



The Implications Of The Decision Of The Constitutional Court Number 6/PUU-XIX/2021 against the investment in the Province Of Papua

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ABSTRACT

The Unitary State of the Republic of Indonesia as stated in Article 1 paragraph (1) and amplified back to in Article 18 paragraph (1), is a Unitary State, divided into the regions of the province and is divided into districts. Every city has a local government as a form of implementation of Law Number 23 Year 2014 on Regional Government. The state also recognizes the special autonomy that can be seen in Article 18B paragraph (1); as one of its implementation is Law Number 2 Year 2021 on the Second amendment to Law Number 21 of 2001 on Special Autonomy for Papua Province (UU Otsus). Based on the special Autonomy LAW, in terms of capital investment that invests in Papua must recognize and respect the rights of local indigenous people. However, Law No. 10 of the Year 2020 about the Copyright Work have an impact on investment in Papua. When the Province of Papua adjust to the LAW, the Ruling of the Constitutional Court Number 6/PUU-XIX/2021 change the more investment conditions in Papua. This creates legal uncertainty.

Keywords: Constitutional Court Decision, Investment, Papua Special Autonomy

INTRODUCTION

The State government of Indonesia has a purpose in building the state of Indonesia which is to protect the people of Indonesia to promote the general welfare, based on social justice as stated in the preamble to the 1945 Constitution of the Republic of Indonesia, paragraph IV. In realizing the formation of the Indonesian state government and realizing the welfare of the community, its implementation must be based on Pancasila and the 1945 Constitution. The state has an obligation to fulfill the right of citizens for the sake of the fulfillment of the general welfare so that the goals of the state can be achieved.

1945 Constitution (UUD 1945), Article 1 says that the State of Indonesia is a Unitary State. Confirmation in Article 18 states that the Unitary State of the Republic of Indonesia is divided into provinces, and provincial areas are divided into regencies and cities of every province, district and town has a local government is regulated by law. Paragraph (2) says that the provincial government, regional districts and the city of arrange and take care of their own government affairs according to the principle of autonomy and co-administration.

In addition to the provisions of Article 1 paragraph (1) and Article 18 paragraph (1) and (2), there is a special attention in the Article 18B paragraph (1) which says that the state recognizes and honors the unit of local government that are special or are looking to be regulated by Law. Thus it is clear that as a unitary state divided into some regions of the country, also acknowledge the existence of indigenous peoples as set out in Article 18B paragraph (2) as the executor of the 1945 CONSTITUTION Article 1, paragraph (1) and Article 18 paragraph (1) and (2). On that basis, Law Number 23 of 2014 concerning Regional Government was enacted which had been amended several times; whereas the implementation of Article 18B paragraph (1) is the enactment of some regions with a special status or privilege. In order to specificity, special to the Province of Papua, formed of Law Number 2

Year 2021 on the Second amendment to Law Number 21 of 2001 on Special Autonomy for Papua Province (UU Otsus).

In October 2019, the President extended the concept of the omnibus law, which, a goal for the completion of problems as a result of too much regulation in Indonesia so that the overlapping regulation. The purpose of the concept of this one is to accelerate the investment. There are 3 (three) laws became the focus of the omnibus law, namely Tax Laws, the Copyright in Employment and Empowerment of SMES. Speech of President Joko Widodo became the starting point of the formation of the Legislation of the Copyrighted Work. On December 17, 2019, start tilld by the government and became the BILL a Priority. On April 2, 2020 the BILL began to be discussed and on October 5, 2020 Law Copyright Work was passed after discussed with as much as 65 times. The entry into force of the LAW of Copyright Work to be a breakthrough for the government to simplify the approximately 80 of the LAW.

