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# Legitimacy of Determination of Indigenous Papuan People Between The Papuan People's Assembly and The Papua Customary Council

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**Abstract:** The determination of Indigenous Papuans (Orang Asli Papua/OAP) within the Special Autonomy regime raises issues of institutional legitimacy between the Papuan People's Assembly (MRP) and the Papuan Customary Council (DAP). Law Number 2 of 2021 defines OAP as individuals of Melanesian descent and/or those recognized by Papuan customary communities. This formulation creates a dual legitimacy framework, consisting of normative-legal legitimacy and customary legitimacy. This study aims to analyze the legal basis of authority in determining OAP status and the institutional relationship between MRP and DAP from a constitutional law perspective. This research employs normative legal research using statutory and conceptual approaches. Primary legal materials include Law Number 2 of 2021 and Government Regulation Number 106 of 2021, supported by doctrinal theories on legitimacy and authority. The analysis is conducted qualitatively through systematic and teleological interpretation. The findings indicate that MRP possesses legal-rational legitimacy derived from statutory attribution, while DAP holds traditional legitimacy rooted in constitutional recognition of customary law communities. This dual legitimacy may generate legal uncertainty if not clearly regulated. Therefore, an integrative regulatory model through a Special Regional Regulation is necessary, positioning DAP as a cultural verifier and MRP as the formal administrative authority in determining OAP status.

**Keywords:** Indigenous Papuans, Legal Legitimacy, Authority, Papuan People's Assembly, Papuan Customary Council, Special Autonomy

## INTRODUCTION

Papua's Special Autonomy is a constitutional construct born from the state's recognition of the region's uniqueness and privileges as stipulated in Article 18B paragraph (1) of the 1945 Constitution. This strengthening of autonomy is normatively reaffirmed through Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for Papua Province, which aims to provide affirmation and legal certainty for the protection of the basic rights of Indigenous Papuans (OAP). Article 1, number 22, emphasizes that Indigenous Papuans are those who originate from the Melanesian racial group and/or are recognized and accepted as Indigenous Papuans by the Papuan Indigenous Community. This

formulation demonstrates that the determination of Indigenous Papuans has both normative and sociological dimensions.

According to Jimly Asshiddiqie (2005), Special Autonomy in Indonesia is a form of state recognition of regional cultural and socio-political diversity, which embodies the principle of respect for the rights of indigenous peoples. This view emphasizes that Special Autonomy is not merely administrative but also has important moral and political dimensions in managing diversity in Indonesia. Meanwhile, Aspinall and Fealy (2010) in their study asserted that the implementation of Special Autonomy in Papua faces a dual challenge: the integration of formal law with local cultural practices, including the recognition of sociological customary rights, which requires harmonization between legal norms and the sociocultural values of Papuan society.

The institutional structure of Special Autonomy is established by the Papuan People's Assembly (MRP) as a cultural representation of Indigenous Papuans, which has specific authority to protect the rights of Indigenous Papuans. Normatively, the MRP is neither a legislative nor an executive body, but rather a cultural institution legitimized by law to safeguard the customary values, culture, and political affirmation of Indigenous Papuans. This provision is emphasized in Government Regulation Number 106 of 2021 concerning the Authority and Institutions for the Implementation of the Special Autonomy Policy in Papua Province, which regulates the scope of regional authority and institutional strengthening in the implementation of Special Autonomy.

According to Salamuddin Daeng (2012), the People's Consultative Assembly (MRP) can be understood as a unique mechanism of political representation, combining formal legal dimensions with cultural legitimacy. Daeng emphasized that the MRP's function is to balance the traditional rights of indigenous communities with state law. Therefore, this dualism must be accommodated so that Special Autonomy becomes not merely a formal symbol but also an implementation tool in community life.

In practice, questions arise regarding the legitimacy of determining the status of Indigenous Papuans, particularly when the MRP's role overlaps with customary recognition carried out by the Papuan Customary Council (DAP). Sociologically, the Papuan Customary Council has moral and cultural authority in determining the recognition of indigenous community membership. However, from a positive legal perspective, attributive authority in the Special Autonomy system is explicitly granted only to the MRP, an official institution regulated by law. This situation raises questions about the limits of authority, sources of legitimacy, and the relationship between normative and sociological legitimacy in determining Indigenous Papuans.

