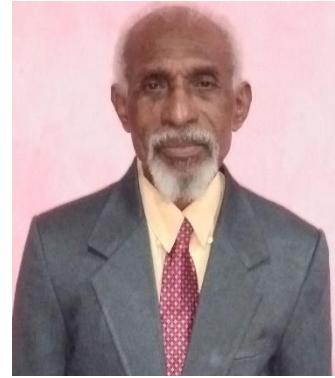


THE FEDERAL STATE REPUBLIC OF WEST -PAPUA (FSRWP)



**Mr. Forkorus Yaboisembut S.Pd
Presiden FSRPB.**



**REALIZATION OF INDONESIA LAWS CONCERNING ANNEXATION
OF DUTCH NEW GUINEA (PAPUA DUTCH)**

A LETTER OF JUDICIAL REVIEW

Number : 1.8/JRF/XI/2019

**Subject : Object to implementation of Criminal Court Code (KUHP in Indonesian Abridge),
article 104, article 106, article 107, article 108 Jo article 87, and article 88
KUHP against West Papua Indigenous People.**

Character: A Peace Way Solution of Annexation Dispute

Enclosure: 1. A Sum sheets of Documents;

2. A Book of Roadmap.

To : The President of the Republic of Indonesia's Supreme Court of Constitution

In Jakarta

Dear President of the Supreme Court of Constitution,

The undersigned this below is:

Name : FORKORUS YABOISEMBUT, S. Pd.

Age : 65 Years Old

Nationality : Papua

Profession : Ondoafi (A Chief of A Traditional Village Government), Sabron Yaru Village,
West Sentani, Jayapura, Papua and as a Former General Chief of Papua
Customary Council, Period 2007-2015

Address : Jl. Batu Dua, Sabon Yaru, West Sentani, Jayapura, Papua, and then called
Requester

In with these, Requester proposed an objection against a Letter of Announcement of the
Indonesia's Police Head of Papua Area, Number: Mak/1/IX/2019, dated at 1 September
2019 on SECURITY AND GOOD MANNERS. Which its content consist of 6 points, especially
Requester complaint point 3 announced: "Forbid everyone did activity which can be
separated a parts and territory sovereign of the Unitary State Republic of Indonesia (USRI)
and did a crime compromised that how as regulated in article 104, article 106, article 107,
and article 108, jo article 87, and article 88 KUHP." These articles in the West Papua history
context indicated there are still going on annexation dispute about state sovereignty
between Republic of Indonesia against West Papua Peoples, which annexed by New York
Agreement 1963 and its follow-up (PEPERA AND UN RESOLUTION 2504) as a base of

international law for Indonesia legality claim over West Papua until at the present. And those articles are remainders of former colonial rule of Netherlands on "makar". As a root causes of the conflicts which has caused human rights violation in all kinds and form that be suffered West Papua People since 1964 till now.

Therefore the objection of the Requester that proposed against to the articles of the KUHP to clarify and confirm with Republic of Indonesia's regulation of law (undang-undang/UU) number 24 at the year 2000 concerning, INTERNATIONAL AGREEMENT by procedure of judicial review in the Supreme Court of Constitution of the Republic of Indonesia mechanism. In according to the article 1 number 3, letter a) jo Article 10 UU Number 24 The Year 2003, concerning the Supreme Court of Constitution. Before the Requester bring the annexation dispute to the International Court of Justice (ICJ).

The Requester took those steps to respect to the Supreme Court of Constitution of the Republic of Indonesia, and in fighting for law and justice in national and international level.

TIME LIMIT

The Requester proposed this objection in the Letter of Judicial Review is still going on in 180 days, since the Letter Announcement of the Police Head of Papua Area number Mak/1/IX /2019, 1 September 2019 of the time limitation in according with Regulation of the Supreme Court of Justice number 1/2004, article 2 ,paragraph 4.

