

The Status of Indigenous Forest in Riau Province

Gusliana H.B.*, Ikhsan Ikhsan, Ferawati Ferawati

Fakultas Hukum
Universitas Riau
Pekanbaru, Indonesia
*gusliana_hb@yahoo.com

Abstract—The position of customary forest after the Constitutional Court Decision No. 35/PUU-X/2012, which was formerly regarded as a state forest within the territory of customary law communities, transformed into a forest that is within the territory of customary law communities. Forest control by the state continues to focus on the rights of indigenous people, for as long as they live and in accordance with the development of the community and the principles of the Republic of Indonesia as regulated under the law. The pattern of customary forest protection after the Constitutional Court Decision No. 35/PUU-X/2012 in the context of providing legal protection to indigenous peoples in Riau Province, where the indigenous peoples have the right to open their customary forests to be controlled and cultivate their land to fulfill their personal and family needs. His is an empirical research seeking to find out which laws and regulations on customary forests in Riau Province. It uses case study and root cause analysis in of an attitude to dissect traditional forest that has long existed in Riau province. Data were collected through in-depth interviews, surveys, laws / regulations, newspapers and magazines. Therefore, it is not possible for the rights owned by the members of the customary law community to be abolished as long as they meet the requirements within the scope of the definition of the customary law community unit referred to in Article 18B paragraph (2) of the 1945 Indonesian Constitution and set forth in a Regional Regulation. Based on the Constitutional Court Decision, in Riau Province, only Kampar Regency submitted to the Ministry of Environment and Forestry regarding the proposed Customary Forest consisting of: 641 ha of customary forest in Batu Songgan Village, 4,414 ha in Gajah Bertalut Village, 251 ha in Petapahan Village, 1,827 ha in Aur Kuning Village, 767 ha in Terusan Village, 156.8 ha in Kampa Village and Koto Perambah Village, and 1,871.7 ha in Bukit Melintang Village.

Keywords: *customary forest, constitutional court, Riau*

I. INTRODUCTION

Forest is a gift from the Almighty God that must always be preserved and sustainably managed for the welfare of the community. The same should also be applied in preserving communal forest for communal law community. Forests have a very important role in supporting national development [1]. All forests in the territory of the Republic of Indonesia, including the natural resources contained therein are controlled by the State to the maximum extent used for the prosperity of the people. The goal to achieve the greatest prosperity for the

people is formulated into four benchmarks, namely: (1) the benefits of natural resources for the people; (2) level of distribution of benefits of natural resources for the people; (3) the level of people's participation in determining the benefits of natural resources; and (4) respect for people's rights for generations in utilizing natural resources [2].

Forests in Indonesia, including communal forests, according to Article 1 number 6 of Law Number 41 of 1999 on Forestry are state forests within the territory of communal law community. However, the definition of communal forests after the Constitutional Court Decision Number 35/ PUU-X/2012, which were formerly defined as state forests within the territory of communal law communities, became communal forests within the territories of communal law communities. Whereas the control of forests by the state still concerns on the rights of communal law community, as long as they are still alive and in accordance with the development of the community and the principles of the Republic of Indonesia as stipulated by the law.

Based on Article 5 paragraph (1) of Law Number 41 Year 1999 on Forestry, forests, based on their status consist of: (a) state forest and (b) titled forest. However, based on the Constitutional Court Decision Number: 35/PUU-X/2012, the interpretation of Article 5 paragraph (1) is conditional as long as it is not understood that "state forest as referred to in paragraph (1) letter a, does not include communal forest" and the phrase "and paragraph (2)" in article 5 paragraph (3) is removed, so that it is increasingly strengthened that communal forests are not state forests. This is then regulated further in Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.21/MENLHK/SETJEN/KUM.1/4/2019 concerning Communal Forests and Titled forests, Article 4 where the forest based on its status consists of: (a) State Forest; (b) Communal Forest; and (c) Titled forest.