Omnibus law is the law, which substantially revise and/or revoke the many other laws. This concept is developed in common law countries with a legal system of anglo saxson, such as the United States, Belgium, UK and Canada. The concept of the omnibus law was a revamping of the problems caused by too many rules (over- regulation) and overlapping regulations (overlapping). When these problems are solved in the usual way then it will take quite a long time and the cost is not small. Not to mention the design process and the formation of laws and regulations often lead to deadlocks or not according to the interests. According to Aidul Fitriada Azhari cites the opinion of Audery o'brian and Marc Bosc, omnibus law as a draft that is intended to alter,replaceorenforcetheLAWintoone.AccordingtoMariaFarida,omnibuslawisa method that is commonlyusedin countries that adopt a system oflaw. Thus the concept of the omnibus law that is used has been applicable since a long time in the context of the legal system. This concept is intended for simplification of a number of laws and regulations so there is no overlap rule, considering Indonesia is a principle which is the principle *lex specialis derogat legi generali*. With the implementation of the principles of the expected adoption of the omnibus law would be much more efficient.

Law Number 23 Year 2014 on Regional Government is also exposed to the impact of the birth of the Legislation of the Copyrighted Work. In connection with the investment, the impact of the LAW on Copyright of the Work occurs against the special Autonomy LAW for Papua. Here is a note from the Center for Indonesian Law and Policy Studies related to this:

Criticism of the settings of the management of natural resources in the LAW of Copy right Work not only on changes to the LAW PPLH ,but al soon some other laws, such as the Number 39 Year 2004 on the plantation (Plantation ACT),ACT No. 3 of the Year 2020 on the amendment of LAW Number 4 Year 2009 on Mineral and Coal Mining (the Mining LAW), and LAW No. 2 of 2012 on Land Procurement for Development for Public Interest(the ACT Peng – being of the Land for Development for Public Interest). The LAW of Copyright in the Work to change the Article 16 of the LAW of the Plantation mem - give me the limitation to amaximumof3 years and 6 years since the get status of land rights for businesses to cultivate the plantation land. In the LAW of Copyright Work, the time limit was shortened to 2 years after obtaining the status of land rights. The LAW of Copyright of the Work does not change the consequences for businesses in terms of exploitation it is not done, i.e. the takeover of part of the plantation which has not been cultivated. However, the administrative sanctions for breach of it, which was previously set out in Article 18 of the LAW of the Plantations, is now abolished by LAW on Copyright Work. The absence of sanctions that raises the question of the effectiveness of the implementation of the provisions of these in the field. Then, the ACT on the Copyright Work also amend Article 34 of the LAW on Land acquisition for Development for Public Interest. Based on that change, the state can do the deprivation of land unilaterally for reasons of public interest with the value of the compensation determined by the appraisal (appraisal). Different with the previous settings which use the consultation process to establish compensation, in the LAW of Copyright Work, the value of the indemnity set forth appraiser shall be final and binding and become the basis for determining the form of compensation. The existence of a process of deliberation based on the new setting becomes uncertain because the reference verse that govern it are not found in Article 34. With that change, one-on-one his odds for the community to ask the efforts of the mind is through the courts. The limited resources in the community, especially the marginalized, the clamping their opportunities to be able to get right, or at least get the compensation they deserve.

The things above are also the basis why this Law was later tested in the Constitutional Court

on November 25, 2021. As a result, the Decision of the COURT Number 6/PUU-XIX/2021 stated that the LAW is unconstitutional conditional. The province of Papua, who are adjust in g to the enactment of this ACT, the end of stalemate and uncertainty of the law in terms of investment. At least this decision to change the cluster licensing and eco system investment. The claim that through the Law No. 11 2020 about the Copyright Work, the present government to encourage investment through ease of licensing strive for investors, will be increasingly confusing with the conditions unconstitutional conditional.(Putra, 2020)

LITERATUREREVIEW

Government of Papua's Special Autonomy

The beginning of the discussion of the autonomous region begins with the lapse of one day after the proclamation of independence. After PPKI stipulates the 1945 Constitution, a small committee is formed which is assigned to take care of matters that need to be resolved immediately, including 4 (four) important issues:

- a) The affairs of the people
- b) Local government
- c) The leader of the police
- d) Army nationality