THE REASONS

1. In the Article 28G, Paragraph (1) Indonesia's Constitution 1945 (AMENDMENT I TILL TO IV In One Manuscript), stated: "Everyone has rights for self-protection, family, honour, grade, and property as an ownership under its authority, and too has rights for feel safe and protection from fear of threat to did or didn't do something which those are the basic rights."
2. KUHP article 104, article 106, article 107, and article 108 Jo Article 87, Article 88 KUHP, Requester proposed objection operated to any one of the West Papua Indigenous Peoples. Because it is faced each other with Article 28G, Paragraph (1) of Indonesia's Constitution of AMENDMENT I TO IV mentioned above. And in the 19th October 2011 announced unilateral declaration of independence (UDI) of Papua Nation In West Papua Country over the former territory colony of the Netherlands New Guinea (Dutch Papua), there was a license letter of the Central Government's Republic of Indonesia to take care of Third West Papua People Congress from 17th till 19th October 2011 (enclosure its copy), and in the unilateral declaration itself has fulfilled the terms of general international law. Therefore must be protected by the Indonesia Government concordant with article 28G, Paragraph (1) the Indonesia's Constitution mentioned above. Because Article 28G, Paragraph (1) has fulfilled a meaning of universality principle of international law;
3. The terms of general international law has been ratified by Indonesia in the Republic of Indonesia regulation of law (UU) number 24 the year 2000 on the International Agreement, article 18 :"An international agreement ended if, point (f),

emergence a new norm of the international law, point (g), object of agreement lost."

4. In the New York Agreement, Papua Nation and West Papua Country as former colonial territory of Netherlands New Guinea (Dutch Papua) become *an object of the agreement*, after unilateral declaration of Papua Nation, 19th October 2011 in Jayapura City, automatically become an *international subject of law that known as belligerent* (*Read: Damos Dumuli Agusman, SH. M.A., HUKUM PERJANJIAN INTERNASIONAL, Kajian Teori Dan Praktek Indonesia, Page 10*). It is meaning a state has been struggling to receive recognition and transfer sovereignty. Because in unilateral declaration itself has fulfilled the terms of general international law, which can't be substituted or changed (peremptory norms);
5. UU Republic of Indonesia number 24 the year 2000 on the International Agreement is a ratification form of the Vienna Convention on The Law of Treaties between States 1969. Therefore Indonesia has tied itself in the Vienna Convention 1969;
6. The Vienna Convention on the Law of Treaties Between State 1969 in the article 64 mentioned:" Emergence of new peremptory norm (jus cogens)," *If a new peremptory norm of general international law emergence, any exiting treaty which conflict with that norm become void and terminates.*"
7. The experts' inventory concerning peremptory norm (jus cogens), there were many more standards of the experts in identification norms of jus cogens. For example, Vedross, Waldock, Rozakis and so on. From the many more standards maybe the standard of Vedross to be in used. Which he divided in 3 types, namely:
 - 1) Norms concerning of the equaled interest of international communities in the whole meaning;
 - 2) The norms that to be formed for the humanity purposes;
 - 3) The norms that urged by The United Nations Charter (UN Charter) for against some treaties used by forces in the international relation.
8. Article 53 of the Vienna Convention on the Law of Treaties between States 1969, on a large line explained that a norm of law can become as a jus cogens is if the norm has been agreed by the states as a norm of law in internationally that has a general character and enforced character (that it is called double consent condition), and then that conditions must be recognized and received by state community as in generally and universally means without exception (that it is universality condition.)
9. Examples of jus cogens, UN Charter article 1, article 55, article 56, article 62, article 68, article 76 in recognizing on basic human rights and right of self-determination, and principles in general international law of agreement in according with conditions that have been mentioned above by Vedross and Article 35 Vienna Convention 1969.
10. Is a norm of jus cogens can be substituted or changed? The answered can be found in lasted sentence of article 53 Vienna Convention 1969 mentioned:".....which can be modified by subsequent of general international law having the same character." It is meaning a jus cogens can be substituted or changed by jus cogens norm only.
11. How the existence of an old jus cogens? In that case occur a general law principle namely, lex posterior derogate lex priori (the old be flanked out by new).

