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Existence of Indigenous Peoples in Law Related to the Environment

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***Abstract*—This article aims to find out the law regarding the protection of indigenous peoples in the law related to the environment in Indonesia. In the pre-reformation era, especially at the beginning of legislating on environment, there is no law regarding indigenous peoples. After the amendment, the existence of indigenous peoples began to be discussed and the law required the government to pay attention on the existing customs. In the post-reformation era, the existence of indigenous peoples has received more attention compared to two previous law. It even provides attribution to the central and local governments to expedite the recognition of indigenous peoples.**

Keywords—the existence of indigenous peoples, the law and the environment

I. INTRODUCTION

This article aims to find out the law regarding the protection of indigenous peoples in the laws and regulations related to the environment in Indonesia. Society and the environment are two things which cannot be separated. The state who has authority to protect human rights should protect the indigenous peoples. The form of government protection is guaranteeing the rights of indigenous peoples regulated in the law. The object of study is the law as a derivative regulation from the Constitution.

There are two terms used; indigenous peoples and/or customary law communities but it is actually the same meaning. The customary law community is a community unit in an autonomous customary area. Customary law communities regulate life systems independently, such as law, politics, economics, and so on. Customary law community is also defined as an indigenous community unit that was born or formed by the community itself, not formed by other forces, for example the Village Unity with the Village Community Resilience Institution [1].

The definition of "community" does have differences with "customary people", but they still have similarities. Society as an object or indigenous peoples as objects of a study into consideration are humans who live in nature. The similarities and differences can be seen from the definition of indigenous peoples above, which will be explained by several experts below.

Edward Shils [2] gives the definition of society as a phenomenon over time. Society is incarnated not because of its existence at one point in time. But it only exists in time. He is the embodiment of time. The definition of society presented by Shils is very different from the definition described in the paragraph above.

Murtadha Mutahhari, [2] giving a different opinion, society is a group of people who are closely intertwined because of certain systems, certain traditions, certain conventions and laws that are the same, and lead to collective life. Collective life in question does not have to live in the same place or eat the same food. Collective life is very closely related to the definition of indigenous peoples in the paragraph above. Setiadi also has a different definition from Shils and has similarities with Mutahhari and the notion of indigenous peoples. Setiadi, [3] defines society as a human being who respects (interacts) with other humans in a group.

The three meanings above, although there are differences, provide evidence that something exists and it is called difference. In community groups there are called indigenous peoples.

Customary law communities are a community unit in an autonomous customary area, where they regulate their life systems independently, such as law, politics, economics, and so on. Customary law community is also defined as an indigenous community unit that was born or formed by the community itself, not formed by other forces, for example the village unit and its Village Community Resilience Institution [4].

The existence of indigenous peoples that have been passed down from generation to generation in the archipelago can be seen from history. In the Bugis, when life was regulated by *pangngaderreng* (social law) as the highest philosophy governing society until the conquest of all Bugis lands in 1906, the elements that initially consisted of only four were later changed to five. The element in question is *pangngaderreng* which was founded on the first *wariq* (royal protocol), the second *adeq* (customs), the third speech (legal system), the

fourth *rapang* (comparative decision making), then added a fifth element, namely saraq (Islamic law). The determination of *pangngaderreng*, which adds Islamic law as one of its contents, shows that indigenous peoples existed before Islam entered Indonesia [5].

Laurensius Arliman said that the rules of our customs, essentially already existed in ancient times, the Pre-Hindu era. The customs that lived in the Pre-Hindu society, according to customary law experts, were Polynesian Malay customs [6]. Although the actual historical records that classify the existence of a Hindu or Buddhist era at this time are questioned, because some Indonesian historians today, such as Santosaba [7] and Sofia Abdullah [8], find that Hinduism and Buddhism themselves were influenced by the teachings of this archipelago's ancestors.

Adat also has sanctions that show that in social life, sanctions are one way to bring order to society. Customary sanctions are one of the customary reactions to violations of customary rules or non-implementation of customary rules [9].

The social facts that show the existence of indigenous peoples, by the makers of the Indonesian constitution are also regulated in the 1945 Constitution of the Republic of Indonesia (UUD 1945) Article 18B paragraph (2) "The state recognizes and respects customary law community units and their rights. as long as it is still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law.".

The 1945 Constitution provides instructions regarding the recognition and respect of indigenous peoples regulated in law (UU). This has implications for many laws governing indigenous peoples.

