

LEGAL REVIEW OF THE EXPANSION OF PAPUA PROVINCE INTO THREE NEW PROVINCES BASED ON LAW OF THE REPUBLIC OF INDONESIA NUMBER 21 OF 2001 CONCERNING SPECIAL AUTONOMY FOR PAPUA PROVINCE

Reyhanka Abid Putera Indrajaya¹
Amancik²
Edra Satmaidi³

¹Faculty of Law, Bengkulu University, Indonesia.

E-mail: reyhankaindrajaya@gmail.com

²Faculty of Law, Bengkulu University, Indonesia.

³Faculty of Law, Bengkulu University, Indonesia.

ABSTRACT

In 2022, Papua Province was divided into three new provinces: South Papua, Central Papua, and Papua. This regional expansion raised legal concerns, particularly regarding unmet technical requirements and the limited consideration of the aspirations of the Papuan People's Assembly (MRP) and the Papuan Regional House of Representatives (DRP) as representatives of indigenous Papuans. This study analyzes the legal considerations and implications of the expansion. This normative juridical research applies statutory and comparative approaches supported by literature review. Legal materials include primary legislation, secondary sources such as books and journals, and tertiary materials from online sources. The findings indicate that the government based the expansion on philosophical, sociological, and juridical considerations. Philosophically, it aimed to realize the third and fifth principles of Pancasila. Sociologically, it sought to enhance welfare, development, and security in Papua. Juridically, it referred to Article 18B of the 1945 Constitution. However, shortcomings were identified, including a rushed process, limited accommodation of local aspirations, and potential inconsistency with Article 35A of Law No. 23 of 2014. Despite these issues, the special autonomy status remains applicable to the newly established provinces.

Keywords: Regional Expansion, Regional Autonomy, Special Autonomy

INTRODUCTION

1. Research Background

In this case, as we know, Indonesia is a country based on law (rechstaat).¹ And not as a maachstat state or a state based on

¹ Dasril Radjab, Indonesian Constitutional Law, Rineka Cipta, Jakarta, 1994, p. 64

absolutism.² So this places every citizen in the same position in the eyes of the law.³ The law in question is a series of regulations made by the state.⁴ Existing laws certainly regulate almost everything that can be regulated by law for the communities within the scope of the relevant laws. In relation to regional autonomy, including the expansion of regions at the provincial level, there are laws governing regional autonomy that ensure the expansion is carried out in a clear and non-arbitrary manner.

Regional expansion is generally the division of a specific region into a new region separate from the existing region, where the new region stands alone alongside the existing region that previously encompassed it. In Indonesia, these newly expanded regions can include provinces, regencies/cities, sub-districts, and villages.

The regional expansion carried out by the Central Government, in general,

has the aim of equalizing welfare for all people spread across many regions, and to help regions that are worthy of being expanded to be able to develop their own economy according to the characteristics and distinctive features inherent in the region concerned.⁵ Regional expansion in this case must also provide benefits in terms of philosophical, sociological, and legal values for the region to be expanded.⁶

The current regional expansion that is receiving considerable attention is the provincial-level expansion in Papua, specifically the Papua Province, which was then divided into three new provincial regions. The expansion of Papua Province is not without its problems. There are problems in the division of Papua Province into three new provincial regions, particularly the legal ones. The legal problem is that the expansion of Papua Province does not involve the Papuan People's Assembly (MRP) in the process. In fact, the expansion of Papua Province should involve the MRP as stipulated in Article

² Sf Marbun, Moh Mahfud MD, *Principles of State Administrative Law*, Liberty, Yogyakarta, p. 51

³ Satya Arinanto and Ninuk Triyanti, *Understanding the Law from Construction to Implementation*, Raja Grafindo Persada, Jakarta, 2009, p. 55

⁴ Lukman Santoso, Yahyanto, *Introduction to Legal Science*, Setara Press, Malang, 2016, p. 16

⁵ Andik Wahyun Muqoyyidin, *Regional Expansion and Regional Autonomy Post-Reformation in Indonesia: Concepts, Empirical Facts and Future Recommendations*, *Constitutional Journal*, Vol 10 No 2, June 2013, p. 291

⁶ Syamsudin and Ace Hasan Syadzily, *Decentralization, Autonomy, and Regional Expansion in Indonesia*, Kencana Prenada Media Group, Jakarta, 2019, p. 32

76 of Law Number 21 of 2001. Furthermore, the expansion of Papua Province, when viewed from the requirements for provincial-level regional expansion under Government Regulation of the Republic of Indonesia Number 78 of 2007, does not yet meet the specified requirements.