12. Unilateral Declaration Independence of Papua Nation in West Papua Country, 19 October 2011 over the former colonial territory of Netherlands New Guinea (Dutch Papua) has fulfilled in itself the terms of general international law of jus cogens norms, like as mentioned in the UN Charter, article 1 paragraph 2:"To develop friendly relations among nations based on respect for the principle equal right and self-determination of people, and to take other appropriate measures to strengthen universal peace. "
13. Therefore we can stated in exactly, that the New York Agreement with its follow-up (act of free choice/ PEPERA and UN Resolution 2504) as a basic of law to maintenance West Papua (former colonial territory of Netherlands New Guinea/Dutch Papua) as an integral parts state territory that legally of the Unitary State Republic of Indonesia lost and terminates. Therefore the Republic of Indonesia's government has no right again over whole territory of West Papua, to implementation the every regulation of law like as mentioned in the Announcement of Papua Area Police Head, number: Mak/ 1/IX/2019,1 September 2019, especial in point 2 and 3. (its copy enclosure)
14. In the Preamble of the Republic of Indonesia's Constitution 1945, in the first paragraph stated in exactly, that the freedom is the right of every nation and therefore that, colonial in over the world must be eradicated, because not according with attitude of human being and attitude of justice.
15. Universal Declaration of Human Rights that adopted by United Nations in the Word International Conference, December 10, 1948, Article 15 explained:
Paragraph 1), Everyone has a right to nationality;
Paragraph 2), No one shall be arbitrarily deprived his nationality.
16. In practically we can explain that, Indonesia nation took independent over the former colonial territory of the Netherlands Indies, which annexed by Japan 1942. Meanwhile Papua nation took independent base on the unilateral declaration, 19 October 2011 in Jayapura City over the former colonial territory of Netherlands New Guinea (Dutch Papua) which annexed by Indonesia since 1963. So that it is very clear its legality in according to the decolonization principles, *uti possidetis juris* and legal successor of state. And both of the states in legally too become international subject of law.
17. A Political Manifest of Independent of Papua Nation on 19th October 1961 over the colony territory of Netherlands New Guinea as a proof where it was announcement nationality of Papua by a Papua National Committee (its copy enclosure), then annexed by Indonesia on 1st May 1963.
18. Annexation in the nation law is," extended a territory of state by forces (some time with treaty). Usually with reasons of family nation and state relation or a cultural. If the territory government which annexed it canceled by war means, that annexation named debillitio (Lat.). For example debillitio: Korea by Japan (1910) , Albania by Italy (1939), Czech by German (1939). If territory which annexed has not political statutes (non-self-governing territory) named occupation (Lat.). For example: Montenegro by Serbia (WW I), Indonesia by Japan (1942-1945). Quoted from Indonesia Encyclopedia, Special Edition, Biding I, Page 213.

19. The United Nations List of Non-Self-Governing Territory stated West Papua (Territory of the Netherlands New Guinea) annexed by Indonesia 1963, changed in the List of Joined Another State (Last Modified September 8, 2014, a copy enclosure.)
20. In West Papua history context on colonial rule of law legality in its scraping and changing at the period of Dutch Colony, at 1951 West Papua statute of law had been increased as a part of the Netherlands Kingdom in Constitution and regulation of law of the Netherlands namely, Netherlands New Guinea (Dutch Papua) by 2/3 voters of Parliament (Read: J.P. Droog Lever, Prof., ACT OF FREE CHOISE! PAPUA AND SELF-DETERMINATION, Indonesian Edition Page 226, its copy enclosure). That it was gone with has been separated Indonesia, after took independent over the colony territory of the Netherlands Indies (Dutch Indies) at 17th August 1945. Therefore Indonesia can't claim again West Papua as its integral part of state sovereignty legality base on the decolonization principle *uti possidetis juris*. Because West Papua not a colony territory of the Netherlands Indies again, and West Papua People had been struggling some decades for took independent since 1961 before annexation. Then after annexation at 1st May 1963 in facing directly against Indonesia's military (TNI) and police (POLRI) brutality operation in all kind of military password over entire territory of West Papua. That it caused human rights violation in all kind and forms which has been suffered by every one of West Papua People until at the present. Therefore we claim annexation dispute is the root causes of the all conflicts over West Papua Country till now.