The discussion will be divided into two, firstly the regulation of indigenous peoples in the environmental law before the reform and secondly the regulation of indigenous peoples in the environmental law after the reform. The purpose of this study is to find out the protection of the existence of indigenous peoples along with an explanation of their rights in laws related to the environment from the beginning of independence to the present.

This article is a normative research that is making laws and regulations the object of study. The approach used is philosophy, which uses the power of thinking to find the essence of something. The data used is secondary data, namely primary legal materials in the form of laws and regulations, secondary legal materials in the form of research results and expert opinions, and tertiary legal materials other documents related to research (Akmal).

II. PRE-REFORM

In 1982, the incumbents realized the importance of regulations governing the environment. Law of the Republic of Indonesia Number 4 of 1982 concerning Basic Provisions for Environmental Management [10] (UU K2P2LH) is the basis for implementing environmental management. The basis for the formation of the K2P2LH Law is as follows:

A. *There is a transcendental understanding that the Indonesian environment is a gift from God Almighty to the Indonesian nation. The environment as a gift from God Almighty means the environment as a space for life in all its aspects and dimensions in accordance with the insight of the archipelago. In this law, insight into the archipelago is a benchmark for whether or not the understanding of the environment is a gift from God.*

B. *Awareness of utilizing natural resources (SDA) to promote public welfare as contained in the 1945 Constitution and to achieve happiness in life based on Pancasila. What is meant by utilizing natural resources is an effort to preserve the ability of the environment. Conditions:*

- Harmonious and balanced to support sustainable development.
- Implemented with an integrated and comprehensive policy.
- Taking into account the needs of present and future generations. The Importance of Wisdom to protect and develop the environment in relations between nations.

C. *The importance of regulating environmental management based on integrated and comprehensive national policies in regulations at the level of the Law (UU).*

The constitutional basis for which this law is attribution is the 1945 Constitution of the Republic of Indonesia [11] (UUD 1945), Article 33 paragraph (1) The economy is structured as a joint effort based on the principle of kinship. Paragraph (2) Production branches which are important to the state and which affect the livelihood of the people are controlled by the state. Paragraph (3) Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.

Based on the three paragraphs contained in Article 33 of the 1945 Constitution, it has the spirit to deliver the Indonesian people to social justice for all Indonesian people. The hope is to achieve mutual prosperity. Paragraph (1) contains the spirit to prosper the Indonesian people from an economic perspective. The way to achieve economic prosperity is to carry out joint efforts based on the principle of kinship. Of course, this is contrary to individualistic principles which will lead to capitalism and imperialism. The principle of kinship is also not in the sense of kinship in blood relations or certain groups which will again lead to the ideology of capitalism and imperialism.

The principle of kinship in Article 3 paragraph (1) is kinship in the sense of all Indonesian people. Therefore, the state must control the production branches that are important for the state and which control the livelihood of the people as

regulated in Article 33 paragraph (2). If the branches of production that are important and which control the lives of many people are controlled by certain groups or certain individuals, it will result in not achieving social justice and welfare for all Indonesian people. The controlling individual and/or group will only prosper themselves and/or their group. Many Indonesian people or people who work for these individuals and/or groups will only become tools. Even the state will only get a splash from the profits of production, but the damage that occurs to nature will be fully borne by the state and the people of Indonesia.

Article 33 paragraph (3) reaffirms that in order to support the control of these important production branches, the state also controls the earth, water and natural resources contained therein. So that the state is also not wrong in exercising control over what has been mandated by the people as stated in the 1945 Constitution, Article 33 paragraph (3), then Article 33 paragraph (3) limiting the use of such control only for the greatest prosperity of the people. Therefore, when today there are individuals or groups of individuals who control important production branches and control the earth, water and natural resources contained therein, it is necessary to question the existence of Article 33 of the 1945 Constitution.

The most likely thing for the existence of indigenous peoples in the K2P2LH Law is that which relates to the insight of the archipelago. Budisantoso [12] said the archipelago insight is Indonesia's national insight to achieve national goals. The term insight into the archipelago is the name given by the predecessors of the Indonesian nation. National insight is defined as insight in achieving national goals. National insight is developed and formulated based on the philosophy of the nation, the condition of the region and the people of the nation state and the environment it affects.

