. Instead, the rights of appointed DPRP members are subject to and follow the provisions of the MD3 Law, the Regional Government Law (UU Pemda), and the Regional Head Election Law (UU Pilkada). Article 39 letter a of the Regional Head Election Law stipulates that election participants are candidates for Governor nominated by political parties or coalitions of political parties. When linked to Article 7 of the Second Amendment to the Papua Special Autonomy Law²⁵, it becomes clear that the article only outlines the duties and authorities of the DPRP, without specifically regulating the rights of DPRP members. These rights are instead governed by other pieces of legislation, namely the MD3 Law and the Regional Government Law. Consequently, only DPRP members elected through general elections and affiliated with political parties are granted the right to nominate candidates for Governor and Vice Governor. Meanwhile, appointed DPRP members are not granted such a right under the current legal framework governing regional head elections.

Appointed members of the Papuan People's Representative Council (DPRP) serve as specific representatives and spokespersons of Indigenous Papuans (OAP). Representation is categorized into two types: formal representation and substantive representation. Formal representation refers to physical presence, while substantive representation refers to the expression of aspirations and ideas. Substantively, representation can only be said to be realized if the values, aspirations, and opinions of the people being represented are genuinely advocated for and become part of the policies determined by the representative body, or at the very least, influence the policy-making process within parliament.²⁶ Members of the DPRP elected through general elections represent the entire populace, including voters from the OAP community. However, both the Papua Special Autonomy Law (UU Otsus Papua) and its Second Amendment affirm the existence of a specific representation group within the DPRP—comprising OAP members—whose

²⁵ N Kartikasari, A J Marshall, and B Beehler, *Ekologi Papua*, Ecology of Indonesia Series (Yayasan Pustaka Obor Indonesia dan Conservation International Jakarta, 2012), <https://books.google.co.id/books?id=AqfUCwAAQBAJ>.

²⁶ J Jasin, *Penegakan Hukum Dan Hak Asasi Manusia Di Era Otonomi Daerah* (Deepublish, 2019), <https://books.google.co.id/books?id=3K9YEQAAQBAJ>.

positions are filled through an appointment mechanism rather than electoral processes.

The appointment of OAP representatives to the DPRP is based on Article 6 of the Papua Special Autonomy Law, and began in 2014 with the enactment of Special Regional Regulation (Perdasus) Number 6 of 2014 concerning Membership of the Papuan People's Representative Council Appointed through the Appointment Mechanism for the 2014–2019 Period. This Perdasus, promulgated on December 18, 2014, served as the legal foundation for the appointment of DPRP members under the framework of Papua's Special Autonomy. For the 2014–2019 term, 14 appointed members served in what was referred to as a special group (not a faction), in accordance with Government Regulation (PP) Number 12 of 2018 concerning Guidelines for the Preparation of Rules of Procedure of Regional People's Representative Councils at the Provincial, Regency, and Municipal Levels. Article 131 paragraph (1) of the regulation stipulates: "Members of the Papuan People's Representative Council and the West Papuan People's Representative Council who are appointed shall be grouped into one (1) special group."

Nevertheless, Article 44 paragraphs (1) and (2) of Perdasus Number 6 of 2014 stipulate that appointed DPRP members must join a faction (paragraph 1), and that the faction must be affiliated with a political party (paragraph 2). This provision conflicts with Article 131 paragraph (1) of PP Number 12 of 2018. The implication of this contradiction is that appointed DPRP members are absorbed into political party factions and are not organized as a distinct special group.²⁷ This arrangement undermines the duties, functions, and rights of appointed DPRP members in the implementation of Papua's Special Autonomy, and diminishes their role as special representatives of OAP in voicing OAP interests. Moreover, as a special regulation, Perdasus Number 6 of 2014 does not provide any provision granting appointed DPRP members the right to nominate gubernatorial and vice-gubernatorial candidates in the 2019 regional elections in Papua Province.