The conclusion on the Constitutional Court's Decision Number: 35/PUU-X/2012 according to Bambang Wiyono, are as follows [3]:

- Communal forests that were previously part of state forests must be interpreted as titled forests based on the Constitutional Court Decision.
- Communal forests are defined as forests within the territory of communal law community.

- The control of forests by the state concerns on the rights of communal law community, as long as they are still alive and in accordance with the development of the community and the principles of the Republic of Indonesia as stipulated by the law.
- The existence of communal law community must be regulated by the law, as long as the law has not yet been established, the inauguration and the elimination of communal law community are stipulated by regional regulations that can be justified, as long as these regulations can guarantee legal certainty and are just.
- The decision of the Constitutional Court should be interpreted as the government determines the status of the forests and communal forests to be maintained for as long as the communal law community concerned still exists.
- If, within the the development the communal forest community no longer exists, the communal forest management rights will be returned to the government and the status of the communal forest will return as a state forest.

Local governments have a role in determining the existence of communal law community in the context of managing communal forests. The steps that must be taken by local governments in supporting the existence of communal forests, include [4]:

- Surveying the areas where communal law communities still exist.
- Conducting studies and research.
- Establishing a certain area as the territory of the communal law community in the form of regional regulations.

In line with Subaru's opinion, after the Decision of the Constitutional Court Number: 35/PUU-X/2012, communal forests are in the territory of communal law and they can use them according to their aspirations and needs without ignoring other applicable laws and regulations. Therefore, the strategy for the management of communal forests in the future must be able to explain and carry out activities in the form of: (1) determination of communal law community; (2) establishment of communal forest boundaries; and (3) formation of communal law community institutions [5].

As for the Province of Riau, it currently has Local Regulation No. 14 of 2018 concerning Guidelines for Recognizing the Existence of Communal law communities in Environmental Protection and Management. The existence of this Regional Regulation provides clarity and certainty in the regulation and determination of the Communal Law Community, but unfortunately does not clearly and firmly regulate the communal forest which is one of the areas occupied and utilized by the communal law community. Therefore, it has not been able to provide legal certainty and regulation in the management and use of communal forests in Riau Province. In Riau Province, only Kampar Regency

submitted to the Ministry of Environment and Forestry regarding the proposed Customary Forest consisting of: 641 ha of customary forest in Batu Songgan Village, 4,414 ha in Gajah Bertalut Village, 251 ha in Petapahan Village, 1,827 ha in Aur Kuning Village, 767 ha in Terusan Village, 156.8 ha in Kampa Village and Koto Perambah Village, and 1,871.7 ha in Bukit Melintang Village.

His is an empirical research seeking to find out which laws and regulations on customary forests in Riau Province. It uses case study and root cause analysis in of an attitude to dissect traditional forest that has long existed in Riau province. Data were collected through in-depth interviews, surveys, laws / regulations, newspapers and magazines [6]. Based on the abovementioned problems, it is necessary to conduct a research Strengthening Existence of Customary Forest after The Constitutional Court Decision Number : 35/PUU-X/2012 in Riau Province.

II. PROBLEM

Kampar Regency is one of the Regencies in Riau Province that already has Regional Regulation No. 12 of 1999 concerning Ulayat Land, but has not yet regulated in detail about communal law community nor has there been any regional regulation on Communal Forests. This is important because the existence of a Regional Regulation on Communal Law Communities provides recognition of the existence of the Communal Law Community and legal certainty and legal protection of Communal Forests. Thus, communal law communities can claim that their entities fulfill the characteristics of communal law community and can claim their rights, one of which is the recognition of the communal forests that they have managed and possessed so far. Based on the identification of these problems, the problem that will be assessed in this paper is how to strengthen existence of customary forest after the constitutional court decision number: 35/PUU-X/2012 in Riau Province?