From the problems above, that is the reason why researchers created this journal, with the title of "Legal Review of the Expansion of the Papua Province into Three New Provinces Based on Law of the Republic of Indonesia Number 21 of 2001 Concerning Special Autonomy for Papua Province".

2. Identification of problems

Based on the background that has been described previously, the formulation of the problem in this research is as follows:

- a) What are the legal considerations regarding the rejection of the transfer of regional government status to a special autonomous region based on the 1945 Constitution of the Republic of Indonesia?
- b) What are the inhibiting and supporting factors for the

rejection of the transition of regional government status from general regional autonomy to special regional autonomy?

RESEARCH METHODS

This research is normative legal research. This type of research is a unique type of research whose objects were sourced from literature studies, existing laws and regulations, legal principles, and logical reasoning, which are then arranged, structured, and presented in written or descriptive form.⁷

RESULTS AND DISCUSSION

1. Legal Considerations for the Regional Expansion of Papua Province into Three New Provinces Based on Law of the Republic of Indonesia Number 21 of 2001 Concerning Special Autonomy for Papua Province

In this case, the legal considerations for the expansion of the Papua province into three new provinces are based on three main aspects, namely:

⁷Philipus Hadjon, Tatiek Sri Djatmiati, Legal Argumentation, Gadjah Mada University Press, Yogyakarta, 2014, p. 3

The philosophical aspect or philosophical study of law, in this case is an aspect or study that places something that is regulated or certain legal regulations that are formed must be based on the outlook on life, awareness, and legal ideals that include the spiritual atmosphere and philosophy of the Indonesian nation.⁸ The expansion of the Papua Province into three new provinces is based on the philosophical aspect and/or is related to the Third Principle of Pancasila, which reads "Unity for all Indonesian people". In addition to the Third Principle, the division of Papua Province into three provinces is in accordance with and even serves to implement the Fifth Principle of Pancasila, which relates to social justice and equality. This is based on the central government's perspective that dividing Papua Province into three new provinces will improve social justice and equality, in

accordance with the Unitary State of the Republic of Indonesia (NKRI), as outlined in the Fifth Principle of Pancasila. This perspective is based on the primary objective of regional expansion in Papua itself, which is generally aimed at improving welfare, development, and facilities in the expanded regions. This then has an impact on improving the welfare of the regions concerned.⁹

a. The philosophical aspect or basis it self is a consideration or reason that describes that a rule that is formed and regulates all things that can be regulated by the State, was used to fulfill the needs of society in various aspects and concerns empirical facts regarding the development of problems and the needs of the society and the State concerned.¹⁰ In this case, the government's perspective is that the expansion of Papua Province into three new

⁸Otti Ilham Khair, Analysis of the Philosophical, Sociological, and Legal Basis for the Formation of the National Capital Law, *Journal of Academic Research Innovation*, Vol 2 No 1, October 2022, p. 2

⁹ Karmila Sinena, Aulia Sasmitha Ningrumb and Oktoviana Angela Kabes, *Government and Community Strategy in Welcoming the New Autonomous Region of*

Southwest Papua, *Expansion of West Papua Province*, *Journal of Social and Political Sciences*, University of Jambi, Vol 6 No 2, 2022, p. 47

¹⁰ Otti Ilham Khair, Analysis of the Philosophical, Sociological and Legal Basis for the Formation of the National Capital Law, *Journal of Academic Research Innovation*, Vol 2 No 1, October 2022, p. 3

provinces is aimed at sociological aspects, namely improving the welfare of the Papuan people in the economic sector. Furthermore, there are other sociological aspects or foundations that the government hopes to achieve by expanding Papua Province into three new provinces. The sociological aspect the government hopes to achieve through this expansion is security, namely improving security for the Papuan people themselves.

