

# The Position and Rights of Indigenous People Ammatoa Kajang: A Perspective of Judicial Normative

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**Abstract**— this article examined how does the position and rights of indigenous people Ammatoa Kajang, and also the relationship between local government and traditional institutions Ammatoa Kajang viewed from the perspective of juridical normative. The issues examined in this study was Indonesia as a legal country should protect all of the citizens, including indigenous people Ammatoa Kajang. Despite the existence of customary law communities have been set in the constitution of Indonesia, there are several conditions must be fulfilled by indigenous people in order their existence and traditional rights are recognized and respected by the country. Meanwhile, until today there is no law that specifically regulates for customary law communities, thus as an alternative way, then regional regulation was issued which become a legal instrument for regional governments in order to provide legal certainty for indigenous people, and also as a legal basis for the government to provide services for the fulfillment of indigenous people rights, one of the examples is the publication of Regulation Regional Bulukumba District Number 9 the Year 2016 on Inauguration, Recognition of rights and the Protection of rights for indigenous People Ammatoa Kajang .

**Keywords**— *the position and the rights of Indigenous people Ammatoa Kajang, legislation*

## I. INTRODUCTION

Kajang customary law community is one among the tribes of Indonesia who are still alive, where they still maintaining the system of patterns and their cultural values through customary law and customary institutions. They lived for generations and groups in South Sulawesi Province, Bulukumba District, Kajang Regency, Tana Toa village. Their traditional territory consists of *ilalang embayya* (inside Kajang) and *ipantarang embayya* (outside Kajang). For those who lived in *ilalang embayya* (inside Kajang), they still adhere to the principle of *tallasa kamase-masea* (modest life) contained in *pasang ri Kajang*. It makes them reject all forms of modernization, such as technology, car, motorcycles, electrical, excessive clothing, and modern lifestyle. If there is a stranger enter the *ilalang embayya* (inside Kajang) except Kajang indigenous people, then he must wear black clothes, he is not allowed to wear shoes or sandals because it is considered as glamour and it breaks *pasang ri Kajang*. As for those who lived in *ipantarang embayya* area (outside

Kajang), most of the society they do not follow *pasang ri Kajang* entirely, and they are still able to receive modernity influence, that is known as a modern community [1].

The identity which is inherent in themselves is become their characteristic, so that it distinguishes them from other society, for instance, an entire outfit they wear are black, start from shirts, pants almost touching the knees, sarung, house dress, until a headband for men are black, they use horses as a transportation, also the procedures for social relations, treating nature, and their religious actions are unique [2]. Kajang customary law community have *Pasang ri Kajang* and traditional institutions. As for *Pasang ri Kajang* is a source and value systems that set all of their customary life, it has the function as guidance, guidelines, reminders, messages, advice and, warnings for them in thinking, behave and act. While their customary institution is led by Ammatoa and his custom device that carry out their duties and functions based on *pasang ri Kajang* [3].

The focus of this article examines the analysis of a number of legislations which are considered relevance with Indigenous People Ammatoa Kajang, namely the 1945 Constitution of the Republic of Indonesia, Law of the Republic of Indonesia Number 23 Year 2014 concerning Regional Government, Law of the Republic of Indonesia Number 6 Year 2014 concerning Villages, and Regional Regulation of Bulukumba Regency Number 9 Year 2015 concerning Inauguration, Recognition of Rights and Protection of the Rights for Indigenous People Ammatoa Kajang. As for the analysis of the legislations is how does the status, the rights of Indigenous People Ammatoa Kajang, and how is the relationship between tribal governments Ammatoa Kajang and Bulukumba governments?

The reason why this topic is important to be studied because Indonesia is a modern constitutional country. This is reflected in the constitution of Indonesia, namely in preamble the 1945 Constitution of the Republic of Indonesia paragraph four, which affirmed states that the purpose of Indonesia is "protect the whole people of Indonesia and the entire homeland of Indonesia, and to advance general prosperity ...". When we examined this sentence, simply, in realizing the objectives of the state, Indonesia adopts two approaches, namely prosperity, and security approach. Furthermore, under Article 18 B Paragraph (2) of the 1945 Constitution of

the Republic of Indonesia is about four conditions that must be fulfilled if indigenous people and their traditional rights want to get a recognition and respect from the state, namely as long as they live, in accordance with the development of times, and the principles of the Republic of Indonesia and it is regulated in legislation. However, until now, specific legislation which set customary law communities as mandated by Article 18 paragraph 2 does not yet exist. Because that is urgent, then there are many regional regulations were born before the law on indigenous people. One of them is Bulukumba Regional Regulation Number 9 the Year 2015 regarding Inauguration, Recognition of Rights and Protection of rights for Indigenous People Ammatoa Kajang.

