

# The Study of Protection of Adat Law Community Rights

(A Case Study in Kampar Regency)

Rika Lestari\*, Sulastriyono Sulastriyono

Fakultas Hukum  
Universitas Gadjah Mada  
Yogyakarta, Indonesia

\*rika.lestari@mail.ugm.ac.id

**Abstract**—The existence of Adat Law Community in Kampar Regency has existed since a long time ago. State protection of the rights fulfilment in Kampar Regency needs to be improved. This paper examines the protection of Adat Law community rights in Kampar Regency through local regulations and seeks solutions for how to provide effective protection for the fulfilment of their rights. The approach in this study is normative-empirical research with the source of the data is primary data obtained through interviews with Adat Chief of Adat Law communities in Kampar Regency, and then the data are analysed qualitatively and concluded inductively. This research concludes that there are several Regional regulations to protect the rights of Adat Law community in Kampar Regency, but there are still many obstacles in fulfilling their rights. In the future, it requires the synergy between the local government, Adat Chief, and Adat Law Community to maximize the protection of their rights fulfilment to advance Adat Law Community of Kampar Regency.

**Keywords:** *protection, the rights, Adat Law community, Kampar Regency*

## I. INTRODUCTION

The population of Adat Law community in the world is quite large. Based on data from the *"Indigenous & Tribal Peoples' Rights in Practice: A Guide to ILO Convention No. 169"* Indigenous peoples include at least 5,000 inhabitants whose numbers reach 370 million and are present in 70 countries [1]. They spread from forest peoples in the Amazon to tribal peoples in India and spread from the Inuit in the Arctic to Aboriginal communities in Australia. In general, they occupy and inhabit areas that are very rich in minerals and other natural resources [2].

Internationally the protection of indigenous peoples is contained in ILO Convention No. 169 *Concerning Indigenous and Tribal People in Independent Countries*. It promotes the rights of indigenous peoples to land, employment, training, social assurance, education and cross-border cooperation among indigenous peoples. Furthermore, the United Nations Declaration on the Rights of Indigenous Peoples: Convention No. 169 and the United Nations Declaration are two

international instruments that are harmonious and strengthening each other.

Experience in various countries, violations of the rights of indigenous and tribal peoples still occur frequently, for example in Papua New Guinea (PNG) even though adat rights to land in PNG are recognized in regulations, which means that 97% of the national territory is located under adat rights, an estimated 5.6 million hectares are clan land, which constitutes 11% of PNG's territory, has been illegally taken over by logging, mining, and plantation companies through disputes over leasing of clan land to third parties, as leases Special Agricultural and Business Leases (SABL) that have been allowed by government agencies, mainly due to manipulation through recognition mechanisms (or neglect) of adat institutions and landowners' associations by government officials [3].

The reality of legal pluralism to ensure the realization of justice for indigenous and tribal peoples is also utilized in several countries in Southeast Asia, namely adat law, state law and international law. Legal pluralism in Sarawak, courts in Malaysia generally allow oral evidence to be presented to prove customary practices, in the case of *Sagong bin Tasi and Ors vs Selangor Kingdoms* and *Ors and Nor Anak Ngawai vs. Kalimantan Pulp Plantation*, two renowned Malaysian cases concerning common law confessions on customary land rights [4].

Indonesia is a country with 1,072 ethnic groups, including 11 ethnic groups with more than one million people. Indonesia is one of the most culturally diverse nations. This diverse ethnic population forms part of an estimated 370 million indigenous and tribal peoples in the world who live in almost 70 countries. Indonesia will be remained as an independent and sovereign state if the state ensures and develop Adat Law Community [5]. "Ensure" means that the country has the political will to acknowledge, respect and protect the juridical existence of Adat Law Community within various laws and to fulfil the rights of the community. "Develop" Adat Law Community means that the State attempted to encourage the

development of Adat Law Community life in economic, social, political and cultural.