With the issues of local government as is a discussion of the importance which should be completed and also with respect to Article 18, which set about governance in the region, then it appears obvious to the strong political will of the founding fathers of Indonesia to give an honorable and important for the region in the system of national politics. In the process of the formulation of Article 18 of the 1945 CONSTITUTION and the explanation, the position of the area in the frame of the Unitary State of INDONESIA canbe group edin to 3(three): auto nomous regions, administrative regions and the special region. For the autonomous regions applied the principle of decentralization and deconcentration; while the area facilities are applied the principle of a small area that has the arrangement of the original. As said Soepomo, the state is required to respect it and every state regulation must respect the rights of regional origins. The existence of the special region is not given or formed; it is recognized. If you read the whole treatise changes to Article 18 of the 1945 CONSTITUTION explicitly not found the term asymmetric decentralization. The idea that contain the conception of asymmetric decentralization has appeared since the beginning of the amendments to the CONSTITUTION of 1945, for example, during a meeting of the PAH I BP MPR that convey the imprisoned the importance of maintaining a commitment to the diversity of Indonesia as a country as the ideas of the founder of the nation state which *Bhinneka Tunggal Ika*. Statement Lutfi stated that the relations between the center and the regions should be implemented according to the philosophy of "*Bhinneka Tunggal Ika*" means the local government should not be uniform, but rather adapted to the conditions of each region.(Isra, 2013)

The principle of recognition and respect for regional administration and reaffirmed in Article 18B paragraph (1). Jimly Asshidiqqie confirmed that the new provisions of Article 18A and Bhas changed the format of the form of the Unitary State of the Republic of Indonesia Unitary State of the rigid to the form of the Unitary State of the dynamic. If done scrutiny of Article 18 B paragraph (1) of the 1945 CONSTITUTION, there are 5 (five) main topics, namely: the state recognizes, the state shall respect, which is recognized and respect edisa unit of local government, units of Local government are special or unit of local government that is special or regulated by the legislation. (Huda, 2014)

In Article 18 is indeed not explicitly set which areas are given special autonomy or special but basically the CONSTITUTION has delegated the special auto no my status or privilege into law. To follow up on the provisions of Article 18 of the passed some Legislation related to autonomous regions or areas of facilities namely:

- a) LAW No. 18 of 2001 on Special Autonomy for the Province of Daerah Istimewa Aceh and LAW No. 11 Year 2006 concerning the Governance of Aceh.
- b) ACT No. 29 of 2007 about the Provincial Government of the Special Capital Region of Jakarta.
- c) LAW No. 21 of 2001 on Special Autonomy for Papua Province

The focus of discussion in this research is in the Province of Papua on the basis of law No. 21

of 2001 as the implementation of the mandate of TAP MPR No IV/MOR/1999, which at this time has been amended by Law Number 2 Year 2021 on the Second amendment to Law Number 21 of 2001 on Special Autonomy for Papua Province.

As for some basic become consideration of granting special autonomy of Papua is as follows:(Raharusun, 2009)

- a) Unitary system of government Republic Indonesia according to the 1945 CONSTITUTION recognizes and respects the units of local government that are specific or are facilities that are regulated in the ACT
- b) The integration of the nation within the unitary state of RI must be maintained with respect to equality and diversity of social and cultural life of the people of Papua through the establishment of special autonomy.
- c) Governance and the implementation of development in the Province of Papua has not fully satisfy the sense of justice
- d) It is not yet fully possible to achieve people's welfare
- e) Not fully support the realization of law enforcement
- f) Not yet fully showing respect for human rights in Papua Province, especially for the Papuan people.

Reforms in Indonesia opened the door for the emergence of various new ideas to resolve the major problems of the nation of Indonesia. For Papua, MPR-RI determines the need for giving the status of Special Autonomy to the Province of Irian Jaya as mandated in the Outline of the State 1999 CHAPTER IV of the letter (g) of point 2. If all parties to support the implementation of the Special Autonomy it is to give freedom as possible to the people of Papua to determine the contents of the Special Autonomy within the framework of the law and the integrity of the Unitary State of INDONESIA, then indeed will be a lot of problems that can be solved.(Ramandey, 2005)

The economic development of Papua in Papua carried out based on the following things.(Ramandey, 2005)