- b. The legal aspect itself is a consideration or reason concerning legal issues related to the substance or material being regulated, so that it is necessary to form new legislation or not.¹¹ The division of Papua Province into three new provinces certainly has legal aspects or foundations that form the basis for the division of Papua Province into three provinces. The division of Papua Province into three new

provinces, which constitutes a special provincial division at the constitutional level, is based on Article 18 of the 1945 Constitution of the Republic of Indonesia concerning regional government. In addition to the constitutional level, the division of Papua Province into three new provinces is also carried out to comply with and implement statutory regulations, namely to implement Article 76 Paragraph 2 of Law of the Republic of Indonesia Number 2 of 2021.

2. Legal Policy for Regional Expansion in Papua Province into Three New Provinces Based on Law of the Republic of Indonesia Number 21 of 2001 Concerning Special Autonomy for Papua Province
 - a. Implementing Regional Autonomy to the Fullest

The expansion of Papua Province into three provinces,

¹¹ Otti Ilham Khair, Analysis of the Philosophical, Sociological, and Legal Basis for the Formation of the National Capital Law,

which is regulated by law, is to implement certain legal policies, one of which is to implement the broadest possible regional autonomy. This is because the expansion of Papua Province into three new provinces essentially grants broader authority to autonomous regions deemed worthy of greater authority by increasing the status of the region concerned. Furthermore, the broadest possible regional autonomy can be implemented effectively and efficiently if the regional expansion is carried out significantly, because by carrying out regional expansion, the authority given to regions to regulate their own affairs can be specifically implemented.

b. Implementation of the “Top Down” Concept in Asymmetric Decentralization

The expansion of the Papua Province into three new provinces in the Papua region in this case was carried out to realize the top-down legal policy of asymmetric decentralization, because the expansion of the Papua Province into three provinces was carried out without the approval of the MRP and DRP which are representatives of the Papuan people, but through the initiative of the central government based on "Article 76 of the Republic of Indonesia Law Number 22 of 2021" regarding the *MRP* and *DRP* as representatives of the Papuan indigenous people which has been amended to accommodate top-down policies in the Papua region which are asymmetric decentralization.

3. Legal Implications of the Regional Expansion of Three Provinces as New Provinces for Papua Province as the Parent Province and Special Autonomous Region

a. In terms of authority

The implications of the expansion of the Papua Province into three new provinces in terms of their jurisdiction, the most important of which is the emergence of new authority from the new autonomous regions, consisting of the Regional Government of South Papua Province, the Regional Government of Central Papua Province, and the Regional Government of Mountainous Papua Province. The three new provinces, which were previously part of the authority of the Regional Government of Papua Province, now have their own authority as new autonomous regions at the provincial level, which have authority as a province separate from Papua Province as its parent province, namely South Papua Province, Central Papua Province, and Mountainous Papua Province. With the existence of three new autonomous provincial regions as a result of the expansion of

Papua Province into three provinces, certain regions that were previously part of the authority of Papua Province have changed to become the authority of the three newly expanded autonomous provincial regions.

b. In terms of the relationship between the parent province and the new province

The institutional relationship between the Regional Government of Papua Province as the parent province to the Regional Government of South Papua Province, the Regional Government of Central Papua Province and the Regional Government of Mountainous Papua Province as new provinces generally has an equal institutional position as a provincial regional government with special autonomy, even though the Papua Province, before the expansion was carried out, was the parent province of the area now known as the Province of South Papua, the Province of Central Papua and the Province of Mountainous

Papua. The same institutional relationship between the parent province and the newly expanded provinces is due to a province that should have the same position, regardless of how long the existing province has existed or how advanced the existing province is, including the parent province and the newly expanded province that was previously part of the province concerned.

So that the institutional status between the parent province and the new province is equal as an autonomous provincial region with the status of a special autonomous region.

c. In Terms of its Institutional Position in the State System

Institutional position in the state system of the institutional position of Papua Province as an implication of the expansion has generally not changed, where Papua Province as an autonomous region still has the status of an autonomous provincial region which still has the status of a region with special autonomy

or asymmetric decentralization.