The constitutional law of Adat Law Community is protected under Article 18 B of paragraph (2) on the 1945 Constitution of the Republic of Indonesia. The recognition and protection of Adat Law Community is not only arranged by the Constitution but also under other regulations. As in Law No. 5 of 1960 Concerning Basic Regulations on Agrarian Principles, Law No. 41 of 1999 Concerning Forestry, Law No. 32 of 2009 concerning Protection and Management of Environment, Law No. 6 of 2014 concerning Village, and Law No. 23 of 2014 concerning Local Government.

Juridical protection as a *das sollen* carried out by central and local governments to respect, protect and acknowledge the existence of Adat Law Community also their rights as *das sein* does not necessarily take place as soon as possible. Therefore, conflicts related to the existence of communities and the fulfilment of their rights still occur in many regions throughout Indonesia.

The basic thing to be examined is who is Adat Law Community. This question can be answered by philosophical approach, one of that is ontological understanding, which looks from the point of view of Adat Law Community that they are essentially human. If Adat Law Community is considered as the same human as others, then the existence of the community along with the value and life system of the community should be respected.

Kampar is one of the regencies in Riau Province. In Kampar Regency, Adat Law Community is recognised and protected through Regional Regulations (Perda) of Kampar Regency No. 12 of 1999 Concerning Ulayat Rights. In addition, there are several Regent's Decrees related to the recognition and protection of Adat Law Community. Although it has received legal protection, but in the implementation there are still various obstacles. Therefore, this research identifies and examines more deeply the protection of Adat Law Community right in Kampar Regency.

Based on the above explanation, the authors are interested in studying further with the research problems:

- How is the protection of Adat Law Community right in Kampar Regency?
- What are the factors affecting the implementation of the protection of Adat Law Community rights in Kampar Regency?

## II. RESEARCH METHODS

This research is normative-empirical [6], which is done by researching secondary data and is supported by field (empirical) research. Secondary data is consisting of primary legal materials which are legal materials with binding powers [7], among them are the second amendment of the 1945 constitution of the Republic of Indonesia, Article 18 B of paragraph (2) and Article 28 I of paragraph (3), and the Law No. 5 of 1960 Concerning Basic Regulations on Agrarian Principles, Article 2 of paragraph (4) and Article 3. The secondary legal material explains the primary legal material

[8]. Such as the arrangement of legislation; legal research; the works of legal community; and legal journals, which have a relationship on the issues discussed in this study. The tertiary content is a material giving instructions and explanations of primary law materials and secondary legal materials such as a dictionary of law and encyclopaedias. The collection techniques of secondary data are through library studies. Primary data is the data obtained directly from field research (empirical), the data-collection techniques went through interviews of two Adat Chief in Kampar Regency. The data that has been systematically assembled and classified according to the subject is to address research problems, and then the qualitative data is analysed. Research findings are produced in the form of a description that discusses or answers research problems comprehensively, after that it conclude inductively.

## III. RESULTS AND DISCUSSION

### A. The Protection of Adat Law Community Rights in Kampar Regency

The recognition and protection of Adat Law Community is in line with the opinion of Moh. Mahfud MD that the political flow of national law has been accommodated or arranged so every law always flows from (and is consistent with) the goals of the state, Pancasila legal system, the rule of law, and the constitution [9]. The purpose of the state has been determined in the Preamble to the 1945 Constitution of the Republic of Indonesia in the fourth paragraph, namely "protecting all Indonesians and all Indonesian blood, promoting public welfare, educating the life of the nation, and carrying out world order based on freedom, eternal peace and justice social". Means that recognizing and protecting Adat Law Community is part of the goals of Indonesia. The responsibility of recognition and protection rests with the State in philosophical juridical meaning. This means that the State is obliged and concretely responsible for protecting and advancing the people. The state to recognize, it means the government's action to establish the existing Adat Law Community, not the other way around, the State (government) actually imposes a heavy burden of proof and is difficult to implement by the community. The state is also obliged and responsible to protect Adat Law Community and to fulfil the rights of them. The state protects, meaning that the government is burdened with obligations and is responsible for taking firm and concrete actions by giving sanctions to those who violate the traditional rights of the community. The rights of the community include ulayat rights (land, water, forests and natural resources), rights to life and autonomy [5]. Jawahir Thontowi even added with other rights, namely: inheritance rights and adat titles, ownership of sacred objects or *regalia*, copyright and intellectual property rights and adat copyrights [9].