- a) All of the business economy in the province of Papua, including the utilization of natural resources carried out to give the benefit and well-being profusely for all the people of Papua to uphold the principles of justice, equality, protect the rights of indigenous peoples, providing legal certainty for employers, as well as the preservation of the environment and sustainable development,
- b) The management of advanced in order of utilization of natural resources, strived to be done fully in the Land of Papua
- c) The agreement and the cooperation agreement that has been done by the central government and the provincial government with the other parties remain in full force and respected at all not to the detriment of indigenous Papuans and not in conflict with the soul and spirit of the Papua Special Autonomy LAW.
- d) The development of the economy based on democracy and carried out by giving the opportunity to the indigenous people or local community.
- e) Negotiations between the government of the Province/District/City and capital investment should involve indigenous peoples

It can be said that the Province of Papua in economic development must meet some of the aspects that is the first utilization of the natural resources which the government should consider the indigenous people of Papua, the second discussion of the capital investment must involve indigenous community, a third of all activities in the framework of the development of the economy of the economy, the preservation of resources, and the whole policy of mandatory involve the indigenous community with the intent of the realization of justice and the welfare of the indigenous community while providing legal certainty.

The principle of Autonomy is actually a part of the principle of real autonomy and responsibility. The principle of autonomy is a real principle that to handle the affairs of government implemented based on the duties, authority and obligations of the actual existing and potentially, to grow, live and develop in accordance with the potential and peculiarities of the region. Thus the content and type of autonomy is not always the same with the other blood.

A formal judicial, since it first appeared in the LAW No. 1 Year 1945 until by ACT 5 of 1974, the spirit of regional autonomy already evident and became the legal basis for the implementation of governance in the region. It's just the spirit of the organizers of the government is still far from the idealism of the concept of autonomy itself. The language used was not as brief and straightforward regional autonomy, it is still about how to arrange the affairs of the household (Marbun, 2005). After there form era was born the LAW No. 22Year1999 on Regional Government with the hope of this ACT became the great Hope of society with the presence of regional autonomy, which adheres to the principle of the principle of decentralization. But the LAW is still found weaknesses, so that the LAW was changed to LAWNumber32Year2004lastamended again to become LAW No. 23 Year 2014.

As for understanding what is meant by autonomy according to the Sugeng Is tan to is the authority to regulate and take care of the household area; whereas according to Ateng Syarifudin, regional autonomy is the freedom or independence that owned the area but not independence but rather only freedom limited or the independence which is realized through the provision of an opportunity that must be accounted for. (Suharizal & Chaniago, 2017)

According to Mariun regional autonomy is the freedom that is owned by the regional government that allows them to make their own initiative in order to manage and optimize resources by their own (Rahayu, 2022). Local autonomy according to the Law No. 23 year 2014 is the right, authority and obligations of the autonomous regions to set up and manage their own affairs and interests of local communities in the system of the unitary state of the Republic of Indonesia.

The policy of granting broad autonomy, real and responsible to the area is a strategic step because it is the answer to the problems of the local nation of Indonesia, construction, poor quality of life of the community and the problem of human resource development; and is a strategic step of the Indonesian nation to commemorate the era of economic globalization by strengthening the base of the regional economy.(Rahayu, 2022)

As the executor of regional autonomy, the area was given the authority to regulate and take care of their own area so it is be the impact positive of the principle of decentralization. With the submission of the authority given to the area then the area also has great authority in making a good policy of the reception area, retribution and taxes. All revenue will be used for community and should remain accountable to the President. Autonomy gives hope for equitable development in the economic sector. For the smooth implementation of a policy in the regions, the necessary details that are more operational than the goals and objectives of a general nature(Jeddawi, 2008). This is where the formation of the special Autonomy LAW for Papua to get the place because it explains in detail the operation al matters related to economic development, especially investment in Papua.

At first, the policies pursued by the central government is collecting almost most of the results obtained from Papua (either in the form of tax and non-tax) for the then distributed to the rest of Indonesia. Such an approach may look "fair" on a national scale but result Edina very backward Province of Papua in various sector sof Development. On the other hand, the construction of the character has become one of the factors occur various forms of human RIGHTS violations in west Papua.(Jeddawi, 2008)

Aspects of welfare that are echoed by the special Autonomy in Papua, is the concrete form of the maintenance of the principle of *staats on thouding* that limit the role of the state and of the government to interfere in the economic and social life of the community. State welfare law in relation to the authority of the central government and local governments in regulating the investment in the region, beginning with the understanding of the understanding of the welfare law of the country itself. Basically the state welfare law which is often also called by the state law of the material or the welfare state is a country where the government is not only responsible for the maintenance of order and peace but also responsible over the welfare of the community and none of the aspects of community life that is free from the interference of the government.

