LEGAL LEGITIMACY OF INDIGENOUS PEOPLES' RIGHTS IN NATURAL RESOURCES MANAGEMENT: THE CASE IN SERAM BARAT

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Abstract

This study purposes to analyze and find out international and national legal documents that have legitimized the rights of indigenous peoples in natural resource management and the reason why the West Seram Regency Government has not formed a regional regulation as a basis for legitimizing the rights of indigenous peoples regarding natural resource management. This type of research is empirical, while still using literature studies based on theories, doctrines and legal norms related to the issues discussed. The nature of the research is explanatory analytical prescriptive by explaining the issues raised based on legal provisions, norms and theories. Then analyzed qualitatively. Based on the research results; The legal legitimacy of indigenous peoples over the management of natural resources as a human right is largely determined by the role of district/city governments which must establish regional regulations. Therefore, the role of the district city government and the district parliament must work together. In fact, the recognition of legal legitimacy for the presence of customary law communities is still ambiguous. On the one hand, recognition of the identity of the indigenous peoples has been carried out, but on the other hand, the use of exclusion under other provisions. Even if it has been fulfilled procedurally and substantively, a legal legitimacy is not necessarily a guarantee that customary law community units are recognized. Considering the more dominant interests of the State over natural resources in the midst of a free market economy and the strengthening of the accumulation of capital power.

Keywords: ***indigenous people, legal legitimacy, natural resources, rights.***

INTRODUCTION

Approximately three hundred and fifty (350) million of the world's population are indigenous peoples.[1] Not much different from the previous opinion, the United Nations Development Program reports that there are about three hundred and seventy (370) million people who are members of indigenous and tribal peoples living in more than 70 countries around the world, constituting 5% of the entire world population. Meanwhile, 80% of all biodiversity on planet earth thrives in 22% of the earth's area where indigenous peoples live.[2] Researchers state that their rich biodiversity is threatened, it will also threaten the long-standing and hereditary relationship between indigenous peoples and their homeland, and will threaten the health and welfare of indigenous peoples. The ongoing environmental degradation endangers their continued relationship with the environment that has been practiced for thousands of years, such as collecting drugs, hunting, fishing, and agricultural activities.[3]

Data recorded by the Association for Community-Based and Ecological Law Reform (Perkumpulan Untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis/Huma), which states that 91,968 people from 315 indigenous communities in Indonesia have become victims of conflicts over natural resources and land. Conflicts occurred in 98 cities/districts in 22 provinces with the number of conflicts reaching 232 cases.[4]

This can be attributed to the situation of an increasingly free market economy, so that the side of the 'state' is precisely on the owners of capital. This is what causes the neutrality of laws and regulations, thus 'mortgaging' the guarantee of legal certainty for indigenous peoples.

If you look closely, there are so many international legal instruments that legitimize the existence of indigenous peoples. Among them are the ILO Convention No. 157 Year 1957 which deals with the protection and integration of indigenous peoples and tribal and semi-tribal communities in independent countries. This was followed by the 1989 ILO Convention 169. The main concept promoted in the 1989 ILO Convention No. 169 relates to the preservation and participation of indigenous peoples in policies and decisions that affect their survival and existence. There are several important points that are put forward in this convention, including the recognition of indigenous peoples as subjects of protected rights. Then followed by the recognition of the collective rights of indigenous peoples.

In addition to the instruments mentioned above, there are also human rights principles and norms that apply to everyone regardless of the boundaries of space, time and place, because of the moral demands of human rights, which essentially look at humans not in different social strata. but there is equality. These principles and norms of human rights are interrelated and interdependent, such as the international covenant on Economic, Social and Cultural Rights (ICESCR), there is also The International Covenant on Civil Political Rights (ICCPR), Decalaration Universal Human Rights (UDHR), and The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

All of the human rights norms mentioned have been ratified by the Indonesian government, however, the Indonesian government objected to ratify the ILO Convention No. 169 of 1989 on the grounds that there would be very complex legal implications in Indonesia and the concept of indigenous peoples in Indonesia is different from the concept of indigenous peoples. in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).[5] Whereas Indonesia has ratified various provisions of international law, including the 1966 ICESCR Covenant with Law No. 11 Year 2005, the Universal Declaration of Human Rights with Law No. 39 Year 1999, the ICCPR Covenant with Law No. 12 Year 2005. There are still many other international conventions that have been ratified related to the rights of indigenous peoples.