Deny Setiawan [13] said that the archipelago perspective had been designated as Indonesia's geopolitics with its unique characteristics as an archipelago state. Budisantoso's opinion regarding the archipelago insight is that the naming given by the nation's predecessors was justified by Deny, even according to Deny that the concept of archipelago insight was initially only developed in the concept of national defense.

Deny cites Lemhanas (1994) [13], which defines the Archipelago Insight as the Indonesian people's perspective on themselves and their environment based on their national ideas based on Pancasila and the 1945 Constitution of the Republic of Indonesia, which are the aspirations of the Indonesian people who are independent, sovereign and dignified, and animate the way of life and acts of wisdom in achieving the goals of the national struggle.

In the K2P2LH Law, the archipelago insight has a scope that includes the space where the Republic of Indonesia exercises its sovereignty, sovereign rights, and jurisdiction, as regulated in Article 2. Archipelago insight does not seem to be directly related to the knowledge of the Indonesian people in managing the environment. wisely when viewed from the K2P2LH Law. It looks a little different when viewed from the understanding given by Budisantoso, which relates to the archipelago insight that was developed and formulated, one of which was based on the people of the nation state. Because when it is called the people, it also includes indigenous peoples.

The people of the archipelago are none other than indigenous peoples. Because indigenous peoples have wisdom and wisdom in environmental management, which is known as their customary law. The facts speak differently, that the K2P2LH Law does not regulate related to indigenous peoples.

In 1997, the state again reviewed the K2P2LH Law and concluded that it was necessary to establish a new law to meet the legal needs at the time. Therefore, to replace the K2P2LH Law, the Republic of Indonesia Law Number 23 of 1997 concerning Environmental Management (UU PLH) was enacted [14]. As for the basis for the formation of this new law, in addition to the four foundations above, it is based on legal norms by taking into account: firstly the level of public awareness, secondly the development of the global environment, and thirdly international legal instruments related to the environment.

The legal basis for the formation of the Environmental Protection Law has also changed. In the K2P2LH Law, Article 33 as a whole is the basis, but in the PLH Law it is only based on paragraph (3) only. 1945 Constitution Article 33 paragraph (3) Earth and water and the natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people.

Changes in the basic constitution and additional foundations for the formation of the Environmental Protection Law need to be reviewed. The interest in the Environmental Protection Law is no longer only the interests of the Indonesian people, but also the interests of the world community. As a result of world (global) interests being accommodated by the state, international law related to the environment also influences the Environmental Protection Law. The basic principle is that if the global interests do not violate the humanitarian principles and the interests of the Indonesian people to obtain justice as a whole, then there is no problem. Of course, this global interest must still be carefully considered and filtered with full awareness. It is possible that certain individual or group interests may act in the name of global interests.

Changes in the basic constitution in forming the Environmental Protection Law also resulted in the direction of policies related to the economy and control of production branches no longer being accommodated in this Law. The PLH Law seems to only relate to Article 33 paragraph (3).

Indigenous peoples in the Environmental Protection Law have begun to be considered. Article 9 paragraph (1) The government shall stipulate a national policy on environmental management and spatial planning with due observance of religious values, customs, and values that live in society.

Pilemont Bukit [15] quotes John Chambers, that they (some Christians) think that culture also comes from God, so that culture can be aligned with God's Word. There are even people who are more obedient to the teachings of culture (customs) than to the teachings of the Bible. Pilemont's quote shows that customs equals culture.

After quoting John, Pilemont quoted Koentjaraningrat regarding the notion of culture. Etymologically culture (origin of the word) is defined as derived from Sanskrit, namely "buddhayah" which is the plural of "buddhi" which means "mind" or reason and "dayah" means ability. Therefore, the word "culture" can be interpreted as "things related to the results of reason" [15].

To emphasize and clarify the meaning of customs Pilemont quotes Chambers. Customs are part of culture, namely customs that exist in the first form of culture (a cultural system, namely: as a complex of ideas, ideas, values, norms, rules, customs and so on). etc). In simple terms, Pilemont defines customs as what is considered good by humans in their society, then it is done repeatedly and then made into a rule in the life of the community, so that life can be better and orderly, so it is easier to achieve a life that is good. just, prosperous and peaceful or live in peace (peaceful, safe, pleasant, fair and beautiful) [17].