If we examined from the perspective of legal sociology, then the recognition of the indigenous people exist is not only based on the mandate or order from legislation (legal state norms) but also based on the fact that the indigenous people are original descendants of a country, they live and inhabit a certain area of the country which their social condition, cultural and economic make them different from other communities in that country [4] and because that, the country is obliged to issue a policy in the form of special regulations in recognizing, protecting and promoting their distinct identity and for the defense and strengthening of indigenous rights [5].

**II. METHODE**

This article was legal research with a normative-judicial approach. In the process when conducting this study, we collected information and data by conducting a review of literature such as legislation, books, articles, journals and any reports dealing with the topic of this study, so that the techniques we used is document. The technique of analyzing data was descriptive qualitative research. The process of analysis was done by selecting, comparing, combining, sorting out the various literature to find relevant information and data.

**III. DISCUSSION**

To begin the discussion of this article, a prior understanding of the hierarchy theory of legal norms and the nature of law, rights, indigenous people and the relationship between local government and traditional institutions are needed as an analytical tool in this section.

In the hierarchy theory of legal norms, the principle of *lex superior de rogat legi inferiori* applies, that is legal norms that are a low degree which is valid, sourced, based and should not be contrary with higher legal norms, and so on until the highest norms, so there it is hierarchy and vertical. Besides, there is also called *lex specialis de rogat legi generalis* principle means legal norms that are special that place side by side the legal norms which have general characteristics, thus it is horizontal. In terms of its characteristics, written legal norms can be both imperative and facultative. It can be said to be imperative if the rules consist of commands and prohibitions norms that are clear and do not cause interpretation. While it can be said facultative if the rules consist of norms that have a function to complete the imperative norms so that it can make any interpretations [6].

In this study, the rights referred to a relationship between people who regulate by the law and in the name of the rights holder, by the law that is given certain powers to the rights object. There are three elements contained in a rights, those are include: The first is protection element means every legal subject has the right to be protected from any interference and the threat from another party; The second is recognition element means the recognition about there is a right from the legal subject; and the last is will element means allocate the certain powers for the legal subjects to act or not act in order to protect their interests.

For the custom community, they have both constitutional and traditional rights. The constitutional rights are the rights guaranteed by the constitution includes personal, political, legal, socio-cultural and economic rights. Whereas traditional rights are communal or individual rights, it is specific inherently in the custom community because they have the same genealogical, territorial, and sourced from their social and cultural systems.

In this study, the relationship between the local government and the customary institution are viewed from normative juridical aspect, which means that the synchronization of the legal norms or legislation will have implications for the validity (if it set as a legal norm based on higher legal norm) [7] and it also has implications for the effectiveness of relationship between the role of the task and authority of local governments and indigenous institutions [8].

*A. The position of Indigeneous People Ammatoa Kajang*

Legally, the position of indigenous people Ammatoa Kajang has been confirmed, recognized as a legal subject and their rights are protected by the government through Bulukumba Regional Regulation Number 9 the Year 2015. This is very reasonable because it is one of the efforts that must be done by the local government to carry out the mandate of the 1954 Constitution of the Republic of Indonesia, the Law of the Republic of Indonesia Number 23 the Year 2014 concerning Regional Government, and the Law Number 6 the Year 2014.

TABEL. 1 THE COMPARATIVE COMPARISON OF INDIGENOUS PEOPLE IN THE PREVAILING LAW AND REGULATIONS

The 1945 Constitution of the Republic of Indonesia	Law of the Republic of Indonesia Number 6 the Year 2014	Bulukumba District Regulation Number 9 the Year 2015
Article 18 B paragraph (2), "The state recognizes and respects the customary law community units along with their traditional rights as long as they are still alive and following the development of the community and the principles of the unitary state of the Republic of Indonesia, which are regulated in the law (the setting of functional aspects).	Article 97 paragraph (1), the unity of indigenous people, must meet three conditions, namely, <ul style="list-style-type: none"> <li>- They still alive, is both genealogical, territorial and functional.</li> <li>- following the development of society</li> <li>- following the principle of the unitary Republic of Indonesia (the setting of the</li> </ul>	Article 1 number 5, "Indigenous people are a group of people who lived in certain geographical areas in the country of Indonesia because they have a relationship with their ancestor, a strong relationship with their land, territories, natural resources, having customary government institutions and structures for their customary area (the
Article 28 I paragraph (3), "Cultural identity		

