

The Strengthening of Agrarian Customary Law in Minahasa Indigenous Community Through Local Regulation

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ABSTRACT

This study aimed to strengthen customary Agrarian law in the Minahasa Indigenous community through local regulation. The method used in this research is the empirical approach and is also supported by local norms, both unwritten and written. The emphasis is on the realities of customary law issues in customary Agrarian law in Minahasa Indigenous people. The Indonesia Agrarian law (UUPA) states that national Agrarian law is based on customary law but on realities, many law issues faced by Minahasa Indigenous community because the basic of Agrarian Law shows the concept of pluralism. As we know, The Republic of Indonesia has various customs and cultures from Sabang to Merauke. Therefore, to study land in an area of Indonesia, one must find out in advance the structure of the indigenous people. It is very appropriate to resolve the conflict by local regulation, which has local adat or local wisdom of Minahasa Indigenous people.

Keywords: Customary agrarian law, Local regulation, Minahasa indigenous people, Strengthening.

1. INTRODUCTION

Indonesia is a large nation consisting of more than 300 ethnic groups [1], or according to census data from the Central Statistics Agency, there are 1,340 ethnic groups [2]. Therefore, Cornelis Van Vollenhoven divides Indonesia into nineteen [3] communities of customary law. There is pluralism in the cultural structure of the people spread from Sabang to Merauke. Differences are seen in ethnicity and religious beliefs and differences in community interests, which often lead to various incidents of communal conflict in indigenous communities. The communal conflict or social unrest happens due to different choices of law in the agrarian sector in several places. Thus, it portrays an imbalance in the country's access to law and social justice. [4]

In paragraph IV of the Indonesian 1945 Constitution (UUD 1945), it is stated that the Government of Indonesia protects the entire Indonesian nation and the entire homeland of Indonesia, also contributes to promoting public welfare as a form of upholding the human rights of every citizen through creating a safe, peaceful, orderly and prosperous atmosphere, both physically and mentally because communal conflicts of indigenous communities caused by conflicts of interest between community groups can be the cause of national instability and hinder national development.

Indeed, national development is a series of sustainable development efforts covering the entire life of the community, nation, and state to realize the National Goals. The implementation of national development covers aspects of the nation's life, namely aspects of political economy, social culture and defense and security in a planned, comprehensive, directed, integrated, gradual, and sustainable manner to drive the improvement of national capabilities in order to realize a life that is equal and equal with other developed nations. As the basis of the nation's philosophy in the realization of the Ideal of Law (Rechtsidee), especially in the 2nd principle "Just and civilized humanity" and the 5th principle "Social Justice for all Indonesian people.

Infrastructure development is an integral part of national development and the driving wheel of economic growth, and it can be said that infrastructure development is the motor of regional development. Infrastructure development has an essential role in strengthening the unity and integrity of the nation. Connected transportation and telecommunications from Sabang to Merauke and Sangihe Talaud to Rote are one of the unifying elements of the Unitary State of the Republic of Indonesia, the smooth distribution of food and other goods and is an essential aspect in increasing the productivity of the industrial sector.

The government has the authority to procure land for the public interest based on the principle stated in Article 6 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as UUPA), which stipulates “All land rights have social functions.” Furthermore, the explanation of article 6 stipulates that:

“There is no justification for any land rights that a person has, that his land will be used (or not used) solely for his interests, especially if it causes harm to the community. Land use must be adapted to its conditions and the nature of its rights so that it is beneficial both for the welfare and happiness of those who own it and the community and the state. However, at the same time, this provision does not mean that individual interests will be suppressed by the public interest (society). The Basic Agrarian Law also takes into account individual interests. The interests of the community and the interests of individuals must balance with each other. In the end, the main goal will be achieved: prosperity, justice, and happiness for the people as a whole.”

Disputes about land in Indonesia today are an issue that has received much attention from various parties who have studied it from various disciplines. The reason is that land in social life is related to economic and welfare aspects and has a close relationship with social, political, juridical, psychological, cultural, and religious issues. The solution taken to resolve problems related to land is not only emphasizing legal (juridical) principles but also having to pay attention to the welfare principle, the principle of public order and security, and the principle of humanity so that land disputes do not widen into public unrest which results in disrupting the stability of unity. And national unity.