Some of the international and national legal documents mentioned above are an illustration of the recognition and protection of human rights for minorities, namely indigenous peoples residing in the

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[1] Eddie Riyadi, Prolog: Masyarakat Adat, Eksistensi dan Problemnya: Sebuah Diskursus Hak Asasi Manusia; in Rafael Edy Bosko, Hak-Hak Masyarakat Adat Dalam Konteks Pengelolaan sumber Daya Alam, ELSAM, Jakarta, 2006, p. 1

[2] United Nations Development Programme, “Human Development Report 2011 Sustainability and Equity: A Beer Future for All”, New York: Palgrave Macmillan, 2011, p. 54

[3] Jeff Corntassel and Cheryl Bryce, "Praccing Sustainable Self-Determinaon: Indigenous Approaches to Cultural Restoraon and Revitalizaon", Brown Journal of World Affairs, Volume XVIII, Issue II, Spring/Summer 2012, p. 151, cited by Muazzin, Hak Masyarakat Adat (Indigenous Peoples) atas Sumber Daya Alam: Perspektif Hukum Internasional, Padjadjaran Jurnal Ilmu Hukum, Vol. 1, No. 2, 2014 p. 322

[4] Tempo, Monday, October 28, 2013, id.berita.yahoo.com/korban-konflik-pertanahan-capai-91-968-orang073753758.html victims of land conflicts reached 91,968 people. Plantation sector conflicts are the most common, followed by forestry and mining. Plantation conflicts occurred in 119 cases with an area of 415 thousand hectares, meanwhile forest conflicts occurred 72 cases with almost 1.3 million hectares in 17 provinces and mining conflicts 17 cases with an area of 30 thousand hectares.

[5] http://www.aman.or.id/2012/09/press-release-pemerintah-indonesia-menolak-rekomendasi-dewan-ham-p terkait hak-hak-masyarakat-adat/ accessed on 17 April 2021.

archipelago. However, in fact, the human rights of these minorities are very difficult to be able to enjoy their rights in their own land. They are ignored, marginalized, uprooted from their cultural roots and even from the land that has brought them to life for generations. The entire legal provisions stipulated by the State are actually oriented only to the State and ignore the existence of indigenous peoples for and for the sake of the State.

By stating the thoughts of Nurjaya, it can be conveyed that substantially the problem of utilizing natural resources stems from a management paradigm that is centralized in style, centered on the State, prioritizing a sectoral approach, ignoring the protection of human rights which in the end does not provide space for community participation and ignores human rights. indigenous peoples' rights.[6]

Contextually, conditions of neglect and marginalization were found in customary law communities in the two districts of West Seram, and Central Maluku District. This can be seen in the absence of local regulations that recognize and guarantee the existence of customary law communities. Compared to other regions or provinces in Indonesia, the stipulation of Regional Regulations has become a political law to provide legal certainty for customary law communities and their rights. This is not the case in the two districts mentioned above. In fact, it was found that there were several stipulations of laws and regulations both vertically and horizontally which were deliberately formed and led to the existence of indigenous peoples to recognize state law, and deny customary law. On the other hand, there is an intervention in the provisions of state law to regulate the government affairs of indigenous peoples, especially in terms of electing village heads.[7] Whereas factually or clearly this village is a traditional village where the determination of the village head or whatever the term is in accordance with the designation for each customary law community, customary law should be included in regulating the government system. The existence of state law intervention on the system of governance of indigenous peoples, of course, will have implications for the rights of indigenous peoples that are inherent in them. For example, the rights of indigenous peoples to natural resources that are in their petuannya area. Discussing natural resources that are in the territory of customary law communities, contains an orientation on the meaning of wealth which is one of the features and is inherent in the existence of customary law communities, which is also equipped with a pattern of alliances that are regular, permanent and have their own power.[8]

The critical question that arises in the mind is whether international legal documents that have been ratified into national law, coupled with the existence of a series of national legal provisions that legitimize the rights of indigenous and tribal peoples and their entire existence cannot be used as a legal basis for placing legal communities. adat as a community that should be treated specifically as part of the obligation and responsibility of the State to protect and ensure their existence. This framework of thought has led the author to examine the extent to which the government's responsibility is to provide protection, guarantee and fulfillment of the rights of indigenous peoples through regional regulations as a manifestation of the implementation of the laws and regulations above them. Regional regulations are considered as the lowest legal product that can provide legal legitimacy for the recognition and protection of natural resources which conditio sine qua non will always face the state.