RESEARCHMETHODS

The type of legal research method used in this study is a normative research method. In normative research secondary data as a source of information can be primary legal material, secondary legal materials, and tertiary legal materials. The specification of this research is specifically to analyze the implementation of legal principles, namely research on written

positive law or research on legal methods that live in society. The method will be applied that approach to legislation (Statute Approach) and Case Approach. Case research in normative legal research aims to study legal norms or rules carried out in legal practice.(Jonaedi Efendi et al., 2018)

The technique of collecting data using literature studies (normative legal research) which focuses on secondary data, the authors researched the laws and government regulations relating to this research. Then conducted interviews with informants, especially the public relations department of the Financial Transaction Reports and Analysis Center and the profession to obtain information to add to the lack of complete secondary data. Data collection tools in normative juridical research are derived from secondary data to obtain concepts, theories, and information and conceptual thinking from previous researchers in the form of legislation, scientific work, journals, and others.(Mamudji & Soekanto, 2004)

Making procedures and data collection in this study conducted in two ways: by studying the literature and interviews with key informants such as lawyers, and prosecutors and service providers finance. Data analysis technique begins with an examination of the data done the collected data then conducts direct and directed interviews and then analyzes the data qualitatively, the data obtained is systematically compiled and then analyzed qualitatively in the form of rules. The process of legal Analysis is linked to the theoretical framework to be able to answer the formulation of the problem under study.

RESULTS AND DISCUSSION

Investment policy in the Special Autonomy in Papua Province in Space the LAW of Copyright Work

Based on the approach of the principle of the welfare state, the granting of the specificity of Papua in aspects of capital investment, should involve the indigenous community. Law Number 21 of 2001 on Special Auto no my for Papua Province provide enlightenment on the policy issued to the people of Papua to consider all aspects of the better aspects of sociology, juridical and historical.

In the LAW Number 21 of 2001, the investment mentioned in CHAPTER X of the economy where the economy of the province of Papua is part of the national economy global direction is to create the greatest prosperity of the people and the welfare of the people of Papua by using the principle of justice and equity. The entire business activity in the province by utilizing the natural resources must respect indigenous peoples, provide legal certainty. Licensing is also included in the economy in this case is the licensing of cooperation. For other economies also mentioned about the investment, which the Government of Papua Province can do equity investments in state-owned and private companies that are domiciled and operating in the territory of Papua Province. All activity in terms of capital investment aimed at the development of the economy also provides opportunities to indigenous peoples and local communities in Papua.

In 2019, Papua entered in one of the provinces that received the most investment, amounting to USD 941 million in 127 of the project. Factually, BPS show that up to 2020, there are 184 Companies of Domestic Capital (PMDN) and 323 foreign investment (PMA) in Papua.

The screenshot shows the website of the Badan Pusat Statistik Provinsi Papua. The main content area displays a table titled 'Jumlah Perusahaan Penanaman Modal Dalam Negeri (PMDN) dan Penanaman Modal Asing (PMA) di Provinsi Papua (Unit)'. The table has columns for the years 2018, 2019, and 2020, and sub-columns for PMDN and PMA. The data for Papua Province is as follows:

Provinsi	Perusahaan Modal Dalam Negeri (PMDN)			Penanaman Modal Asing (PMA)		
	2018	2019	2020	2018	2019	2020
Provinsi Papua	87	104	184	146	152	323

Source: BPS, 2020

As the implementation of the Legislation of the Copyrighted Work in terms of investment, then the biggest question is which one should take precedence-related investment in the area of

special Autonomy in Papua. If based on the legal principle of *lex specialis derogat legi generali*, then the affairs of the investment in the area of the Autonomy to be the responsibility of local government Autonomy. This means that the special Autonomy Law prevail over the LAW of Copyright Work. But the implementation is not so because the Central Government is promoting investment in the region so quick and easy and accelerated the process.