Subsequently, the appointment of DPRP members for the 2019–2024 term was based on Special Regional Regulation Number 9 of 2019 concerning Procedures for Appointing Members of the Papuan People's Representative Council through the Appointment Mechanism for the 2019–2024 Period. Article 35 paragraph (1) of this regulation stipulates that appointed DPRP members shall be organized into one (1) special group. This aligns with Article

²⁷ J Jasin, *Penegakan Hukum Dan Hak Asasi Manusia Di Era Otonomi Daerah* (Deepublish, 2019), <https://books.google.co.id/books?id=3K9YEQAQBAJ>.

131 paragraph (1) of PP Number 12 of 2018. For the 2019–2024 term, appointed DPRP members formed and operated within a special group under the framework of Papua's Special Autonomy. Nevertheless, Perdatus Number 9 of 2019 also does not grant these members the right to nominate gubernatorial and vice-gubernatorial candidates in the 2024 regional elections in Papua Province.

Since its enactment on 21 November 2001 until 18 July 2021—nearly two decades prior to the enactment of the Second Amendment to the Papua Special Autonomy Law (UU Otsus Papua) on 19 July 2021—the implementation of the Papua Special Autonomy Law has had ample time for evaluation in terms of the effectiveness of the normative provisions contained in each of its articles. One notable limitation is the restriction placed on appointed members of the Papuan People's Representative Council (DPRP) regarding their right to nominate candidates for Governor and Deputy Governor in regional elections.²⁸ This reflects the non-responsive nature of the legal norms. Although Papua Province has been granted Special Autonomy status, which includes the existence of appointed DPRP membership within the DPRP institution, the substantive provisions in the original law and its Second Amendment still do not grant appointed DPRP members equal and fair rights to nominate gubernatorial and vice-gubernatorial candidates. The absence of legal provisions recognizing this right for appointed DPRP members signifies a discriminatory attitude on the part of the lawmakers toward those representatives within the framework of Papua's Special Autonomy.

Direct regional elections in Indonesia began in 2004, while the Papua Special Autonomy Law has been in force since 21 November 2001. As of 21 November 2024, Papua's Special Autonomy will have been implemented for twenty-three years. However, during this entire period—covering both the original law and the Second Amendment enacted on 19 July 2021—appointed DPRP members under the Special Autonomy framework have never been granted the right to propose gubernatorial and vice-gubernatorial candidates in Papua's regional elections.

Members of the Papuan People's Representative Council (DPRP) who are elected through general elections and those who are appointed under the framework of Papua's Special Autonomy are both representatives of the

²⁸ Ode Jamal and Yan Dirk Wabiser, "Kontroversi Realisasi Kursi Afiriasi Anggota Legislatif Dalam Otonomi Khusus Papua," *LIPI-Majalah Ilmu-Ilmu Sosial Indonesia* 45, no. 2 (2019): 185–93.

people, representing two groups: the general public and Indigenous Papuans (OAP). Both elected and appointed DPRD members have equal status in terms of duties and authority, functions, and standing as regional people's representatives. However, in the matter of the right to nominate candidates for Governor and Deputy Governor in regional elections in the Special Autonomy Province of Papua, appointed DPRD members do not have equal rights with elected DPRD members. This inequality arises because there are no provisions in the Papua Special Autonomy Law or the Regional Election Law that grant appointed DPRD members the right to propose gubernatorial candidate pairs.

4. Conclusion

Appointed DPRD members serve as special representatives of Indigenous Papuans (OAP) within the framework of Papua's Special Autonomy. However, the MD3 Law, the Papua Special Autonomy Law, the Second Amendment to the Papua Special Autonomy Law, the Regional Election Law, and Government Regulation No. 106 of 2021 do not regulate equal rights for appointed DPRD members in proposing candidates for Governor and Deputy Governor in regional elections in the Province of Papua.

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