METHOD

This research is included in the type of empirical research, namely research conducted by focusing on field research.[9] This research was originally sourced from references to library materials in the form of theoretical foundations in the form of principles, conceptions, doctrines and legal norms

[6] The thoughts of I Nyoman Nurjaya were adopted in his book Pengelolaan Sumber Daya Alam Dalam Perspektif Antopologi Hukum. His thinking is based on various facts and realities faced by indigenous and tribal peoples who have to experience injustice over land, water and the regional environment that has so far brought them to life. The injustice is both in the legal instruments set by the State and in its implementation.

[7] The use of the term village head is used by the author based on a general concept that describes a village head leader as the leader, the sole ruler in the village government and carrying out village government affairs based on his position and authority as well as his duties which have been regulated in the legislation. Meanwhile, the village head or other designations according to the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 84 Year 2015 concerning the Organizational Structure and Work Procedures of the Village Government, is a Village Government official who has the authority, duties and obligations to organize his village household and carry out the duties of the Government and Regional Government.

[8] Mr. B. Ter Haar Bzn translated by K. Ng. Soebakti Poesponoto, "Asas-Asas dan Susunan Hukum Adat (Beginselen en Stelsel van Hat Adat Recht)", Prandnya Paramita, Jakarta, 1987 in Lalu Sabardi; Konstruksi Maskna Yuridis Masyarakat Hukum Adat in Article 18B The 1945 Constitution of the Republic of Indonesia for the Identification of the Existence of Customary Law Communities, Jurnal Hukum dan Pembangunan Tahun ke-43 No.2 April-Juni 2013, p. 170-196, see http://jhp.ui.ac.id/index.php/home/article/viewFile/19/19.

[9] Kadarudin, *Penelitian di Bidang Ilmu Hukum (Sebuah Pemahaman Awal)*, Semarang: Formaci Press, 2021, p. 171

related to issues concerning indigenous peoples in natural resource management and their influence on human rights, coupled with other documents. legal documents both international and national and other important documents belonging to the government which are also used as references in the literature. This research is an explanatory analytical prescriptive,[10] based on the collected data, sorted based on their relationship and then analyzed by doing qualitative decomposition.

RESULTS AND DISCUSSION

Confession: Initial Guarantee of Human Rights of Indigenous Peoples on Natural Resources.

In international law, recognition is one of the legal elements of the formation of a State, in addition to the presence of elements of population, territory and government.[11] Recognition itself is a very important element at the level of building relations between countries. With this recognition, it opens up opportunities for relations between countries that will continue in the form of cooperation in the political, economic, legal, social and so on. Lauterpacht in his analysis of recognition simply concludes that recognition allows States to establish cooperation with other subjects of international law.[12] In the sense that recognition is the starting point for the existence of subjects of international law in this case the state to establish relations and cooperation with other legal subjects other than the state. By acknowledging placing the subject of state law, obtaining legitimacy for every action or deed he does.

The concept of confession (*erkening*) which is adapted from Alting has a terminological meaning as a process, method, act of confessing, or admitting while admitting that he is entitled.[13] Meanwhile, Kelsen, through his writing entitled "General Theory of Law and State", describes the concept of recognition in two dimensions, namely the political and legal dimensions. In the political dimension, the emphasis is on the recognition and will of the State to cooperate in the political and other fields with the people it recognizes. Meanwhile, the legal dimension relates to the legal procedures used to regulate the substance of the recognition itself which is actually based on the provisions of international law.[14] Listening to Kelsen's framework which was later quoted by Muazzin in his analysis of his writings, there are two actions in a confession, namely political recognition and legal recognition. Political action recognizing a State (read: customary law community) means that the State recognizes and wishes to establish political or other relations with the community it recognizes, while legal action is the procedure used by international law or national law to establish facts. State (read: indigenous peoples) in a concrete case.[15]

State recognition in its reference is aimed at indigenous peoples, then recognition in these two dimensions, politics and law have legitimate powers that place customary law communities both de facto and de jure.[16] This is in line with the opinion conveyed by Nor Fauzy Rahman that with the state's recognition of customary law communities in relation to citizenship status, either individuals or groups.[17] With this recognition, citizens can carry out their rights both politically and legally. State recognition is the initial means that bridges the interests of indigenous peoples' rights as legal subjects as stated by Wignyosoebroto "Recognition by the state of indigenous peoples' land rights is essentially a reflection of the willingness of the bearers of state power to recognize the existence of autonomous indigenous peoples. , and then also to recognize the rights of the indigenous peoples to the land and all the natural resources that exist on and/or in it—which are of vital value to ensure the physical and non-physical sustainability of the community".[18]