III. RESULTS AND DISCUSSION

Previously, in the conception of forestry law, there were only 2 (two) forest statuses, namely state forests and titled forests. Since the issuance of the Constitutional Court Decree Number 35/PUU-X/2012, the status of communal forest is affirmed, so that now there are three forest statuses, namely titled forest, state forest and communal forest.

Through the decision of the Constitutional Court Number 35 / PUU-X / 2012, the regulatory principles in Law Number 41 of 1999 on Forestry concerning the existence of communal forests are as follows: First, what is referred to as "communal forest" has now become separated from state forests. This refers to the opinion of the Constitutional Court which states that in accordance with the provisions in article 18B paragraph (2) of the 1945 Constitution, the unit of communal law is a legal subject that has the capacity to bear rights (and obligations), and therefore communal law communities should have rights to the forest (MK Decision No. 35/PUU-X/2012); secondly, because Law Number 41 of 1999 only recognizes 2

(two) types of forests, namely state forests and titled forests, based on the first principle above that the communal law community unit should also have rights to the forest, then referring to the Constitutional Court's opinion, what referred to as communal forest is part of titled forest and not part of state forest (MK Decision No. 35/PUU-X/2012, H. 173, 179, 181); third, what is referred to as "communal forest" after the decision of the Constitutional Court No. 35/PUUX/2012 is defined as "forests within the territory of communal law community" (MK Decision No. 35/PUU-X/2012, H. 185); and fourth, communal forests as forests whose rights belong to a communal law community unit will be recognized if the existence of the communal law community unit is recognized, and in order to have a communal law community entity recognized, it must meet the recognition requirements as regulated by the 1945 Constitution, that the communal law community still exists and in accordance with the development of society and the principles of the Republic of Indonesia (MK Decision No. 35/PUU-X/2012, H. 185-186). This changes the previous principle, that in order to be recognized, a communal law community unit must meet the conditions, one of which is that it must not conflict with national interests. Referring to the new regulatory principles concerning communal forests after the Constitutional Court's decision No. 35/PUU-X/2012 as mentioned above, it can be seen that communal law community have now been confirmed to have rights to forests, which are then referred to as communal forests. Thus, the rights of communal law community to these forests have been explicitly recognized by Law No. 41 of 1999 after the Constitutional Court's decision No. 35/PUU-X/2012 [7].

Communal law community is a legal alliance in Indonesia which can be divided into two groups, according to their basic structure, namely based on the linkage of a descendant (genealogy) and fundamental regional environment (territorial) [8]. Communal law communities are organized human entities, settling in certain regions, having rulers and possessing wealth, tangible and intangible. In connection with the conditions for recognizing the existence of a communal law community, it is necessary to refer to these conditions as stipulated in article 18B paragraph 2 of the 1945 Constitution, which if based on the Constitutional Court's opinion as stipulated in the Constitutional Court's decision No. 31/PUUV/2007 and MK Decision No. 35/PUU-X/2012, these requirements can be translated into 10 cumulative elements [9]:

- Communal law community whose existence has existed since the time of ancestors and succeeded in maintaining its existence until now without interruption
- Its members have in-group feelings;
- Have communal government institutions;
- Own property and/or custom objects;
- Have a set of communal law norms;
- Possess a certain area for territorial communal community.

- The substance of the traditional rights of the communal law community is recognized and respected by the members of the community concerned as well as the wider community, and does not conflict with human rights.
- Its existence does not threaten the sovereignty and integrity of the Republic of Indonesia.
- The substance of communal law norms is appropriate and does not conflict with applicable laws and regulations.
- The existence of communal law communities and their traditional rights has been recognized based on the Law (UU) or Regional Regulation (Perda).