The theory of authority, in state administrative law, stems from attribution, delegation, and mandate. Attribution is the direct grant of authority by law to a state organ (Suharsono, 2015). Therefore, if the authority to determine Indigenous Papuans is interpreted as public legal authority, then this legitimacy must be based on statutory norms. On the other hand, Max Weber's legitimacy theory distinguishes between legal-rational legitimacy and traditional legitimacy (Weber, 1978). In the Papuan context, the dualism between legal legitimacy (MRP) and traditional legitimacy (DAP) is a central issue that requires normative analysis. According to Yulianto (2018), conflicts between legal and traditional legitimacy often arise when formal state institutions fail to fully understand customary social structures. Therefore, a harmonization model capable of uniting these two dimensions of legitimacy is necessary for the Special Autonomy policy to be effective and accepted by the local community.

Based on this description, the issue of legitimacy in determining Indigenous Papuans is not merely an administrative issue, but also concerns legal certainty, protection of constitutional rights, and harmonization between state law and customary law. Therefore, this article will analyze the legal basis for the determination of OAP and examine the legitimacy of

authority between the MRP and the Papuan Customary Council from the perspective of constitutional law and the theory of authority.

## **METHOD**

This research is normative legal research, focusing on written legal norms as the primary object of study. According to Soerjono Soekanto and Sri Mamudji, normative legal research is conducted by examining library materials or secondary data as the primary source for identifying legal principles, concepts, and systems (Soekanto, 2001). In this context, the research aims to analyze the legitimacy of the authority to determine Indigenous Papuans based on the applicable positive legal framework, particularly within the Papuan Special Autonomy regime. The approaches used include a statutory approach and a conceptual approach. The statutory approach examines the norms contained in Law Number 2 of 2021 concerning Special Autonomy for Papua and Government Regulation Number 106 of 2021 concerning the Authority and Institutions for Implementing the Special Autonomy Policy of Papua Province. Meanwhile, a conceptual approach was used to analyze the theory of legitimacy and authority in constitutional law to determine whether the authority to determine the status of indigenous Papuans is attributive, delegative, or based solely on sociological legitimacy.

The legal materials used consisted of primary legal materials in the form of legislation, secondary legal materials in the form of books and scientific journals discussing the theory of legitimacy and authority, and tertiary legal materials in the form of legal dictionaries and legal encyclopedias. The analysis was conducted qualitatively using systematic and grammatical interpretation methods to obtain a coherent legal construction. According to Peter Mahmud Marzuki, analysis in normative legal research aims to provide prescriptions regarding what should be (*das sollen*) based on applicable legal norms (Marzuki, 2011). Therefore, this research not only describes norms but also provides arguments regarding the boundaries and legitimacy of the authority between the Papuan People's Assembly and the Papuan Customary Council in determining the status of indigenous Papuans.

## **RESULTS AND DISCUSSION**

### **Normative Construction of the Designation of Indigenous Papuans**

The designation of Indigenous Papuans (OAP) cannot be separated from the normative construction formulated in Article 1, number 22, of Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for Papua Province. This norm defines Indigenous Papuans as individuals originating from the Melanesian racial group, consisting of indigenous tribes in Papua, and/or individuals accepted and recognized as Indigenous Papuans by the Indigenous Papuan Community. The formulation of "and/or" in this norm has significant legal implications, as it opens up the possibility that Indigenous Papuan status can be determined through two channels: genealogical and customary recognition. This emphasizes that the state provides flexibility in determining status while simultaneously recognizing the sociological and cultural dimensions of Papuan society that are not always captured in formal administrative documents.