It is interesting to note that each stage of recognition that takes place for indigenous peoples through the recognition of the colonial state and by related parties has an impact on attention and increased efforts to recognize and protect indigenous peoples. Organization of the League of Nations (Liga Bangsa-Bangsa/LBB) with its authority to form and develop a doctrine based on "trusteeship". As

[10] Soerjono Soekanto, Pengantar Peneltian Hukum, Jakarta, Universitas Indonesia Press, 1986, p. 50 and 9-10.
[11] Kadarudin, Antologi Hukum Internasional Kontemporer, Deepublish, Yogyakarta, 2020, p. 431
[12] Lauterpacht, Recognition in International Law, The macmillan Company New York, 1948, p. 28
[13] Husen Alting, Dinamika Hukum dalam Pengakuan dan Pelindungan Hak Masyarakat Hukum Adat atas Tanah, Yogyakarta, 2010, p. 64
[14] Muazzin, Hak Masyarakat Adat (Indigenous Peoples) atas Sumber Daya Alam: Perspektif Hukum Internasional, Padjadjaran Jurnal Ilmu Hukum, Vol. 1, No. 2, 2014, p. 322
[15] Ibid.
[16] Ibid.
[17] Noer Fauzy Rahman, Masyarakat Hukum Adat Adalah Bukan Penyandang Hak, Bukan Subjek Hukum, dan Bukan Pemilik Wilayah Adatnya, WACANA Jurnal Transformasi Sosial, Nomor 30, Year XV, 2014, p. 25–50 Published by Indonesian Society for Social Transformation (INSIST), p. 37
[18] Wignjosoebroto, S. 1998. "Kebijakan Negara untuk Mengakui dan Tak Mengakui Eksistensi Masyarakat Adat Berikut Hak atas Tanahnya." Jurnal Masyarakat Adat 01 in Noer Fauzy Rahman, Ibid., p. 46

a result, two articles were formulated, namely Article 22 and Article 23 of the LBB which focused their regulation on customary law communities. Specifically, Article 22 of the LBB regulates "a nation that has not been able to stand alone in the midst of the difficult conditions of the modern world", but it is hoped that the quality of civilization with a high value is found in the community. The reality of the existence of these indigenous peoples prompted LBB to formulate Article 23. This article is an imperative affirmation article for LBB members to carry out a positive task of supervising fair treatment of indigenous peoples from areas within their guardianship areas.[19]

The development of these policies apparently continued until the United Nations Organization (UN), which replaced the LBB, decided on several policies. Cooperating with multilateral agencies to conduct studies on the existence of indigenous peoples, including establishing a sub-commission to prevent discrimination and protect minorities. The data collected is based on input from the government, indigenous peoples almost all over the world. This data then becomes a reference for the United Nations to form a working group and discuss various matters related to indigenous peoples starting from land, territory, water, natural resources, wealth, culture, and other rights attached to indigenous and tribal peoples who continue to be promoted to the arena. international as revealed by James Anaya.[20]

All efforts made by the United Nations together with the working group succeeded in establishing ILO Convention No. 107 Year 1957 concerning the Protection and Integration of Indigenous Peoples and Tribal and Semi-Tribal Indigenous Peoples in Independent Countries. Observing the ILO Convention No. 107, there is a tendency to slightly move away from the essence and existence of indigenous and tribal peoples who are already known to emphasize groups or communities with collective rights to land, natural resources, wealth and culture. Even though it is recognized that there is recognition of individual rights in customary law communities, it does not place collective rights in the second position, because even if there is recognition of individual rights, in certain situations and conditions individual rights must be subject to collective rights. The following weaknesses are found in the ILO Convention No. 107 Year 1957, collective rights can be transferred at any time in the interests of the state.[21]

In Indonesia, the recognition of customary law communities has been formulated in various regulations, ranging from the 1945 Constitution of the Republic of Indonesia to the laws and regulations under it. Recognition of the existence of indigenous peoples is actually based on the fact that de facto, they existed long before this country existed. Even citing the research of Tjahyono Prasodjo, it was stated that in the Majapahit era, adat was recognized as one of the sources of law which was referred to as "Desadrsta" which means law in an area.[22] The existence of Customary Law Communities is very dependent on the implementation and recognition of their Customs as a bulwark of the land of the social system through various kinds of social institutions. This is why, even in the form of a kingdom, the existence of the Customary Law Community can grow and prosper. Entering the era of colonialism, the Indigenous Law Community was initially underestimated as primitive with an underdeveloped legal system. The pattern of customary law such as togetherness, religion (magical-relegius), concrete, has not been considered as a modern law with a written system. This is what gives rise to a negative assessment of customary law communities who are considered primitive, not modern, old existing natives.[23]

Human Rights of Indigenous Peoples on Natural Resources, Study of Legal Instruments.