If moving from the local Government ACT, in Article 27 stated that (1) the Area of the province was given the authority to manage natural resources in the sea in the region. (2) the Authority of the province to manage the natural resources in the sea referred to in paragraph (1) shall include: a. exploration, exploitation, conservation and management of marine resources outside of the oil and natural gas; b. administrative settings; c. settings layout; d. participate in maintaining security in the sea; and e. participate in maintaining the sovereignty of the state. But the presence of the LAW of Copyright Work, the impact of its own related to this.

Center for Indonesian Law and Policy Studies noted there are some weak points of the LAW of Copyright in a Work-related investment that is (1) not friendly to the environment and threatening the community is marginal, which can be seen from the various concessions the requirements of the environment for businesses, (2) in terms of waste management, the ACT on the Copyright Work allows individuals or business entities dispose of waste management of hazardous materials and toxic (B3) in the river, the sea, and enter into the land with the permission of the government, (3) the LAW of Copyright in the Work to change the Article 16 of the LAW of Estates that provide a limitation to a maximum of 3 years and 6 years since the get status of land rights for businesses to cultivate the plantation land. No time limit was then shortened to 2 years since getting the status of land rights. The LAW of Copyright of the Work does not change the consequences for businesses in terms of exploitation it is not done, i.e. the takeover of part of the plantation which has not been cultivated. However, the administrative sanctions for breach of it, which was previously set out in Article 18 of the LAW of the Plantations, is now abolished by LAW on Copyright Work. (4) Change the settings in the LAW of Copyright Work could potentially lead to the exploitation of natural resources in excess, which resulted in the destruction of the environment and threatening the community. (Wamafma, 2021)

After that, the Government issued a 49 PP that support the implementation of the investment in the area. How to Papua? The province of Papua automatically be impact related example of Article 17 of the LAW of Copyright Work which trim the authority of the local Government in terms of layout, in which the authority of the local Government in the implementation of spatial planning only involves setting, coaching, and supervision of the implementation of the spatial region of the province, and county/city. If referring to the LAW No. 6 of 2007 on spatial planning, local Government was still given the authority in the planning of the layout region of the province, the utilization of the space region of the province, and control utilization of the space region of the province. The government also given the authority for the establishment of a strategic area of the province, spatial planning strategic area, the space utilization strategic area, as well as space utilization control a strategic area.

However, that authority is not listed in the LAW of Copyright Work. This pruning is to make the local Government as merely a spectator, and thus negated the position of the special Autonomy, which should affirmations given to local Government to manage the region. (Wamafma, 2021)

In addition, the LAW of Copyright Work confirms that a number of the authority of the central government includes the planning, control, utilization, and the determination of the space of the national territory, and the authority of the local government, is restricted in accordance norms, standards, procedures and criteria established by the central government, namely in the form of setting, implementation, and cooperation between provinces. The article then generalize all kinds of norms, standards, procedures, and criteria for related to national policy. Leveling all kinds of norms, standards, procedures, and criteria for related to national policy that will eliminate the meaning of the 'specificity' of Papua/West Papua. Then, what's the point of the special Autonomy LAW that made new? (Wamafma, 2021)

As known, Article 38 paragraph (2) of the LAW of Autonomy that the new states that economic ventures in the Province of Papua that utilizes natural resources is carried out while respecting the rights of indigenous peoples, providing legal certainty for employers, as well as the principles of preservation of the environment, and sustainable development that the settings are set with the Perdasus. The phrase means that all the government's commitment relating to

such matters, should be completed in a dignified by the indigenous community itself. (Wamafma, 2021)

It was also affirmed in Article 42 of the LAW on special Autonomy, the contents of which affirm the following things:

- (1) The Development of the economy based on democracy and carried out by giving the opportunity to the indigenous peoples and/or local community,
- (2) Investors investing in the territory of Papua Province should recognize and respect the rights of local indigenous people.
- (3) Negotiations between the government of the province, regency/city, and investors must involve the local indigenous people.
- (4) The opportunity to do as referred to in paragraph (1) is carried out within the framework of the empowerment of indigenous peoples can play a role in the economy of the broadest.