Recognition and protection of Adat Law Community in Indonesia can be viewed in various laws and regulations in Indonesia both at the central and local levels. According to Law Number 32 of 2009 Concerning Protection and Management of Environment in Article 1 paragraph (31) states that Adat Law Community is a group of people who have traditionally lived in certain geographical areas due to ties to

ancestral origins, a strong relationship with the environment life, and the existence of values system that determines the economic, political, social and legal aspects of life. Then how is the recognition and protection of Adat Law Community in Kampar regency? This can be seen in Regional Regulations (Perda) of Kampar Regency No. 12 of 1999 Concerning Ulayat Rights, in Article 1 paragraph (g) states that Adat Community is a Adat Law Community that has traditional property rights for generations in the area, in the form of tribes, *nagari*, *perbatinan*, villages, *kepenghuluan* and *kampung*. The Regional Regulation above shows that Adat Law Community in Kampar Regency is recognized and protected for the existence and the rights. In addition, there are also several Kampar Regent's Decrees related to the recognition and protection of the adat law community, among Kampar Regent's Decree No. 660 - 325 / IV / 2019 Concerning The Recognition of Adat Law Community and Ulayat Rights of the Petopang Tribal of Kenegerian Kuok of Bukit Melintang Village of Kuok sub-district of Kampar Regency. Then Kampar Regent's Decree No. 660 - 327 / IV / 2019 Concerning The Recognition of Adat Law Community and Ulayat Rights of Kenegerian Terusan Kekhalifahan Batu Sanggan of Terusan Village of Kampar Kiri Hulu sub-district of Kampar Regency. Both Regents' Decrees state that they recognize the existence of Adat Law Community and their traditional rights. Adat Law Community of Kampar is a community that lives in an area, where the region is a place for growth and development as well as the enactment of adat Kedatuan Andiko [10]. Kedatuan Andiko government, according to Datuk Rajo Malano, was born since the earth was dug up with *tumilang*, same as plants, meaning that since the world and humans existed, since then Andiko's government and customs have begun [10]. Kedatuan Andiko government was continued by Andiko Nan 44 Government. Andiko Nan 44 Government was a unity government that was born in the 13th century in Central Sumatra.

The reign of unity was governed by the unification of the grandfathers which called penghulu of Andiko. A grandfather is a role model for all his children, because he regards to a person of higher status (by genealogy), wise, experienced, generous and lucky person based on the rules of *hontak soko pisoko*. The government of these unions has a set of offices and adat regulators also hereditary devices in carrying out their duties as guardians of the tribal alliance and adat density of village, this is known as *Cacau Ninik Mamak*.

Otok cacau Andiko Nan 44 Government which starts from Pucuk Andiko, Wakil Pucuk Andiko, Pucuk Adat / Pucuk Nagoghi, Pucuk Suku, and Pucuk Kampung. Niniok mamak is responsible for their respective tribes, where in the Adat Andiko Nan 44 there are four broad outlines namely *Domo*, *Piliang*, *Malay*, *Pitopang* [11]. The benefits of otok cacao are to fulfil the needs and Adat Law Community rights in Kampar Regency, so that the rights of Adat Law Community can be fulfilled by their chiefs based on their rights and authorities according to adat law. These rights must also be protected so that the life of the Adat Law Community are guaranteed both de jure and de facto.