P E T I T U M (PETITION)

Base on all over of explanation that have been put forward above and explanation in the title book, Roadmap of Independence which enclosure with this Letter of Judicial Review, Requester request to the assembly of judges that adjudicate to give decision fairly in fighting for law and justice as follow:

1. The Republic of Indonesia don't used again article 104, article 106, article 107, and article 108 KUHP Jo article 87 and article 88 KUHP like as wrote in the letter Announcement of the Police Head of Papua Area, number Mak/1/IX/2019, 1 September 2019 point 2 and 3 against all over West Papua peoples in the Federal State Republic of West Papua (FSRWP);
2. Another regulation of law which relevance with *jus cogens* norms (like basic human rights values) still be going on until to be done a peace settlement on annexation dispute between Republic of Indonesia and FSRWP;
3. Please give a recommendation to the His Excellency President Republic of Indonesia to takes decision in processing on resettlement of the annexation dispute all over the former colonial territory of Netherlands New Guinea (West Papua territory) between Republic of Indonesia and Federal State Republic of West Papua (FSRWP) in the short time.

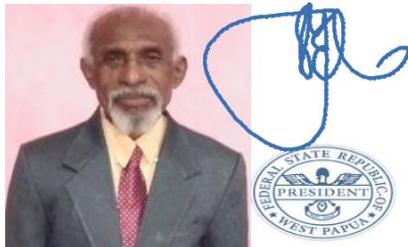
LAWYER OF THE REQUESTER

The Requester has a lawyer or a sum lawyers that be arranged by full powers (written power of attorney) concordant with its needs. For attending and registered this Letter of Judicial Review to a Clark of the Court, and other activities in according to its professional of job with coordination and consultation to Requester.

Thus the Letter of Judicial Review to be done in fully accountable with respect to the human being norms and be most respectful onto The Almighty Only One God, in maintenance international peace and security

Done in Jayapura
Dated at: 08 November 2019
Best Regards, Requester:

PRESIDENT NFRPB,



FORKORUS YABOISEMBUT, S. Pd.
SabronYaru, Sentani, Jayapura Papua

Send Copies To:

1. His Ecellency Presiden of the Republic of Indonesia in Jakarta;
2. Dear Chairman of Indonesia People Representatatives Council (DPR RI) in Jakarta;
3. Dear President of the Republic of Indonesia Supreme Court of Justice in Jakarta.

THE PRESS CONFERENCE OF THE PRESIDENT OF THE FEDERAL STATE REPUBLIC OF WEST PAPUA ABAUT SUBMITTING OF THE JUDICIAL REVIEW TO THE CONSTITUTIONAL COURT IN JAKARTA

The main objective is the existence of acts of violence so far based on the treason articles in the criminal code to maintain the annexation of the West Papua Region of the former colonial Netherlands and stated that the New York Agreement as a form of annexation through an agreement with the follow up of the Act of Free Choice at the UN General Assembly's solution 2504 has lost and ended after the Declaration of Papuan Unilateral Independence on 19 October 2011 in Jayapura city on the last day of the Papuan People's Congress (PPCIII) . The annexation according to the laws of the nations is; "Expanding the territory of the State by force sometimes with treaties.