Human rights (Hak Asasi Manusia/HAM), are rights that are inherent in human existence, because indeed he is a human being. In the meaning of human rights that are owned by every human being, it already exists and is integrated when humans come into the world. Thus, it can be said that human rights are a gift from God to humans and are not given by anyone, nor are they based on positive law.[24] The moral basis of this statement is that all human beings have the same and

[19] Ibid., p. 41
[20] James Anaya, Indegenous Peoples in International Law, 1996, p. 52
[21] Rafael Edy Bosko, *Op.Cit*., p. 49
[22] Iham Yuli Isdiyanto dan Deslaely Putranti, Perlindungan Hukum Atas Ekspresi Budaya Tradisional dan Eksistensi Masyarakat Hukum Adat Kampung Pitu, (Legal Protection of Traditional Cultural Expression and The Existence of Customary Law Society of Kampung Pitu), Jurnal Ilmiah Kebijakan Hukum, Vol. 15, No. 2, Juli 2021, p. 236
[23] Raithah Noor Sabandiah and Endra Wijaya, "Diskriminasi Terhadap Agama Tradisional Masyarakat Hukum Adat Cigugur," Jurnal Penelitian Hukum De Jure 18, No. 3 (2018): p. 335, in Iham Yuli Isdiyanto dan Deslaely Putranti, Ibid.
[24] Jack donnely, Universal Human Rights in the Theory and Practice, Ithaca and London: Cornell Universitty Press, 2003, hal 7-21 dan Maurice Cranston, What are human Rights? New York; Taplinger, 1973 in Rhona K.

inalienable dignity and status, as formulated in article 1 of the UDHR; "All human beings are born free and equal in dignity and rights".[25] The basis of this understanding is to lay down that human rights are universal, and therefore respect and respect for human dignity cannot be denied by anyone and under any circumstances.

To strengthen this basis and understanding, it is good to put forward the concept of thinking from Franz M. Suseno which states that the principle of understanding human rights lies in the awareness that society or humanity cannot be upheld except that every human being, individual without discrimination, without exception, is respected. Wholeness.[26] To strengthen the opinion and thoughts of Franz Suseno, it is not wrong to raise the opinion of Rhoda E. Howard who describes the concept of human rights starting from observations of the daily practice of human rights in all contexts. His opinion emphasizes that human rights are owned by humans because they are human and this right should not be denied either because of differences in race, gender, gender and religion and is no longer politically and legally relevant and demands equal treatment for all people.[27] This implies that the concepts of human rights raised by the thinkers above are based on universal human rights principles, namely "dignity, freedom and equality" and this is the essence of human rights. These fundamental human rights principles are not limited by space, time, place and apply to everyone, whoever he is.

The fact that the State and its power control natural resources without heeding the rights of indigenous and tribal peoples, appears in the legal products formed by the State to manage natural resources which are more repressive in nature. Intercession characterizes repressive law:[28]

1. Community rights are formulated with ambiguity; on the one hand recognizes existence, on the other hand is restrained, restricted and even marginalized.
2. There is stigmatization or negative labeling for indigenous peoples such as illegal cultivators, forest encroachers, forest destroyers and others, even being victimized.
3. Involving the military in every activity of exploitation of natural resources as a way to secure the situation from any movement of indigenous peoples.

Many legal products with this repressive nature have emerged, this is also strongly influenced by the accumulation of capital to manage natural resources. Therefore, the State often treats indigenous peoples in ambiguous ways. Many laws that were born after the amendments were mainly related to natural resources such as the Fisheries Law, Plantations Law, Village Laws, Mining Laws and others became laws that legitimized the political power of the State and removed the legal legitimacy of indigenous peoples, this resulted in injustice, violations of the rights of indigenous peoples. humanity, environmental destruction and depletion of natural resources only to pursue the interests of the country's economic growth. Without considering the high costs that will be paid later for generations of children and grandchildren.

Overview of the Country: Lumoly, Ety and Nuniary in Seram Barat

First, it is necessary to describe in general terms the West Seram Regency. This district is part of the province with an area of 84.1 square kilometers or about 11.82 percent of the total area of Maluku Province. Geographically, the Regency is located at 2.55^0 South Latitude to 03.30^0 South Latitude and 127^0 East Longitude to 55^0. West Seram Regency has its capital city in Piru.