The 1945 Constitution of the Republic of Indonesia	Law of the Republic of Indonesia Number 6 the Year 2014	Bulukumba District Regulation Number 9 the Year 2015
and traditional community rights are respected in harmony with the times and civilizations (the setting of human rights aspects).	functional aspects).	setting of functional, anthropological aspects).
Article 32 paragraph (1), the country promotes the national culture of Indonesia in the middle of world civilization by guaranteeing the freedom of the people in maintaining and developing their cultural values (the setting from anthropological aspects).		

Source: the results of analysis data by the researchers, 2019

Meanwhile, if we observe the table 1 above, we can see the definition formulation about indigenous people. In relation with that, the indigenous people Ammatoa Kajang has fulfilled several elements contained in the prevailing laws and regulation as listed in table 1. The explanations as follows:

The first, obviously the indigenous people are still alive, either from their genealogical, territorial or functional. Genealogically and territorial means that Kajang indigenous people who lived hereditary in Tana Toa Village, Karaeng Regency, Bulukumba District, in South Sulawesi Province. They lived in groups, each of them has a kinship and they share feelings each other, and they have 313,99-hectare forest area (The decision of the Minister of Environment and Forestry of the Republic of Indonesia Number SK.6746/MENLHK-PSKL/Kum.1/12/2016). While functionally, Kajang indigenous people have customary law norm which is known as pasang ri Kajang and also they have customary government institutions that consist of Ammatoa, Karaeng Tallua (Sulehatang Kajang, Karaeng kajang, and Anak Karaeng), and Adat Limayya that is divided into two areas, those are in Tanekekea and Tanaloheya [9].

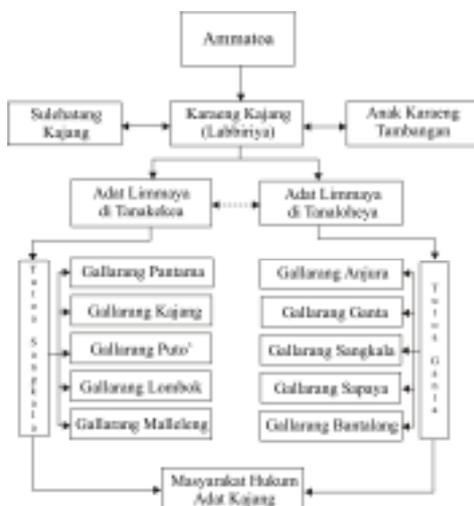


Figure 1. The Structure of Government Ammatoa Kajang

- Ammatoa as a unifying symbol and also as a shelter for the Kajang community, Karaeng Tallua, and Adat Limayya.
- Karaeng Kajang as the holder of glory, sulehatang Karaeng as a vice of Karaeng Kajang, and anak Karaeng tambangan are descendant of Karaeng Tappau who are domiciled in tambagan.
- Tutoa Sangkala served as a unifying figure, mediator or connector between the members of Limayya Custom in Tanakekea, Tanaloheya, Karaeng Tallua, and Ammatoa.
- Indigenous Limayya in Tanakekea is: (1) Gallang Pantama works as the holder of glory before he gives to Karaeng Kajang, he works as a judge in representing Ammatoa in deciding the case. if it is related to the structure Indonesian government, Gallang Pantama work as interior minister and minister of justice. (2) Gallang Kajang, act as the ritual leader, he represents Ammatoa in leading the ceremony for praying to God so that indigenous people always healthy and free from diseases, free from enemies-war and the plant free from pests and drought, so that the life of Kajang society is safe and prosperous. (3) Gallang Puto assigns as a spokesman for Ammota (Minister of Information). (4) Gallarang Lombok has to set in the agriculture field and (5) Gallarang Malleleng has to handle fisheries affairs in the customary forest area.
- Tutoa Ganta served as a unifying figure, mediator or connector between the members of Adat limayya in Tanaloheya, Karaeng Tallua, Tanakekea, and Ammatoa
- Adat Limayya in Tanaloheya is consist of (1) Gallarang Anjuru act to take care and escort guests who want to meet Ammatoa, if it connected with the Indonesian government structure, Gallarang Anjuru works as foreign minister. (2) Gallarang Ganta responsible for maintaining and observing the indigenous forests in Bongo'a, 3) Gallarang Sangkala in Sangkala forest, (4) Gallarang Sapaya in Sapaya forest, and (5) Gallarang bantalang in balantalang forests. They are responsible for keeping and supervising the forest area.