The pattern of communal forest protection after the Constitutional Court Decree No. 35/PUU-X/2012 in the context of providing legal protection to communal law communities in Riau Province, where communal law community have the right to open their communal forests to be controlled and cultivated their land to fulfill their personal and family needs. Therefore, it is not possible for the rights owned by the members of the communal law community to be taken away as long as they meet the requirements within the scope of the definition of the communal law community referred to in Article 18B paragraph (2) of the 1945 Constitution and further set forth in a Regional Regulation [10]. Based on the Constitutional Court Decision, in Riau Province, only Kampar Regency submitted to the Ministry of Environment and Forestry regarding the proposed Communal Forest consisting of: 641 ha of communal forest in Batu Songgan Village, 4,414 ha in Gajah Bertalut Village, 251 ha in Petapahan Village, 1,827 ha in Aur Kuning Village, 767 ha in Terusan Village, 156.8 ha in Kampa Village and Koto Perambah Village, and 1,871.7 ha in Bukit Melintang Village.

Riau Province has yet to have communal forests as stipulated in the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.21/MENLHK/SETJEN/KUM.1/4/2019 concerning Communal Forests and Titled forests. This also relates to social forestry in the form of Village Forests, Community Forests, Community Plantation Forests, Communal Forests (not yet available) and Forestry Partnerships, as shown in the table below:

TABLE I. SOCIAL FORESTRY IN RIAU PROVINCE

No.	Types of Utilization	Number of Units	Area
1	HPPH (Village Forests)	21	±53.120 ha
2	IUPHKm (Community Forests)	10	±5.898 ha
3	IUPHHK-HTR (Community Plantation Forests)	7	±4.192 ha
4	Partnership Forests	1	±4.000 ha
5	Communal Forests	-	-
	Total Amount	39 Unit	±67.210 ha

Source: Governor's explanation in the seminar: "Restoring Land Forests to the People", Pekanbaru, July, 2nd 2018.

Based on the table above, it can be seen that there are 21 units of Village Forests with Village Forest Management Rights (HPHD) with an area of \pm 53,120 ha, while the Community Forests with permits granted are IUPHKm or Business Forest Utilization Business Permits, there are around 10 units with an area of \pm 5,898 ha, whereas Community Plantation Forests, with permits granted are IUPHHK-HTR or Timber Forest Product Utilization Business Permit - there are about 7 units of Community Plantation Forest with an area of \pm 4,192 ha, and Forestry Partnerships, Recognition of Forestry Partnership Protection there are around 1 unit with an area of \pm 4,000 Ha.

While Communal Forests in Riau Province do not yet exist, in Riau Province only Kampar Regency has submitted to the Ministry of Environment and Forestry regarding the proposed Communal Forest consisting of: 641 ha of communal forest in Batu Songgan Village, 4,414 ha in Gajah Bertalut Village, 251 ha in Petapahan Village, 1,827 ha in Aur Kuning Village, 767 ha in Terusan Village, 156.8 ha in Kampa Village and Koto Perambah Village, and 1,871.7 ha in Bukit Melintang Village.

Some of the obstacles faced in community-based forest management include communal forest management, among others are [11]: (a) Certainty of the status of the forest location and the boundary of the location of the forest that is designated and developed; (b) unclear patterns of socialization and financing, (c) specifically regarding communal forests and titled forests, there is only a legal basis that guarantees the existence and sustainability of communal forest areas, namely Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.21/MENLHK/SETJEN/KUM.1/4/2019 on Communal and Titled forests; so that the implementation still face many obstacles; (d) The same understanding and perception of PHBM at the level of program implementers, what is the process of proposing, who does PHBM does not yet have the same understanding; (e) weak development of networking among stakeholders at various levels so far, where with this network it is hoped that efforts to obtain information and interventions can be done in a better way and are recognized to be more effective in supporting existing programs; (f) lack of involvement of women's groups, it is necessary to have a strategy to increase the involvement of women's groups which are still very low, even though they have a lot of information and are directly involved in forest management in their area; (g) the capacity of village institutions, it is necessary to strengthen the capacity of village organizations/institutions and village apparatuses to support management implementation, such as the ability of the Village Head to maximize his authority in managing Village Forests and Community Forest Management, or the ability of local and communal institutional instruments to negotiate and sustainability of funding in passing the lengthy procedure or bureaucracy for the submission of forest management schemes that are the choice of villages or community groups; (h) ensuring the availability of supporting data, strengthening the planning and implementation of programs such as the extent of the location of prospective areas for the implementation of social forestry programs, PHBM, communal forests and so on. Studying the status of the area before advancing the proposed