In contrast to Pilemont, Jelani Harun, [16] quoting Sulalatus Salatin in the book History of Malay as quoted by A. Samad Ahmad, that, the origins of the customs of the Malay community began with the regulations that had been set by Demang Lebar Daun, the head of the Malay community in Palembang. , when he wanted to marry his son with Seri Teri Buana, the son of King Suran who appeared on Si Guntang Hill. Jelani's quote shows that customs are derived from rules. If you review Pilemont's opinion, you will see the difference. Because for Pilemont rules and customs come from culture

Different from Pilemont and Jelani, H. Munir Salim [17] said, customs are something related to the attitude and behavior of a person who is followed by others in a long process of time, this shows the broad understanding of these customs. In addition, there will be differences between the customs of a nation or society with others.

The above explanation related to customs shows that customs are not separated from indigenous peoples. Customary values are one of the government's considerations in the Environmental Protection Law to determine policies related to the environment. The Environmental Protection Law is the starting point for the regulation of indigenous peoples in the law related to the environment. The explanation of Article 9 paragraph (1) UU PLH as follows:

"In the framework of formulating national policies on environmental management and spatial planning, it is imperative that rational and proportional attention be paid to the potential, aspirations, needs and values that grow and develop in the community. For example, attention to indigenous peoples who live and their lives rely on the natural resources found in the vicinity. The maintenance of the sustainability of environmental functions is in the interests of the people so that it demands responsibility, openness, and the role of community members, which can be channeled through individuals, environmental organizations, such as non-governmental organizations, indigenous peoples groups, and others, to maintain and increase the power of the community. environmental support and capacity which is the foundation of sustainable development. Development that integrates the environment, including natural resources, becomes a means to achieve sustainable development and is a guarantee for the welfare and quality of life of present and future generations. Therefore, the Indonesian environment must be managed with the principle of preserving a harmonious, harmonious, and balanced environmental function to support sustainable development with an environmental perspective to improve the welfare and quality of life of present and future generations."

At the beginning of the explanatory sentence of Article 9 paragraph (1) which states, "In the context of formulating national policies on environmental management and spatial planning, it must be considered rationally and proportionally, the potential, aspirations, and needs and values that grow and develop in the community..." shows seriousness of lawmakers to the importance of traditional values. Coupled with the example given in the explanation, which reads "…For example, attention to indigenous peoples who live and their lives depend on the natural resources that are around them…" shows that the existence of indigenous peoples is indeed unquestionable and national policies should not contradict .

The importance of alignment between policies related to the environment and indigenous peoples, because good and bad environmental management will have an impact on indigenous peoples themselves and other communities. In the elucidation of this article, it is called for the interest of the people, which reads, "…The preservation of the sustainability of environmental functions is in the interests of the people…." Not only talking about whose interests, but those who are interested must participate in determining national policies related to environmental management, which reads, "… thus demanding responsibility, openness, and the role of community members, which can be channeled through individuals, environmental organizations, such as non-governmental organizations, indigenous groups, and others,…".

III. Post Reform

10 years since the reformation, the PLH Law was again replaced with the Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH). The spirit of forming a new law related to the environment is also different from the previous two laws. On the basis of the formation of this new law, there is no longer a transcendental spirit and continues to prioritize the archipelago insight as contained in the two previous laws.

The establishment of the PPLH Law is to ensure legal certainty and provide protection for everyone's right to a good

and healthy living environment as part of the protection of the entire ecosystem. The basic considerations are as follows:

- A good and healthy environment is a human right of every Indonesian citizen as mandated in Article 28H of the 1945 Constitution.
- The national economic development as mandated by the 1945 Constitution is carried out based on the principles of sustainable development and is environmentally sound.
- The spirit of regional autonomy has brought about changes in the relationship and authority between the Government and regional governments.
- The declining quality of the environment has threatened the survival of humans and other living things.
- Global warming is increasing, resulting in climate change, which exacerbates the decline in the quality of the environment.

The legal basis for the formation of the PPLH Law has also changed from the previous Law. The K2P2LH Law uses the entirety of Article 33 of the 1945 Constitution before the amendment and the Environmental Protection Act only uses Article 33 paragraph (3) of the 1945 Constitution after the amendment. The PPLH Law uses Article 28H paragraph (1) and continues to use Article 33 paragraph (3) and Paragraph (4).