In Kampar Regency, according to Datuk Simorajo [12], the fulfilment of Adat Law community rights to ulayat land still

faces obstacles, for example the right to manage lakes (Bokuok lake). At the first, Adat Law community of Kenegerian Tambang Terantang pay the recognition if they want to take the products from lake. After that, they raise an objection, then the recognition is abolished, specifically for Adat Law community of Kenegerian Tambang Terantang. Furthermore, the conflict of ulayat rights between Adat Law community and the local Government of Kampar Regency, one of them is the ulayat rights of *Pulao Botiong*. *Ninik Mamak Datuk Nan X Kenegerian Tambang Terantang*, Kampar Regency, sued the State Administrative High Court (PTUN) for the Kampar Regent's Decree Number: 545 / D.P.E / IUP / 2012/18 dated 31 October 2012, concerning Approval of Mining Operational Business Permits Production of Rock Material (Sand and Stone) to Omar Yudisira. Because the Regent's Decree was not accompanied by a written Recommendation Letter, a Certificate of Adat Density regarding the Relinquishment of Rights, or the transfer of rights to a third party, from *Ninik Mamak Datuk Nan X* in Kenegerian Tambang Terantang, who controlled the ulayat rights of Botiong Island. The decision of the Pekanbaru PTUN granted the lawsuit of Adat Law community in Kenegerian Tambang Terantang and asked the Kampar Regent to revoke the Decree of the Kampar Regent Number: 545 / D.P.E / IUP / 2012/18.

Then he explains about adat title rights, in otok cacau of Adat Law Community at the Kenegerian Tambang was passed down through the lineage of his descendants who had the right to become *ninik mamak* in each tribes. As *ninik mamak* they must perform their duties and functions in accordance with adat law. If the coronation is done in violation of rule (directly related) then the consequences will be caused (*biso kaughi*), a disease that is difficult to cure.

From the description above can be seen that the protection of Adat Law Community in Kampar Regency in juridical manner (de jure) has been recognized and protected in various regulations that apply in the regions. However, in de facto the rights of adat law community fulfilment still faces various obstacles, so synergy between local governments, Adat Chief, and Adat Law Community to maximize the protection of their rights fulfilment.

#### *B. Factors Affecting the Implementation of the Protection of Adat Law Community Rights in Kampar Regency*

According to Lawrence M. Friedman in his book *The Legal System; A Social Science Perspective*, later known as legal system theory explains that there are three components of the legal system, namely: legal structure, legal substance, legal culture [13]. The affectivity and success indicator of law enforcement depends on the three elements of the legal system. The legal structure concerns law enforcement officers, the legal substance includes a set of laws and regulations, and the legal culture is a living law adopted by a community.

According to Bambang Waluyo that the condition of law enforcement in Indonesia is considered to be deteriorating or at its nadir. This fact is seen in the results of surveys, news in the mass media, electronics, and which is directly felt by the public. This deterioration in law enforcement shows, among others, the existence of deviations from the principle of

equality before the law and finally the denials of the nobility of the legal function. It can be seen that the law enforcement in the adat law community is not good and discriminatory. Law Enforcement in law in action is not the same as law in the book, *das sein* deviates from *das sollen* and other things that are not ideal [14].

According to Soerjono Soekanto, the main problem of law enforcement actually lies on the factors that might influence it. These factors are: The legal factor, in this case is the law; Law enforcement factors, namely those who form and apply the law; Factors of facilities that support law enforcement; Community factors, namely the environment in which the law applies; Cultural factors, namely as a result of work, creativity and taste based on human initiative in the association of life [15].

The fulfilment of adat law community rights according to the *datuk Marajo indo* of the Pitopang tribe has not run as it should be, this is due to the lack of synergy between the local government and adat chiefs in regulating Adat Law communities in Kampar Regency, so the authority of the adat chief (the right of adat title) is decrease day by day, for example in providing marriage recommendations, so that there is no marriage between one tribe that is considered to violate adat law [16].

From the description above it concluded that the fulfilment of adat law community rights in Kampar Regency has not been proceeding as it should be due because it is influenced by factor, first the legal structure concerns law enforcement officers, who do not carry out the rules as they should be, secondly the legal substance (regional regulations concerning ulayat rights) which is still weak, and third the legal culture of the adat law community.