Starting an explanation of the conditions and positions of the three countries above, it is necessary to convey that the author uses a legal source, namely Law No. 6 Year 2014 concerning Villages and Regional Regulation of Maluku Province No. 14 Year 2005 concerning Re-determination of the State as a Customary Law Community Unit in the Maluku Province Region. In Law No. 6 Year 2014 in article 1 point (1) it is formulated: "Village is a village and customary village or what is called by another name, hereinafter referred to as Village, is a legal community unit that has territorial boundaries that are authorized to regulate and manage government affairs. the interests of the local community based on community initiatives, origin rights, and/or traditional rights that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia".

The three countries Lumoly, Ety and Nuniari according to their existence are located in West Seram District with the capital city in Piru. West Seram sub-district has seven (7) countries and 20

Smith, et.al., Hukum Hak Asasi Manusia, Yogyakarta: PUSHAM-UII, 2008, p. 11, cited by Andrey Sujatmoko, Hukum HAM dan Hukum Humaniter, PT RajaGrafindo, Jakarta, 2016, p. 2

[25] Kadarudin, Isu-Isu Hukum Kejahatan Internasional & HAM dalam Catatan Hukum Dr. Kadarudin, Deepublish, Yogyakarta, 2020, p. 223

[26] Suseno, F.M., Etika Politik: Prinsip-Prinsip Moral Dasar Kenegaraan Modern, Jakarta: Gramedia Pustaka Utama, 2001, p. 145

[27] Howard, R.E., HAM Penjelajahan Dalih Relativisme Budaya, (Traslated Book), Kajatasungkana, Nugraha. Jakarta: Pustaka Utama Grafitri, 2000, p. 1

[28] Rahmat Syafa'at, et.al., Op.Cit., p. 33

hamlets located in coastal and mountainous areas, and the three countries where this research is located are within the scope of West Seram sub-district (Piru). To test that the three countries are legal community units, the elements or criteria of customary law communities are based on the applicable laws and regulations. Considering that the criteria or elements used vary between the relevant laws and regulations, the authors simply combine these criteria or elements, with the aim of making it more comprehensive because the test instrument is more accurate. The author merged using Law No. 41 of 1999 concerning Forestry, Minister of Home Affairs Regulation No. 52 Year 2014, Minister of ATR Regulation No. 10 Year 2016 and the Minister of Environment and Forestry Regulation No. P.21/MENLHK/SETJEN/KUM.1/4/2019., as well as Law No. 6 Year 2014. Just to remind that in Law No. 6 Year 2014 concerning villages there are different elements related to the determination of customary villages and customary law community units. The content of the article is in Article 97 paragraphs (1) and (2). However, in general, the elements of the legal community unit almost have similarities with other laws and regulations. Based on the results of the study through the writings of Ilhan Yuli Isdiyanto and Deslaely Putranti, they explained that this was closely related to other than the conditions previously stipulated in Article 97 paragraph (2) to be recognized as a legal community, the customary community unit must be able to adapt to developments. While dealing with the provisions of Article 97 paragraph (3) of Law No. 6 Year 2014 mentions two (2) main indicators that must be considered by customary law community units, namely their existence is legally recognized and their substance is recognized and respected by members of the wider community unit and does not conflict with human rights. Thus, it can be said that between juridical legitimacy and sociological legitimacy, it becomes the standard and measure of assessment of the recognition of the said customary law community unit.[29]

The Authority of Regional Governments in Establishing Regional Regulations to Protect the Rights of Indigenous Peoples.

From the perspective of legislation, the formation of a legal product, whether it is in the form of a law to a regional level regulation, always has a basis for study. The basis of the study includes a) philosophical basis, b) sociological basis, and c) juridical basis. With these three foundations, it is intended that a regulated problem has a strong regulatory foundation. The philosophical foundation is a philosophical study or view that lays down basic ideas, ideals when pouring out a problem in legislation, it should come from the community and not the authorities. The juridical basis is a legal provision that becomes the legal basis (rechtsgrond) for the making of laws and regulations so that there is no legal conflict or legal conflict with the legislation above. At the same time, it contains principles and norms both vertically and horizontally. Sociologically examines the reality of society which includes the legal needs of the community, socio-economic aspects and values that live and develop in society.