The above is compounded with the contents of Article 22 of the LAW of Copyright Work that restrict the role of local Government in term soft hegranting of the environmental permit for entrepreneurs (Environmental Impact assessment/EIA). Supposedly, in the name of the specificity and the principle of *lex specialis derogat legi generali*, the management of natural resources in Papua following the setting of the special Auto no my LAW. In other words, in the name of auto no my, it is precisely the Role of the central government was limited, and the role of local Government with local communities is lifted and brought forward.

Why the affairs of the investment within the framework of Autonomy and Copyright of this Work ought to be studied in depth? All policies related to the investment or capital investment, derived of the provisions concerning the affairs of mandatory and optional affairs where the government affairs in the field of investment under the authority of the central government and the central government can host it yourself, delegate to the Governor as the representative of the government so that local government has the authority in organizing the investment, except for the implementation of the investment authority owned by the central government.

The post the Law of Copyright Work, formed the Government Regulation Number 5 Year 2021 on the Implementation of the Licensing Trying to Risk-Based. The purpose of this regulation is to strengthen the role of the regions in support of fiscal policy, simplify licensing and ease of doing business. This rule adjusts the tax rates and levies. The Central government will further make adjustments in tax rates and / or charges that have been set in the Regulation. Adjustment of tax rate sand retribution will be determined by Presidential decree. The role of local government will only implement the tax and / or levy the following rates are determined by Presidential decree.

In setting the adjustment of the tax rates and retribution, the Government Regulation Number 10 Year 2021 about Local Tax and Retribution Areas in Order to Support the Ease of doing business and the Service Area as the executor of the Law of Copyright Work, mentioned in Article 3:

- (1) The Central Government in accordance with the national priority program can make adjustments in tax rates and/or charges that have been set out in the Regulations regarding Tax and/or Levy.
- (2) The national priority Program referred to in paragraph (1) of the national strategic project established by the Central Government in accordance with the provisions of the regulations law.
- (3) Adjustment of Tax rates and/or the Levy referred to in paragraph (1) shall be prescribed by Presidential decree.
- (4) Presidential Regulation referred to in paragraph(3)most bit set:
 - a) The national strategic project that gets the facility offer tariff adjustment;
 - b) Types of Taxes and/or Levies which will be adjusted;
 - c) The magnitude of the tariff adjustment;
 - d) The entry in to force of the tariff adjustment;
 - e) The period of adjustment of rates; and
 - f) The areas that perform the adjustment of the tariffs.
- (5) Local Government in carrying out Tax collection and/or Retribution follow the tariff stipulated in the Presidential decree referred to in paragraph (3).
- (6) In the period of adjustment of tax rates and/or Levies depart in the presidential decree referred to in Subsection (3) applies, the level stipulated in the Regulations regarding tax

and/or Levy may apply a return.

The construction above shows that the presence of the LAW of Copyright Work, and PP derivatives, stunting the role of local Government Auto no my. In other words, the character of the centralized raised back. It must be remembered that in Article 34 paragraph (3) of the LAW of Autonomy of the new, already mentioned definitively that the fund balance in the context of the Special Auto no my referred to in paragraph (1) letter c is applicable provisions of the division as follows: a. for the results of tax: 1. Land and Building tax of 90% (ninety percent); and 2. Personal Income tax amounted to 20% (twenty percent); b. for the result of natural resources: 1. forestry by 80% (eighty percent); 2. Fishing by 80% (eighty percent); 3. General mining amounted to 80% (eighty percent); 4. Mining of petroleum by 70% (seventy percent); and 5. Mining of natural gas amounted to 70% (seventy percent). The amount of funds it certainly cannot be rigged again with the mechanism of the LAW of Copyright Work. That is why the Government of the Province of Papua has the legal uncertainty related to the implementation of the LAW of Copyright Work in the space of Special Auto no my.