Of the several land disputes faced, namely regarding land issues located within the environment of a customary law community, sometimes there is an overlapping issue of the authority of the local customary law community on the one hand and the use of land for the government for development in Indonesia. This should be given serious attention in the context of implementing national agrarian affairs.

The development of the customary law system of a community has a close relationship with the structure of the customary law community (*Adatrech gemeenschap*), which is the supporter and implementer of customary law in the process of their life. In addition, customary law is a supporter and implementer of custom in the life process of an indigenous people and the basis for the authority for the community to act in the legal process.

So it is appropriate if someone wants to study the land in an area in Indonesia to know in advance the structure of the indigenous peoples in that land. As stated by the Father of Indonesian Customary Law, Prof. Cornelis Van Vollenhoven, that: “In order to know customary law, it is necessary to investigate in any area the nature and structure of the legal alliance in which the people who are controlled by the law live their daily lives.” [5]

An orderly human unit, settled in a specific area, has rulers and has tangible or intangible wealth. The members of each unit experience an everyday life according to nature, and none of the members have any thoughts or ideas. The tendency to dissolve the bond that has grown or leave in the sense of breaking away from the bond for good is called the customary law community (*adatrech gemenschaap*).[6]

The relationship between customary law communities and land use is very close and cannot be easily separated. “Ulayat rights” are rights owned by legal alliances to freely utilize customary lands that are still undergrowth within their territory for the benefit of the law itself and its members or the benefit of outsiders, but with permission and interference, always with the payment of recognition from the legal alliance, as well as on lands that have been cultivated by people located within their territory. According to Van Vollenhoven’s term, this right is called “*Beschikkingrecht* [7] or the right to control entirely. For Indonesian, this term is translated into various terms such as lordship rights, ulayat rights, ancient rights, etcetera [8]

Based on the explanation above, the community within the Minahasa Customary Law has the authority to utilize the land within the Minahasa customary law alliance. Of course, this authority is based on a customary land tenure right based on the rights of customary law communities to manage these lands for the common good. The existence of these customary lands, in fact, still exists in line with current developments with the increasing need and limited availability of land for national development, especially after the construction of infrastructure, especially toll roads in the Bitung and North Minahasa areas, causing customary lands to receive attention from the government as an alternative for land acquisition for development because no specific regulations are governing the use of customary land in the Minahasa customary law environment, especially those intended for national development.

The existence of customary rights raises many perceptions. At least it can be said that there are two views on the issue. On the one hand, there is a concern that customary rights that previously did not exist are revived. On the other hand, there are concerns that with the increasing demand for land, there will be more pressure on customary rights whose existence is guaranteed by Article 3 of the UUPA [9]. Recognition of existence by the UUPA is natural because customary rights and customary law communities existed before forming the Republic of Indonesia long before the birth of our national land law. Article 3 of the Basic Agrarian Law confirms this recognition. In the provisions of this article, it has been explained that it is recognized with certain limitations, namely regarding its existence and implementation. Even among ordinary people, the basic understanding of customary land rights varies. Some people interpret customary rights as ownership that leads to individual ownership, while in fact, customary rights

are shared rights of all customary law communities (civil aspects of customary rights).[9]

Based on the reasons mentioned above, the formulation of the problem that became the subject of the discussion in this research are:

- What are customary law communities in Minahasa?
- How are land rights under customary law?
- How to the strengthening of Agrarian Customary Law in Minahasa Indigenous people through local regulation.

2. RESULT AND DISCUSSION

2.1 Minahasa Indigenous Law Community

In the analysis of this study, we first distinguish the meaning between indigenous peoples and customary law communities to see which customary law applies in an area in Indonesia. Many experts argue that the notion of indigenous peoples must be distinguished from customary law communities. The concept of indigenous peoples is an understanding to refer to specific communities with specific characteristics. Meanwhile, customary law community is a technical juridical understanding which refers to a group of people who live in a specific area (ulayat) where they live and live in a specific environment, have wealth, and a leader who is in charge of protecting the interests of the group (outward and inward), and has a legal system and government.[10]

Society in Indonesia has a specific structure and pattern [11], but overall it can be described as follows:

1. Customary law has a strong communal nature, meaning that humans, according to customary law, are creatures in close social ties; this sense of togetherness covers the entire field of customary law.
2. Customary law has a *magisch religieus* style, which is related to Indonesia's natural way of life.
3. Customary law is filled with concrete thoughts; that is, customary law is very concerned about the number and repetition of concrete life relationships.
4. Customary law has a very visual nature, meaning that legal relations are considered only to occur because they are determined by a visible bond (i.e., a visible "sign").