When Law No. 32 Year 2004 on Regional Government was enacted followed by Government Regulation No. 72 Year 2005 on Villages, the Maluku Provincial Government immediately welcomed it with the spirit of "euphoria", because previously it was confined by the tyrannical model and system of government of the New Order. Meanwhile, the spirit of reform is still looking for the right reformulation. The Maluku Provincial Government swiftly welcomed these changes by establishing Regional Regulation (Peraturan Daerah/PERDA) No. 14 Year 2005 concerning the Re-determination of the State as a Unit of Indigenous Law Communities in the Maluku Province Region. The PERDA seems to bring back life for the countries in Maluku. Recognition of the States in Maluku as a unitary community of customary law, and every village in Maluku in 2005 changed its name to a State and each State is a unitary community of customary law in the eyes of the law based on the Regional Regulation.

Prior to the existence of the two regulations mentioned above, namely Law No. 32 Year 2004 and Government Regulation No. 72 Year 2005, customary law community units experienced "near death" or the term "life doesn't want to die either". Reality becomes a necessity of how these customary law community units are powerless due to strong intimidation and pressure from the authorities, taking over the natural resources of indigenous peoples without clear compensation.

The momentum of the era of autonomy with legal products that place the recognition of indigenous peoples in Maluku and recognize the country as a unit of indigenous peoples, turned out to cause problems, the MHA wanted to obtain communal rights to land as regulated in Permen ATR No. 10 Year 2016 and/or wish to obtain rights to customary forests as regulated in Permen LHK No. P.21/MENLHK/SETJEN/KUM.1/4/2019 because the current form of recognition is not based on the recognition mechanism established after Law No. 6 Year 2014. Because customary law communities in Maluku have been recognized since 2005 with the mechanism of the Maluku Provincial Government, without identification, verification and validation processes, the recognition mechanism is different and

[29] Ilham Yuli Isdiyanto and Deslaely Putranti, Op.Cit., p. 243

communal rights to land and rights to customary forests cannot be automatically recognized. given to every recognized customary law community in Maluku.

However, in order to have rights that are in accordance with the development of laws and regulations regarding customary law communities, it is important to see whether the people of the three countries of Eti, Lumoli, Neniari with customary law community units in Maluku can be identified, validated and verified. as a customary law community. The criteria that will be used to analyze whether the people of the three customary lands above are classified as customary law communities in the Indonesian legal framework are the criteria for MHA contained in Law No. 41 Year 1999 concerning Forestry, Minister of Home Affairs Regulation No. 52 Year 2014, Minister of ATR Regulation No. 10 Year 2016 and the Minister of Environment and Forestry Regulation No. P.21/MENLHK/SETJEN/ KUM.1/4/2019.

The problem is related to the recognition of customary law community units that will obtain their rights, must go through the determination of the provincial and district governments. Based on the analysis presented by previous researchers, the reaction from local governments to make PERDA as a way to respond to Law No. 6 Year 2014 is very low. Until now, very few PERDA have been made to show a reaction to the readiness to take back the rights of indigenous peoples. This is inversely proportional to the implementation of Law No. 32 Year 2004 and Government Regulation No. 72 Year 2005. Maluku Province stipulates Regional Regulations governing the State and Central Maluku Regency Government stipulates eight regional regulations governing State Government. For now, even though there has been a decision of the Constitutional Court No. 35/PUU-X/2012 which stipulates that the existence of customary forest is recognized, there is no longer State forest in customary forest, but the Minister of Forestry is still adamant to maintain it based on the Circular Letter of the Minister of Forestry Number SE.1/ Menhut-II/2013 concerning Constitutional Court Decision No. 35/PUU-X/2012 In the explanation of article 4 paragraph (3) which has been updated, that "the control of forests by the state continues to pay attention to the rights of customary law communities as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia as regulated in law. law".