Methodologically, this norm must be interpreted through systematic and teleological interpretation. A systematic interpretation requires reading these norms within the overall framework of Special Autonomy, particularly in relation to the objective of protecting the fundamental rights of Indigenous Papuans as formulated in the preamble of the law. A systematic interpretation also encourages integration between the authority of the MRP, the recognition of the Papuan Customary Council, and other regulations supporting the implementation of Indigenous Papuan rights, so that these norms can be operationalized consistently. Meanwhile, a teleological interpretation demands an understanding that regulations regarding Indigenous Papuans are affirmative instruments to protect certain

community groups within the framework of asymmetric decentralization. This perspective emphasizes the constitutional purpose of Special Autonomy, namely recognizing the unique culture, identity, and political aspirations of Indigenous Papuans, while simultaneously providing protection against potential marginalization due to the dynamics of national development. Thus, the norm defining Indigenous Papuans cannot be understood in isolation but must be placed within the context of constitutional protection of the collective identity and rights of the Papuan people.

### **Theoretical Analysis of the Legitimacy of Authority**

From the perspective of Max Weber's legitimacy theory, the authority of the modern state rests on legal-rational legitimacy. The authority of the Papuan People's Assembly (MRP) has formal legitimacy because it was established and authorized by law. Article 5 paragraph (2) of Law Number 2 of 2021 affirms that the MRP is the cultural representation of Indigenous Papuans (OAP) and has specific authority to protect the rights of Indigenous Papuans. From the perspective of the theory of authority, this constitutes a direct attribution from the legislators to a specific organ within the Special Autonomy system, ensuring that every MRP action related to Indigenous Papuan rights has a valid legal basis and can be administratively accounted for. This formal legitimacy allows the MRP to function as a bridge between the interests of indigenous communities and state mechanisms, while also ensuring that Indigenous Papuan rights are accommodated within the national legal framework.

In contrast, the Papuan Customary Council (DAP) derives its legitimacy from the recognition of indigenous communities as guaranteed in Article 18B paragraph (2) of the 1945 Constitution. This constitutional recognition provides the basis for the existence of customary norms and structures, including the mechanism for recognizing indigenous community membership, but does not automatically give rise to administrative authority within the state legal system. In the theory of state administrative law, as argued by Philipus M. Hadjon (2005), every administrative authority must have a clear basis for attribution in statutory regulations. In other words, the DAP's existence relies more on sociological-traditional legitimacy, which stems from the recognition and acceptance of local communities, rather than from formal laws or regulations.

The difference in the sources of legitimacy between the MRP and the DAP creates its own dynamics in the practice of determining Indigenous Papuans. The MRP's legitimacy is normative-legal, guaranteeing legal certainty and administrative authority, while the DAP's legitimacy is sociological-traditional, emphasizing the recognition of indigenous people's culture and morals. This dualism, while potentially conflict-inducing, reflects the complexity of implementing Special Autonomy in Papua, where the formal legal system must interact with long-standing social and cultural structures. Therefore, an analysis of authority in Papua cannot solely assess who has formal legal "rights," but must also consider the dimensions of social and traditional legitimacy that underlie community acceptance of customary institutions.

### **Potential for Dualism and Legal Uncertainty**

The dualism of legitimacy between state norms and customary norms has the potential to create legal uncertainty if not explicitly regulated. In practice, if the Papuan Customary Council (DAP) establishes or recognizes Indigenous Papuans (OAP) that impacts political or administrative rights, even though such authority is not explicitly granted by law, there is a risk of an *ultra vires* (exceeding authority) action. The principle of the rule of law requires that all government actions be subject to the principle of legality, so any violation of formal authority limits can trigger legal conflicts and undermine legal certainty for the community. In this context, the People's Consultative Assembly (MRP), as an institution with normative-legal legitimacy, functions as a guardian of legal formalities, ensuring that the rights of Indigenous

Papuans are exercised in accordance with statutory provisions.

However, ignoring the role of customary law also has the potential to lead to social delegitimization. In the theory of legal pluralism put forward by Satjipto Rahardjo (2006), law exists not only in the text of laws but also in social practices. This means that recognition of customary norms and local social structures is essential to the effective implementation of law, as legal legitimacy will be weakened if not accepted by the communities concerned. Therefore, a purely positivistic approach that does not accommodate customary legitimacy can generate social resistance, give rise to horizontal conflict, and disrupt the comprehensive implementation of Special Autonomy.