The Minahasa tribal customary law community is a group of people who have lived, settled for generations living on Minahasa land since ancient times, allying with customary law communities both territorially with the territory of the alliance of customary law institutions in a village alliance, regional alliance (sub-tribe), our alliance of several villages; as well as genealogical or affinity with fellowship as one descendant in a patrilineal manner.

The management of the Minahasa customary law community is genealogical territorial, occupying a residential area called "walak," consisting of members of

relatives of a patrilineal genealogical unit under the leadership of "Tua un Teranah" as the head of the family. "Walk" the meaning of communal agricultural land, but by the Dutch government, "Walak" was changed to "Negeri" or "negorij," which has certain territorial boundaries and has different meanings. Previously the unity of the country was based on kinship, and now it is a neighbor that is open to outsiders.[3]

Currently, the villages as administrative units are inhabited by the Minahasa indigenous people led by "Hukum Tua" or "Kuntua" derived from the word "Ukung," which means head or also called "Paedon tu'a" or "Pamatu'an." Farms, rice fields, gardens, and "Sabuwa" or Popo, Lekou, Terung, are emergency buildings erected on garden land, included in the village unit. "Wanna" is a unit of several villages located side by side. This area is at the same level as the sub-district area headed by "Kumara." [3]

From the research results of the National Legal Development Agency (BPHN) of North Sulawesi Province, in running the village government "Kuntua" or the Village Head is assisted by several staff such as:

1. "Pala" or "Head of Guard" has the task of being the leader of a "Guard" or community group in the area or village environment;
2. "Meeting" has the task of assisting the head of "guard" in one of the "guards" in the village area, namely managing guests who come in the village area or guard. The meeting comes from the word "weteng," which means to arrange or divide.
3. The clerk is in charge of administering the village administration.
4. The land surveyor's task is to carrying out land measurements in the village area and recording them in the village land register.
5. "Mantri air" duty is to evenly regulate water distribution for farmers in the fields and fields.
6. Kepala Jaga is in charge of maintaining security in the village. Positions such as the Kepala Jaga guard are now known as "village hansip commanders."
7. The Kepala Jaga is a person who represents the Hukum Tua (Village Head) when unable to do so. Usually, one of the guards in the village is appointed who is old or who is considered intelligent or wise to represent the Hukum Tua.
8. "Tukang Palakat," his job is to convey announcements or instructions from the Hukum Tua to the village people.
9. Raad Negeri, or aka in wakum Tua as traditional leaders (other than the Hukum Tua), consists of village elders (poenden tua = people who are elders in the village). The task of the State Raad is to provide opinions or considerations on matters relating to customary issues of customary law in the village to the Hukum Tua. The opinion of the Raad Negeri is not binding on the Hukum Tua because the final decision rests with the Hukum Tua itself as chairman of the

Raad Negeri. This State Raad is independent of the village administration (apart from the duties of the village civil servant).

10. "Pamong Tani" duty is to guide the village community in agriculture.
11. Suru is in charge of managing and supervising guard property.
12. The role of the legal community government (ukung wangko, walak head, and ukung tua) in Minahasa is only to regulate and maintain the use of land by its citizens so that it is not transferred to other members of the legal community.

2.2 Land rights according to Mihanasa customary law

The land is one of the gifts of God Almighty for humans in living their lives in the world, starting from a foothold, daily activities, and as a place to earn a living, so that land has economic value and social functions for human life itself. Land can be valued as an essential property with permanent properties and economic value for humans and can be used as a guarantee for the survival of human life on this earth.