CONCLUSION

Based on the research results and discussions described in the previous chapter, the researcher concludes that:

- 1) The expansion of Papua Province presents a myriad of problems. However, despite these challenges, the central government can conclude that there are three considerations in implementing the expansion. The first is a philosophical consideration, namely that the regional expansion in question will implement the third and fifth principles concerning unity and social welfare, although there are shortcomings of the expansion, which are rushed, which can cause the expansion to "fail" in implementing these philosophical aspects. Then there is a sociological consideration related to the benefit of the community, although the regional expansion does not pay enough attention to the aspirations of the people as

expressed by the *MRP* and *DRP*. And the last is the consideration based on the legal aspect, namely that the expansion of the region will carry out the mandate of Article 18 b of the Constitution of the Republic of Indonesia, even though there are legal shortcomings in the expansion, which are contrary to Article 35 a of Law Number 23 of 2014. Based on the discussion above, it can be concluded that the legal policy in question is to implement the broadest possible autonomy and also to implement the "top-down" concept in autonomous regions with special autonomy or asymmetric decentralization.

- 2) The expansion of the Papua Province into three new provinces can be concluded to have three legal implications. The first is the implication in terms of authority, namely from the expansion of the region, the parent province will still have special authority as a province with special autonomy, although in this case the scope of the special authority area owned by the

parent province will be reduced, due to the expansion of the region into three provinces, and also the three new provinces will certainly receive new authority as autonomous provincial regions and even receive special authority, because the three provinces have special autonomy status. Then there are legal implications in terms of institutional relations between the three new provinces to the parent province, namely, with the expansion, the three new provinces have a horizontal equal relationship with the parent province. And finally, there are legal implications in terms of institutional status, namely the parent province still has the same position as an autonomous region with special autonomy, while the three new provinces change their position from what was before the expansion as a district/city that was part of the parent province, increasing their position to become an autonomous provincial region with special autonomy.

2. Suggestions

In relation to the above problems, the author provides the following suggestions:

- a. The central government should proceed slowly in implementing the regional expansion, taking into account input from the People's Consultative Assembly (*MPR*) and the People's Representative Council (*DRP*), which represent the indigenous peoples and the Papuan people. Furthermore, the regional expansion should not be rushed, leading to unmet technical requirements. This would ensure that the division of Papua Province into three provinces would not create the same turmoil and problems that currently exist.
- b. The government should improve the quality of bureaucracy in the three newly established provinces professionally, while taking into account

the unique characteristics and uniqueness of each new province. This will ensure that the implications of this expansion, which grants the three provinces greater authority, can be utilized optimally for the development of the provinces concerned, while also taking into account the unique characteristics of the local communities. If this is achieved, the expansion of Papua Province into three provinces will be successful and not a failed expansion.

REFERENCES

Books:

- Dasril Radjab, Indonesian Constitutional Law, Rineka Cipta, Jakarta, 1994, p. 64
- Lukman Santoso, Yahyanto, Introduction to Legal Science, Setara Press, Malang, 2016, p. 16
- Philipus Hadjon, Tatiek Sri Djatmiati, Legal Argumentation, Gadjah Mada University Press, Yogyakarta, 2014, p. 3
- Satya Arinanto and Ninuk Triyanti, Understanding the Law from Construction to Implementation, Raja Grafindo Persada, Jakarta, 2009, p. 55
- Sf Marbun, Moh Mahfud MD, Principles of State Administrative Law, Liberty, Yogyakarta, p. 51

Section from a book:

- Eddy O.S. Hiariej. "Pemilukada Kini dan Masa Datang Perspektif Hukum

Pidana” on Achmad D. Haryadi (ed). (2012). *Demokrasi Lokal: Evaluasi Pemilukada di Indonesia*. Jakarta: Konstitusi Press, p.182

Syamsudin and Ace Hasan Syadzily, *Decentralization, Autonomy, and Regional Expansion in Indonesia*, Kencana Prenada Media Group, Jakarta, 2019, p. 32

Journal articles:

Andik Wahyun Muqoyyidin, *Regional Expansion and Regional Autonomy Post-Reformation in Indonesia: Concepts, Empirical Facts and Future Recommendations*, *Constitutional Journal*, Vol 10 No 2, June 2013, p. 291

Karmila Sinena, Aulia Sasmitha Ningrumb and Oktoviana Angela Kabes, *Government and Community Strategy in Welcoming the New Autonomous Region of Southwest Papua, Expansion of West Papua Province*, *Journal of Social and Political Sciences*, University of Jambi, Vol 6 No 2, 2022, p. 47

Otti Ilham Khair, *Analysis of the Philosophical, Sociological and Legal Basis for the Formation of the National Capital Law*, *Journal of Academic Research Innovation*, Vol 2 No 1, October 2022, p. 3