" (Read: Indonesian Encyclopedia, Special Edition Volume I, p. 213). So the Papuan Nation and the Former Colonial Territory of the Netherlands New Guinea (Papua Netherlands) were annexed in two ways, first with a treaty called the New York Agreement (15 August 1962-1 May 1963), second by violence since 1964 by Indonesian military operations (ABRI / TNI) Now) and the police (POLRI) in various codes of military operations. The annexation dispute acts as the root cause of the conflict in the occurrence of human rights violations in various types and forms suffered by every Papuan Indigenous Peoples up to now. The main reason is because of the One-sided Declaration of Papuan Nation, October 19, 2011 in the various Papuan Indigenous Peoples up to now in itself has fulfilled the requirements of this general international law (General International Law). And contains legal norms, peremptory norm (jus cogens), meaning that legal norms cannot be changed except by the jus cogens norm itself. As stipulated in the Law of the Republic of Indonesia Number 24 of 2000, Regarding the International Agreement, Article 18 states, "International Agreement ends if: the letter point (f), a new norm arises in international law, and the letter point (g), the object of the treaty is lost. " . In Article 64 of the 1969 Vienna Convention concerning: "Emergence of new peremptory norm (jus cogens), meaning a new legal norm that cannot be changed, states:" If a new norm that cannot be changed in international law arises, then the existence of any agreement that conflicts with the norm it becomes lost and ends. "In the New Agreement, the Papuan Nation and the former colonial territory of the Netherlands New Guinea (Dutch Papua) were made the object of the agreement, but after the Unilateral Declaration of the Papuan Nation, October 19, 2011 automatically won the title as the subject of international law known as belligerent. (Read: Damos Dumoli Agusman, SH, M.A., **LAW OF THE INTERNATIONAL AGREEMENT**, Analysis 2 Indonesian theory and practice, p. 10.). This means that a country that is struggling to gain recognition and transfer of sovereignty. The Indonesian government has thus binded itself to the 1969 Vienna Convention through Law of the Republic of Indonesia Number 24 of 2000, then the New York Agreement with the Follow-Up results of the Act of Defense and Resolution of the UN General Assembly 2504 has lost and over. ... Of course we will fulfill certain requirements, such as ratification or with access to some international law and make a declaration to recognize and accepted.

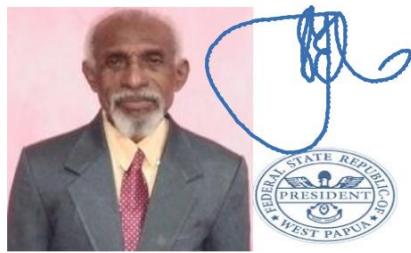


Photo: President of the Federal State of West Papua is reading out the text of a press conference to be entrusted to a team witnessed by staff.

The petition desired in the Judicial Review in the Constitutional Court is essentially the peaceful settlement of the annexation dispute, as well as the recognition and transfer of sovereignty from the Republic of Indonesia to the Federal State of the Republic of West Papua. If it cannot, because it is rejected, it will be brought through the procedure of the International Court of Justice (ICJ) in The Hague , Netherlands of course the International Court of Justice, the UN Security Council and the UN General Assembly. Before going there, the necessary requirements must be fulfilled based on the UN Charter, Article 2 paragraph 6, Article 35 Paragraph 2, and Article 93 Paragraph 2, relating to the International Court of Justice, being prepared. **HERE, "NO REFERENDUM."** Indonesia has become a member of the United Nations Security Council (UN) and a member of the UN Human Rights Council. So that the UN Secretary General is not tired of inviting Indonesia 3 to attend later sessions. To resolve the West Papua annexation dispute with the Federal State Republic of West Papua * FSRWP) , besides the State of Palestine was very diligently voiced by Indonesian Foreign Minister Retno Marzudi.

Jayapura 12 November 2019

PRESIDENT NFRPB,



FORKORUS YABOISEMBUT, S. Pd.
SabronYaru, Sentani, Jayapura Papua