The implications of the Decision of the Constitutional Court Number 6/PUU-XIX/2021 against the Law Number 10, 2020

The Constitutional court has issued a Ruling Number 6/PUU-XIX/2021. The applicant has submitted an application to the Constitutional Court on December 15, 2020. The applicant test the Laws of Copyright Work because rights and constitutional authority possessed by the applicant detrimental to the applicant since the LAW was enacted in November 2, 2020. The applicant argued that the Statute of the Copyrighted Work formed not based on the Law Number 12 Year 2011 on the Establishment of Laws and Regulations.

In consideration of the constitutional COURT stated that the Law Number 11 Year of 2020 of the Copyrighted Work contrary to the constitution of the republic of INDONESIA Year 1945 and does not have the binding force of law is conditional to the extent not defined "is not done the repair in 2 (two) years since the verdict is pronounced". Point 4 states that the Law Number 11 of the Year 2020 remains valid up to do the repair to the formation in accordance with the grace period as specified in that decision. In points, to-5 stated that the legislation was ordered to make repairs within a period of 2 (two) years since the verdict was pronounced. If a grace period of 2 (two) years forming the legislation does not complete the repair of the law, then the law or article, the material law that has been repealed or amended by the Laws of Copyright work, declared unconstitutional permanently. In points 7 mentioned that the constitutional COURT ordered the Government to suspend all actions or policies that are strategic and have a huge impact and are not justified also publishes the implementing regulations of the new related to Law Number 11 of the Year 2020 about the Copyrighted Work.

How it impacts the delivery of investment in Papua? The post the LAW of Copyright Work, the Government of Papua Province experienced vertigo related to the implementation of this ACT, given in the same year, out of the special Autonomy LAW that is new. If the LAW of Copyright Work declared unconstitutional conditional, then the implementation of the investment according to the LAW of Autonomy of the new, fixed run, at least for 2 (two) years until the LAW of Copyright Work revised. This can cause legal uncertainty when associated with investments with a maturity of over 2 (two) years. What if the LAW of Copyright Work which was revised later to amputate investment policies that have been carried out according to the special Autonomy LAW that is new and Special Regional Regulation (Perdasus) that have been made? This question will cause legal chaos (chaos of law). When it concerns strategic policy such as investment, then follow the logic of the Decision of the constitutional COURT, all actions or policies that are strategic and have abroad impact, should be suspended. Whereas, the investment policy in Papua following the special Autonomy LAW that is new. One example is the LAW on special Auto no my in Papua new specifies that the Papua Province can hold mutually beneficial cooperation with the agency or agencies abroad according to the provisions of [Article 1 point 2 of Article 4 paragraph (5) of the special Auto no my LAW], which in the explanation asserts that this is to enhance the investment. If the LAW of Copyright Work enforced again after the revision, then how the impact of cooperation that was created based on the special Autonomy LAW?

Further, how the fate of a wide range of PP-related investments that have been defined after the LAW of Copyright Work? Theoretically, the repeal of the LAW of Copyright in a Work is not

automatically remove the PP that are already established as their derivatives. Practically perhaps will not be a problem related to the presence of PP that was formed after the Decision of the COURT. But theoretically, there need to be regulations re peel the applicability of the PP, considering one of the reasons a regulation does not apply because repealed by another regulation higher or equivalent. Therefore, the required hard work from the Central Government to be able to perform the synchronization at the level of regulation and implementation of the related investment in Papua.

CONCLUSIONS

As the province with the Autonomy of a Special, then the investment policy in the Province of Papua, following the provisions in the local Government ACT, the special Autonomy LAW and the LAW of Copyright Work. However, there are still legal uncertainty regarding the LAW which is used in the implementation. As a result of the decision of the constitutional COURT related to the LAW of Copyright Work, then there will be the potential chaos of the law (the chaos of law) when the implementation of the LAW of Copy right Work after revision in 2(two) years, amputate all the investment policy that is created based on the special Autonomy LAW. Required a greater energy of Government to a bit of 'impose' label specificity of Papua in terms of investment. Some general principles of management of natural Resources, for example, related to the safety of the environment, are being followed. However, the regulation on licensing procedures, results, local taxes, should give the role of the broadest for the local Government and the community (customs) of Papua.

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