The Minister of Forestry has determined that state control (Ministry of Forestry) over customary areas located in state forest areas remains valid and does not need to be considered wrong. The circular states that "Article 4 paragraph (3) applies to customary law communities whose existence has not been determined by a Regional Regulation (Perda)". The circular states that, based on Article 5 paragraph (3), it is the Minister of Forestry who determines the status of customary forests. Since Article 5 paragraph (3) provides the basic authority for the Minister of Forestry to determine the status of customary forest, the Minister of Forestry uses this authority “as long as the existence of customary law communities has been stipulated by a Regional Regulation (Perda). based on the results of research by the Team, as referred to in Article 67 and the Elucidation of Article 67 of Law Number 41 of 1999 concerning Forestry, which has been amended by Law Number 19 Year 2004”. The Ministry of Forestry is “obedient and passively waiting”. In an interview, the Minister of Forestry stated that the Ministry of Forestry is “obedient and passively waiting”. In an interview, the Minister of Forestry stated that “the state recognizes the existence of customary forests which are customary rights. and ulayat, but first there must be a regional regulation (Perda) that regulates it” and “the ministry is in a waiting position, on the other hand it is the district or city government that must actively propose the regulation considering that the local government knows the customary forest area” Listening to the statements of the Minister of Forestry, then compare with the situation of the enactment of Law No. 32 Year 2004 which was followed by Government Regulation No. 72 Year 2005 was enacted, the Maluku Provincial Government stipulates a Regional Regulation that regulates the State. For example, the Central Maluku District Government stipulates eight regional regulations governing State Government.

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Article 5 paragraph (3) provides the basic authority for the Minister of Forestry to determine the status of customary forest, the Minister of Forestry uses this authority "as long as the existence of customary law communities has been stipulated by a Regional Regulation (PERDA). based on the results of research by the Team, as referred to in Article 67 and the Elucidation of Article 67 of Law Number 41 Year 1999 concerning Forestry, which has been amended by Law Number 19 Year 2004". The Ministry of Forestry is "obedient and passively waiting". This implies "the state recognizes the existence of customary forests which are customary rights. and ulayat, but first there must be a regional regulation (PERDA) that regulates it" and "the ministry is in a waiting position, on the other hand it is the district or city government that must actively propose the PERDA considering that the local government knows the customary forest area".[30] Listening to the statements of the Minister of Forestry, then compare with the situation of the enactment of Law No. 32 Year 2004 which was followed by Government Regulation No. 72 Year 2005, becomes a reflective question to ponder when the rights of indigenous peoples become a very substantial problem, but the West Seram district government has not yet responded by setting a PERDA, what is the root of the problem.

Based on the results of the research team's study, one of the reasons found is that the West Seram district is currently experiencing dualism in terms of the customary government system. Indigenous countries are currently being led by village head officials, namely government employees who are assigned to each state to prepare for village head elections. (PILKADES). Whereas customary lands are one of the defining elements; Its government is autonomous in the sense of a customary government system that must be used in building its government with a customary system, namely preparing the eyes of the house of command to become king. The dualism of this government creates a lot of political intrigue and discourses on the turmoil that will arise in the midst of people's lives. There are pros and cons because there are customary countries that do not want to carry out simultaneous village head elections, they have the principle that they are an indigenous land. After being traced, it was found that there were several regional regulations that became the basis for the emergence of dualism in government. Among them can be mentioned, among others:

1. Seram Barat Regional Regulation No. 10 Year 2019 concerning Simultaneous and Intertemporal Village Head Elections
2. Seram Barat Regional Regulation No. 14 Year 2019 concerning Negeri Saniri
3. Seram Barat Regional Regulation No. 13 Year 2019 concerning Negeri
4. Seram Barat Regional Regulation No. 11 Year 2019 concerning Villages
5. Seram Barat Regional Regulation concerning Village Consultative Body

Observing these legal provisions gives the impression of confusion, why are PERDA made simultaneously for customary countries, but also for villages. After being traced, indeed not all countries in West Seram are customary lands, there are also administrative villages. The PERDA made is possible to answer as well as the conditions that occur. The strange thing is in PERDA No. 10 Year 2019 why the implementation of the PILKADES elections simultaneously. In fact, customary law community units have a customary system of government, with a different electoral system because there are legal and social institutions that serve as standards or standards. The next analysis why the SBB local government has not yet formed a PERDA for the recognition of MHA units, with their rights being recognized by the government, is by temporarily filling out a questionnaire to list customary lands in preparation for a PERDA for the fulfillment of the rights of indigenous peoples.

CONCLUSION

The legal legitimacy of indigenous peoples over the management of natural resources as a human right is largely determined by the role of Regency/City Governments which must establish regional regulations. Therefore, the role of the Regency/City Governments together with the Regency/City Regional People's Representative Council must be in synergy. In fact, the recognition of legal legitimacy for the presence of customary law communities is still ambiguous. On the one hand, recognition of the identity of the indigenous peoples has been carried out, but on the other hand, they have used the removal with other provisions. Even though it has been fulfilled procedurally and substantively, a legal legitimacy is not necessarily a guarantee that customary law community units are recognized. Considering the more dominant interests of the State over natural resources in the midst of a free market economy and the strengthening of the accumulation of capital power.

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