Besides that, Adat Limayya in Tanakekea and Tanaloheya, there is also the term of Adat Buttaya which is complementary of Ammota Kajang government, but their position is the outside of government structure by Karaeng Tallua dan Adat Limayya. Adat Butaya are consist of: lompo karaeng whose job is to arrange the seating order for customary stakeholders, lompo adat works to set food according to the position, anrong works in arranging completeness of ritual ceremony, and sanro Kajang is task to pray to the God in order to make Kajang society free from all plagues.

Secondly, it suits with the development of society. This is showed by the substance of traditional rights indigenous people Ammatoa Kajang recognized and respected by the wider community and it does not contradict with human rights. Thirdly, it appropriate with the principle of the

Unitary State of the Republic of Indonesia. The existence of Kajang indigenous people are considering not threaten the sovereignty and integrity of Indonesia and their legal norms are deemed in contrary with legislation

### *B. The Rights of Indigenous People Ammatoa Kajang*

The position of indigenous people Ammatoa Kajang as citizens and also indigenous communities, it has implications for the rights inherent in themselves, which means that they have constitutional rights and traditional rights. As for the constitutional rights of indigenous people Ammatoa Kajang as citizens are stipulated in the Indonesian constitution as follows:

- The constitutional right in personal aspects (private) include the right to life, freedom from torture, the right not to be enslaved, the right to grow and develop as well as protection from violence and discrimination, the right to build a family and continue the descent through legitimate marriage;
- Constitutional rights in the field of law include the right to recognition, security, legal protection of fair and equal treatment before the law;
- Constitutional rights in the economic sector include the right to work and to receive remuneration and fair and proper treatment in the employment relationship,
- Constitutional rights in social and cultural sectors cover, the right to social security, right for education, the right of citizenship status, the right to choose a religion and pray, the right to communicate and obtain information, to develop personality and social environment, the right to life prosperous physically and mentally, get a good environment and healthy, right to receive to health care, the right to be respected on the basis of cultural identity and rights of indigenous people, the rights in the political field include the right to participate in government, the right of association, assembly and express opinion

Meanwhile, the traditional rights of indigenous people Ammatoa Kajang is arranged in Bulukumba District Regulation Number 9 the Year 2015 include:

- Articles 15 and 16 stipulates that the right to the lands, territories, and resources include the right to own, use, develop and control based on ownership hereditary or using a mechanism that is recognized by customary law. Land rights can be collective and personal. The land rights are collective and it cannot be given to other parties include indigenous forests (*borong lompoa*), Kalompoang land (traditional land where the management rights is given to indigenous stakeholders, and it is intended as a source of livelihood) indigenous land and Gilirang land (land belonging from generation to generation where it managed in turns by the one descendants of indigenous people). While the land rights which is personal can be given by the family based on family agreement, it covers residential land, yards, gardens and rice fields. Meanwhile, for other parties who want to use the land that is communal/collectively and individual land an in indigenous area, it can be

done through decision-making based on customary laws.

- Article 17 regulates the rights to development, that indigenous people Ammatoa Kajang have right to determine and develop their forms of development that suit their needs and culture. If the government and/or other parties will carry out or have a plan about a program development in their traditional area, then they first must provide full information to customary law Ammatoa Kajang related to the program, and the potential and impact of that development. Then, based on the information received, indigenous people Ammatoa Kajang have right to refuse, accept, or propose other forms of development under the aspirations and needs.
- Article 18 regulates the rights on spiritual and cultural that indigenous people Ammatoa Kajang reserves the right to choose the religion and practice their beliefs, rituals inherited from their ancestors, the right to develop the traditions, customs includes the right to maintain, protect and develop their culture in the past, now, and future, right to maintain, control, protect, develop and apply traditional knowledge and their intellectual property.
- Article 19 regulates the rights on the environment that indigenous people Ammatoa Kajang reserve the right to have a healthy environment, receive environmentally, get an education, access for information, and broad participation in the management and protection of the environment. If the environment in the customs area is broke, then they deserve to get protection and restoration of that environment which is based on local wisdom.
- Article 21 regulates the right to manage themselves is a right that must be existed in indigenous communities as precondition from the implementation of their innate rights, that is to take care of themselves independently, through their traditional institutions for generations and new institutions that were agreed to be formed jointly to handle internal/local affairs in indigenous people and external affairs related to the existence of indigenous people and their rights. To do this right, then they deserve to get support from the local government, either from funding or other necessary infrastructure.
- Article 22 regulates the rights to conduct the legal and customary justice that is indigenous people Ammatoa Kajang deserve to do their customary law and resolve a case through justice, if there is a violation for customary law in the indigenous area, either it committed by the community or other parties.