According to Black's Law Dictionary, that right is correlative to duty; where there is no duty, there can be no right.[12] Indonesian Basic Agrarian Law Act No. 5 Of 1960 in article 4 point has given the definition, that :

1. Based on the state's right of control referred to in Article 2, it is necessary to determine the types of rights to the surface of the earth, which is called land (land), that can be granted to, and held by, persons, either individually, jointly with others as well as bodies corporate.
2. The land rights referred to in paragraph (1) of this article confers authority to use the land in question as well as the mass of the earth and the water existing under its surface and the space above it to the point that is essentially required to allow for the fulfillment of the interests that are directly related to the use of the land in question, such a point being within limits imposed by this Act and by other legislation of higher levels.

According to customary law, land rights can be owned through land clearing, land tongue, inheritance, buying and selling, and expiry. Land clearing must be based on a permit from the local village government, and if the permit is not given based on the rules and mechanisms, then land clearing cannot be done. At the same time, the tongue is obtained due to natural processes that occur due to the turning of the river current or the land that arises on the coast. Customary law communities have rights to existing land and have certain rights to the land and can exercise these rights both outside and into the alliance. The total ownership of the customary law community is called "Ulayat Rights," while limited land ownership is the embodiment of personal rights.

In Minahasa, every member of the customary law community is given the right to clear forest to be used as

agricultural land or fields. This right is the right to clear land, which is called "pasisi" land (from the word "I pesin"), which means to motivate residents to be diligent in doing business in agriculture. The custom of the Minahasa indigenous people to clear forests to be used as agricultural fields is called "Tumani." [13]

One way of land ownership through customary law is through inheritance. In Minahasa customary law inheritance, there are two inheritance systems, namely:

1. The individual inheritance system is called "Pasini" land. Pasini land ownership rights can be carried out legally according to customary law and national law by registering the Pasini land as property rights on private land at the local Land Office. Pasini land in the Minahasa area cannot be contested for ownership of the land. However, these rights can be transferred through inheritance, exchange, buying, selling, or grants.
2. A collective inheritance system is known as "boedel" or a joint inheritance, also known as "Kalakeran" land. The ownership of Kalakeran land has an element of togetherness as a source of life for the customary law community. The goal is that the community continues to coexist with each other in the hope of not causing divisions in it. There are several types of kalkeran soil, namely:
 - a. Tana' one Taranaki = family land remodeled or purchased by a family head (dotu = Datuk) and has never been divided from generation to generation.
 - b. Tana' kalakeran OEM banoea = land of state/village kalakeran, which was originally remodeled and worked by a country for coffee plants.
 - c. Tana' kalakeran oem balak - land of kalakeran pakasan or district, an example of which is in Wenang (now Manado). For example, the lands of the districts of Tomohon, Langowan, Kakas, Tondano and others.[14]

There are several rights [15] of the Minahasa customary law community to customary lands, both Pasini and kalakeran, namely:

1. Right to enjoy the results (Genotrecht).
The right to enjoy the results of the Kalakeran land-based on Minahasa customary law may not be sold. The processing is done according to a schedule, and the one who manages it is usually the oldest.
2. Profit Sharing (Tumoyo/Toyo/Matuke).
In the form of a profit-sharing agreement, the agreement is made communally for Kalakeran land and individually for Pasini land. The agreement's content is a profit-sharing agreement between the plantation manager and the owner based on their respective distributions based on the agreement of the

parties when making. Each gets the proceeds deducted from processing the remaining 1/3 for the owner and 2/3 for the processor.

3. Boarding Rights.

The right to ride usually occurs at the owner's request to be lived in and maintained or also managed for plantation land. Usually, feed rights occur when the owner is not in place. This right is given the opportunity for people who do not have houses or agricultural fields to manage land that has not been occupied or managed by the owner until the time limit of the agreement agreed by the parties.

4. Lease.

This lease agreement is between the owner of the land or house and the tenant, and if one of the parties dies, the heirs continue the agreement.

5. Right to purchase authority (naastingrecht).

Landowners usually first offer to family or neighbors. If the land is inherited, the family or neighbors cannot afford it, which is offered to someone else. In particular, for inherited land (boedel) such as the family Kalakeran, the offer is given first to the family at a lower selling price. This means that the selling price is not comparable to the price of unity and harmony of a family, which is commonly known as "the price of the relatives."