#### IV. CONCLUSION

Protection of Adat Law community is part of the goals of the state of the Republic of Indonesia. This responsibility means being in the hands of the State which contains philosophical juridical meaning in depth. This means that the State is obliged and concretely responsible for protecting and advancing adat law community. The state is obliged and responsible to protect adat law community and to fulfil adat law community rights. The protection of Adat Law community has been outlined in the form of the regional regulations of the Kampar Regency and Regent's Decree, but the realization is not carried out properly. The weakness of law enforcement is influenced by factors, first, the legal structure concerns law enforcement officers, secondly the legal substance of Regional

regulations. Third the legal culture of Adat Law community. In the future, it requires the synergy between the local government, adat chief, and adat law community to maximize the protection of their rights fulfilment to advance adat law community of Kampar regency.

#### REFERENCES

- [1] A Guide to ILO Convention No. 169, 2010, Indigenous & Tribal Peoples Rights in Practice. Jakarta: ILO Publications.
- [2] A. Amiruddin and H.Z. Asikin, *Pengantar Metode Penelitian Hukum*. Jakarta: PT. Raja Grafindo, 2004.
- [3] R.E. Bosko, *The Right of Indigenous Peoples in the Context of Natural Resources Development*. Jakarta: ELSAM, 2006.
- [4] R. Bulan, *Pluralisme hukum di Serawak; sebuah pendekatan terhadap hukum adat dalam Konstitusi Federal dengan menggunakan konsep yang dikembangkan sendiri oleh masyarakat adat sendiri*, Epistema Institute, AIPP, FPP, RRI, RECOFTC. Jakarta, 2012.
- [5] M. Colchester, *Beragam Jalur Menuju Keadilan: Pluralisme Hukum dan Hak-Hak Masyarakat Adat di Asia Tenggara: sebuah Awal*, Epistema Institute, AIPP, FPP, RRI, RECOFTC. Jakarta, 2012.
- [6] L.M. Friedman, *The Legal System; A Social Science Perspective*. New York: Russel Sage Foundation, 1975.
- [7] S. Mertokusumo, *Penemuan Hukum Sebuah Pengantar*. Yogyakarta: Liberty, 2009.
- [8] M.M.D. Mahfud, *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi*. Jakarta: Rajawali Pers, 2010.
- [9] E. Riyadi, *Masyarakat Adat, Eksistensi dan Problemnnya; sebuah diskursus Hak Asasi Manusia*. Jakarta: ELSAM, 2006.
- [10] M. Syarfi, Abdullah, Dt. Marajo Bosau, H. Nurhidayat, and R. Dianti, *Adat Jati Kabupaten Kampar*, UNRI Press kerjasama Dinas Perhubungan, Pariwisata dan Seni Budaya Kabupaten Kampar. Pekanbaru, 2007.
- [11] U. Syarfi, A. Zulkarnaini, D.P. Desi, Sudirman., Dt. Rajo Malano, Imam., Dt. Bosou, Yurnalis., Dt. Marajo Basau, and N. Nurhidayat, *Silsilah (Otok Cacao) Ninik Mamak Dalam Masyarakat Adat Kampar*, Dinas Pariwisata dan Kebudayaan Kabupaten Kampar, Kampar, 2011.
- [12] S. Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. Jakarta: Rajawali Pers, 1983.
- [13] S. Soekanto, *Pengantar penelitian hukum*. Penerbit Universitas Indonesia (UI-Press), 2006.
- [14] B. Waluyo, *Penegakan Hukum di Indonesia*. Jakarta: Sinar Grafika, 2016.
- [15] S. Sulastriyono, *Pengakuan dan Perlindungan Hak-Hak Masyarakat Hukum Adat*, disampaikan pada Peresmian Forum Dewan Guru Besar Indonesia dan Sarasehan Kebangsaan Masyarakat adat dan Gerakan Kebudayaan di Indonesia, Menggali Memori Nilai-Nilai Kebangsaan, Balai Senat Universitas Gadjah Mada (UGM), Yogyakarta, 16 Desember 2017.
- [16] J. Thontowi, "Perlindungan dan Pengakuan Masyarakat Adat dan Tantangannya dalam Hukum Indonesia," *Jurnal Hukum IUS QUIA IUSTUM*, vol. 1, no. 1, UII, Yogyakarta, 2016.