Article 28H paragraph (1) Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and have the right to obtain health services. Individual interests are seen in Article 28H paragraph (1), but the individual nature in this Article does not reduce the principle of social justice for all Indonesian people. It even accommodates justice for all living things on earth in Indonesia.

At first glance, the individual principle contradicts the social/group principle, but it must not be forgotten that in the social/group it can only be said to be social or in groups due to the existence of individuals who interact and bind themselves. Therefore, it is important for individuals who are physically and mentally prosperous, have a place to live, a good and healthy living environment and obtain health services in order to achieve social justice as a whole.

To support the implementation of Article 28H paragraph (1), Article 33 paragraph (3) and Paragraph (4) are required. The state must control natural resources to prosper its people. The state must organize a national economy based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity.

The three laws relating to the environment have different legal politics and of course there are also similarities. Laws enacted in 1982 and 1997 state that the regulations made must have an archipelagic perspective. This policy direction shows that the existence of indigenous peoples will be considered. Because the insight of the archipelago will not be separated from the indigenous peoples. However, the facts are different, that the Law enacted in 1982 did not regulate indigenous peoples.

The law that was enacted in 2009, the insight of the archipelago is still mentioned in the policy direction of the environmental law. Will the reloading of "archipelago insight" make the existence of indigenous peoples clearer or more existent?

In general, the law refers to indigenous peoples as customary law communities such as Article 1 paragraph (31) which reads: "Customary law communities are groups of people who have traditionally lived in certain geographic areas because of ties to ancestral origins, a strong relationship with the environment. life, as well as the existence of a value system that determines economic, political, social and legal institutions.

Article 1 paragraph (3) is a limitation related to the so-called indigenous peoples. The criteria for indigenous peoples are stated:

- A group of people who have lived in a certain geographical area for generations.
- The community group has ties to ancestral origins,
- The community group has a strong relationship with the environment,
- The community group has a value system that determines the economic, political, social and legal institutions

Administratively, the state regulates the recognition of indigenous peoples. This problem is certainly very interesting to study. If you look at the definition above, it is very easy to identify indigenous peoples, but even so, the PPLH Law still gives attribution authority to the government and local governments to carry out policies related to the recognition of indigenous peoples.

The norms that give attribution to the central government are contained in Article 63 paragraph (1) letter t, "In the protection and management of the environment, the Government has the duty and authority to establish policies regarding procedures for recognizing the existence of indigenous peoples, local wisdom, and the rights of indigenous peoples who related to environmental protection and management". Article 63 paragraph (1) letter t explains that it is the authority of the central government on a national basis to determine the policy of recognition procedures.

The regional level is different again. The provincial government also has the authority to set policies on the procedures for recognizing indigenous peoples. Article 63 paragraph (2) letter n, "In the protection and management of the environment, the provincial government has the duty and

authority to establish policies regarding procedures for recognizing the existence of indigenous peoples, local wisdom, and rights of indigenous peoples related to environmental protection and management in provincial level".

The district or city level, district and city governments also have the authority to establish policies related to the procedures for recognizing indigenous peoples. This authority is regulated in Article 63 paragraph (3) letter k, which reads, "In the protection and management of the environment, the district/city government has the duty and authority to implement policies regarding procedures for recognizing the existence of indigenous peoples, local wisdom, and the rights of indigenous peoples. related to environmental protection and management at the district/city level".

The PPLH Law provides attribution to three levels of government, from the center to the provinces, as well as districts and cities. This attribution is of course to facilitate the implementation of the recognition of indigenous peoples, in accordance with the orders of the 1945 Constitution. Therefore, the implementation of this recognition should be the government either at the center or in the regions active to implement it. What about the facts? This is the problem that I mentioned is important to be reviewed. Talking about facts is very stifling and indigenous peoples have to do a massive and intensive struggle.

IV. Conclusion

Pre-reform, especially at the beginning of the formation of laws related to the environment, there was no regulation on indigenous peoples. As a result, the protection of the existence of indigenous peoples and their rights is not accommodated by the state, as regulated in the K2P2LH Law. After a change occurred with the ratification of the Environmental Protection Law, indigenous peoples began to be considered and the government was obliged to pay attention to their customs.

After the reform, the existence of indigenous peoples received more treatment than the previous two laws. Even the PPLH Law gives attribution to the central government and local governments to accelerate the recognition of indigenous peoples as a form of the seriousness of the state in protecting and guaranteeing the existence of indigenous peoples and their rights.

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