Therefore, the problematic issue of determining the status of indigenous Papuans (OAP) is not merely a normative or administrative issue, but also a matter of integrating state law and customary law within the constitutional framework. Effectively determining the status of indigenous Papuans (OAP) requires a mechanism to harmonize the legal-rational legitimacy of the People's Consultative Assembly (MRP) and the sociological-traditional legitimacy of the Regional Representative Council (DAP), so that the political, social, and cultural rights of indigenous Papuans can be comprehensively protected without creating conflict or legal uncertainty. This integrative approach emphasizes that the implementation of Special Autonomy depends not only on formal legal certainty but also on social acceptance that guarantees institutional legitimacy and recognition of Papuan identity.

**Authority Harmonization Model**

To avoid conflicts of authority, a harmonization model is needed that integrates legal-rational legitimacy and traditional legitimacy. This model can be developed through a coordinative mechanism, where customary recognition by the Papuan Customary Council (DAP) serves as the basis for sociological verification, reflecting the acceptance and practices of indigenous communities. In this context, the DAP maintains its role as a cultural institution that provides social legitimacy to the status of Indigenous Papuans (OAP), without violating formal administrative authority. Meanwhile, administrative decisions with formal legal force rest with institutions with statutory attribution, such as the Papuan People's Assembly (MRP) or other institutions explicitly designated through derivative regulations.

With this mechanism, the MRP serves as the final administrative authority, ensuring legal certainty and consistent implementation of OAP rights, while respecting customary recognition granted by the DAP. This coordinative approach enables the integration of state and customary norms, so that the dualism of legitimacy does not give rise to overlapping authority or potential legal conflicts. This harmonization also creates synergy between formal legality and social acceptance, which is key to the successful implementation of Special Autonomy in Papua. Thus, this model emphasizes the importance of balancing legal force and cultural legitimacy in safeguarding the collective rights of the Papuan people.

This integrative model can be formulated in the following analytical table:

**Table 1. Integrative Authority for Determining Indigenous Papuan Status**

Dimension	Customary Legitimacy (DAP)	Formal Legitimacy (MRP)
Theoretical Basis	Traditional/sociological	Legal-rational
Function	Verification of cultural identity	Administrative validation
Source of Authority	Recognition of indigenous communities	Legal attribution
Legal Power	Recommended	Administratively binding
Risks of Standing Alone	No formal legal force	Lack of social legitimacy

The table shows that both legitimacy forms have distinct yet complementary functions. Therefore, the reconstruction of norms through a Special Regional Regulation (Perdasus) is a legal urgency to clarify coordination mechanisms and boundaries of authority. This harmonization is not merely an institutional compromise, but rather a constitutional effort to maintain a balance between the rule of law and respect for the cultural identity of the Papuan people.

## CONCLUSION

First, the normative construction of Indigenous Papuans (OAP) in Article 1, point 22 of Law Number 2 of 2021 embodies dual legitimacy: genealogical legitimacy and customary recognition. This formulation demonstrates that the determination of Indigenous Papuans is not merely administrative but also has cultural and sociological dimensions. However, the law does not explicitly regulate the technical mechanisms for determining Indigenous Papuans, thus opening up room for interpretation that could potentially lead to dualism of authority.

Second, from the perspective of the theory of authority and legitimacy, the Papuan People's Assembly (MRP) possesses legal-rational legitimacy because it derives its authority attributively from the law. Conversely, the Papuan Customary Council (DAP) derives traditional legitimacy from social and constitutional recognition of indigenous communities. This difference in sources of legitimacy positions the MRP as the holder of formal administrative authority, while the DAP functions as a cultural authority with social legitimacy. If the DAP determines Indigenous Papuans with administrative implications without a clear normative attributional basis, it could potentially raise *ultra vires* issues from a legality perspective.

Third, the dualism of legitimacy between state law and customary law in determining indigenous Papuans must be understood as a consequence of the asymmetrical decentralization design of Papua's Special Autonomy. Therefore, the appropriate solution is not to eliminate one legitimacy, but rather to build an integrative model that harmonizes customary and formal legitimacy. Without such harmonization, the potential for conflict of authority and legal uncertainty will continue to recur in the implementation of Special Autonomy.

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