2.3 The Strengthening of Agrarian Customary Law in Minahasa Indigenous people through local regulation.

The application of Regional Autonomy through the legal basis of the 1945 Constitution Articles 18, 18A and 18 B, MPR Decree No. XV/MPR/1998 concerning Regional Autonomy Law no. 22 of 1999 as amended by Law no. 32 of 2004 is the forerunner to the growth and development of customary law, which has been marginalized. This emergence was accompanied by community voices regarding customary law over several customary land conflicts in almost all regions of Indonesia. This is a bright spot for strengthening local community law. As we know, customary law is a law that comes from the soul of the Indonesian nation itself and has existed for a long time. So the opinion of Prof. Soepomo and Prof. Koesnoe is that customary law. The science of customary law are laws that, even though they are not written, live and are obeyed in everyday life because they radiate and incarnate the thoughts and feelings of the people's laws that continue to grow and develop originating from the soul, feelings, and beliefs of the nation's law. Indonesia itself.[16] Implementation of regional autonomy focuses on the area closest to the community, which is taken from customary law, customs, and socio-cultural values in the local community, such as land ownership rights for Pasini and kalakeran. This is important because the essence of regional autonomy is the

meaning of political maturation of the local people, where there is participation and empowerment and the increase of welfare of the community. This is justified by the opinion of Satjipto Rahardjo [17] that a good legal policy will certainly not leave the facts (customary law) that have long existed in Indonesia. Although in social development, the Indonesian people tend to incline toward modern society.

Regional autonomy has rights and obligations in its implementation in autonomy regions, namely based on Article 21 of Law no. 32 of 2004, the regional rights are:

- a. regulate and manage their government affairs;
- b. elect regional leaders;
- c. managing local officials;
- d. managing regional wealth;
- e. collect local taxes and regional levies,
- f. get a share of the results of the management of natural resources and other resources in the region, get other legitimate sources of income get other rights regulated in the legislation.

Meanwhile, regional obligations are regulated in article 22, namely:

- a) protecting the community, maintaining national unity and harmony, and the integrity of the Republic of Indonesia,
- b) improving the quality of people's lives,
- c) developing democratic life
- d) actualizing justice and equity,
- e) improving basic educational facilities,
- f) improving health services,
- g) providing adequate social and public facilities,
- h) developing a social security system,
- i) preparing regional planning and spatial planning,
- j) developing productive resources in the region,
- k) preserving the environment,
- l) managing population administration,
- m) preserving socio-cultural and establish their values,
- n) applying laws and regulations by their authority,
- o) regulating other obligations directed in the laws and regulations.

In particular, in Article 22 point (n) listed above, one of the regional obligations is to form and apply laws and regulations by their authority, including making regional regulations that contain provisions on customary lands based on customary law sources in the area of Minahasa legal communities. This needs to be done because, in a democratic country, it requires community participation based on the consideration that sovereignty is in the hands of the people and its implementation carried out together to determine common goals and the community's future. This conception of society is directly related to the idea of democracy wherein truth democracy is "of the people, by and for the people."

3. CONCLUSION

The Minahasa tribal customary law community is a group of people who have lived, settled for generations living on Minahasa land since ancient times, allying with customary law communities both territorially with the territory of the alliance of customary law institutions in a village alliance, regional alliance (sub-tribe), our alliance of several villages; as well as genealogical or affinity with fellowship as one descendant in a patrilineal manner.

In Minahasa, every member of the customary law community is given the right to clear forest to be used as agricultural land or fields. This right is the right to clear land, which is called "pasisi" land (from the word "I pesin"), which means to motivate residents to be diligent in doing business in agriculture. The custom of the Minahasa indigenous people to clear the forest to be used as agricultural fields is called "Tumani." One of land ownership through customary law is through inheritance.

In Minahasa customary law inheritance, there are two inheritance systems, namely an individual inheritance system called "Pasini" land and a collective inheritance system called "boedel" or a joint inheritance which is also known as "Kalakeran land." Regional autonomy strengthens customary law in the Minahasa area as regulated in Article 22 point n. It is the regional obligation to form and apply laws and regulations by their authority, including making regional regulations that contain provisions on customary lands of Pasini and Kalakeran based on customary law sources in the Minahasa community.

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