The sixth traditional rights above have four functions that oriented in the society and the universe, the function of government, the function of the maintenance the spirit, the religion, and the function of guidance on customary law [10].

Rights always reflect obligations, while obligations reflect rights. Aguste Comte said that right is not used for the owners absolutely, but it must be used in their social role

which includes the obligation to use that right for the interests of society in general. Therefore, besides having constitutional rights or traditional rights, the society also has the duty and authority, namely adhere, keep, and preserve *pasang* as guide life indigenous people; and preserve the indigenous forest areas as indigenous forests (article 14 Bulukumba Regional Regulation Number 9 the Year 2015)

### C. *The Relationship Between Local Government and Indigenous Government Ammatoa Kajang*

According to the provisions of Article 18 paragraph (7) the 1945 Constitution of the Republic of Indonesia that local governments have the right to establish regional regulations and other regulations to carry out the task of autonomy and the task of assistance. Regarding the structure and procedures of the regional administration is regulated by Law Number 23 the Year 2014. In terms of local government affairs in community empowerment and village, the local government has a job to empower traditional institutions and customary law communities.

Lexically, the relationship between local governments and tribal governments (traditional institutions of the village) are also regulated in Law Number 6 Year 2014 on the village, where traditional institutions villagers perform the functions of the customs and become a part of original arrangement village that grew and developed based on the effort of the village community and assists village governments as partners in empowering, preserving, and developing customs as a form of recognition of villager custom.

Based on that provisions, then in this case, the local government Bulukumba issued a policy in the form of local regulation Bulukumba Number 9 Year 2015 on the inauguration, the recognition of the rights and protection of the rights for indigenous people Ammatoa Kajang, which arrange that the duty of the local government are: develop and implement community empowerment programs Kajang customary law participatory by considering local wisdom; providing facilities and infrastructure that is the necessary for indigenous people Ammatoa Kajang in order to preserve the integrity of the customs, traditions, indigenous area which is based on the prevailing laws and regulation; conduct socialization and information on development program for indigenous people Ammatoa Kajang; perform guidance for them (Article 23).

In addition, local governments are also authorized to: assign a protection policy on the culture of indigenous people Ammatoa Kajang; establish policies facilities and infrastructure that is necessary for indigenous people Ammatoa Kajang; determine the socialization policy and information on the development program for indigenous people Ammatoa Kajang, and to provide guidance and protection to indigenous people Ammatoa Kajang, and to ensure that women and children are enjoying the full protection and guarantees in fighting all forms of violations and discrimination (Article 24).

If there is a dispute between indigenous people Ammatoa Kajang with other parties, then the government make Dispute Handling Team to solve that that is ad hoc as an attempt to deal with that dispute (Article 25). As for, the

team in this study is consists of local government representatives; representatives of indigenous people Ammatoa Kajang; academician; religion institution; non-governmental organizations; and representatives of third parties who are involved in the dispute (Article 26). The explanation of Article 26 stated that in the membership of the Dispute Handling Team, the representative elements of the Ammatoa indigenous people are more than other elements as a form of respect and protection and also the effectiveness of communication between teams.

## IV. CONCLUSION

Based on the discussion above, it can be concluded that in fact, the position and the rights of the Ammatoa Kajang customary community have been recognized and regulated in synchronized laws and regulations so that it is expected to have implications on effectively related to the duties and authority of regional governments in order to ensure legal certainty for Ammatoa Kajang indigenous people. obviously, in terms of the implementation of the legislation requires an approach that is participatory which means that it involves the participation of various parties, start from local government, indigenous people, academics, non-government organizations, and other related parties.

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