management rights plan, ensuring community involvement is the key to the success of the program, the timely disbursement of the budget strongly supports the smooth implementation of the program and preparation of further program plans in accordance with the needs and developments that have been achieved. The most important thing is to consider the carrying capacity and capacity of the environment in the process of approving a permit so that proposals from the community are not ignored or lost to permits granted to the company.

The establishment of Communal Forests based on Article 5 paragraph (1), (2), (3) and (4) Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.21/MENLHK/SETJEN/KUM.1/4/2019 on Communal Forests and Titled forests are made through an application to the Minister by communal stakeholders. The application must meet the following requirements:

- The area of the Communal Law Community requested in part or in the form of forest;
- Legal products for the recognition of the Communal Law Community in the form of:
 - Regional Regulations for Communal Forests that are inside the State Forest Zone; or
 - Regional Regulation or Decree of the Regional Head for Communal Forest that is outside the State Forest Zone.
- A map of the communal area as an attachment to the Regional Regulation or the Decree of the Regional Head.
- In the process of preparing the map of communal territories as referred to in letter c, it is advisable to consult with the Ministry of Environment and Forestry; and
- The existence of a Statement containing: (1) confirmation that the proposed area is the applicant's communal forest area; and (2) approval is determined as communal forests with protection, conservation, or production functions.

Based on the abovementioned requirements, the Community Active Participation Pattern is an ideal pattern in community-based forestry development, especially in the empowerment of communal law communities and communities surrounding communal forests. The pattern of communal forest protection after the decision of the Constitutional Court Number 35/PUU-X/2012 in the framework of providing legal protection to communal law communities in Riau Province by including and actively participating in the community is important, because so far the active role of the community is still very low. Communal law communities have the right to open their communal forests to be controlled and cultivated their land for the fulfillment of their personal and family needs. Therefore, it is not possible for the rights held by the members of the communal law community to be taken away as long as they meet the requirements within the scope of the definition of the

communal law community as referred to in Article 18B Paragraph (2) of the 1945 Constitution and set forth in Regional Regulations. However, in reality, this is not the case in Riau Province since the rights of communal law community has not been exercised optimally, so what needs to be done is to establish a pattern of legal certainty about the status of communal law communities as well as communal forests so that conflicts in the field between communal law communities and private or corporations may not occur again, as has happened so far. In addition, a better technical understanding of law is needed for communal law communities who will be involved in producing a complete, integrated and applicable policy, so that the protection of communal law communities and the protection of communal forests in the future can be realized.

IV. CONCLUSION

The position of communal forest after Constitutional Court Decision Number 35/PUU-X/2012 which was formerly communal forest is state forest which is within the territory of communal law community, then became a forest that is within the territory of communal law community, whereas forest controlled by the State still concerns on the rights of communal law communities, as long as they still exist and in accordance with the development of the community and the principles of the Republic of Indonesia as stipulated by the law. The Pattern of Active Community Participation is an ideal pattern in community-based forestry development, especially in the empowerment of communal law communities and communities around communal forests, especially for Riau Province, which until now does not yet have the legality of Communal Forests from the Ministry of Environment and Forestry of the Republic of Indonesia. The regency/city government in Riau Province and Riau Province government should immediately make a Regional Regulation on Communal Forests that regulates the management and use of communal forests so that the protection of the rights of communal law communities is guaranteed by law. Moreover, it is better to

immediately resolve the dispute over the management of communal forests, so that conflicts in the community can be resolved.

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