An Analysis of Environmental Law Regarding the Protection of Indigenous Peoples' Rights in Natural Resource Management in Indonesia

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Abstract. The purpose of this study is to examine environmental legislation in relation to the preservation of indigenous peoples' rights in the context of natural resource management in Indonesia. In the context of expanding natural resource development and exploitation in Indonesia, indigenous populations frequently face threats to their rights in sustainable natural resource management. This study examines the existing legal framework in Indonesia, including key legislation and policies protecting the environment and indigenous groups, using a normative legal research technique and policy analysis. The primary goal is to determine the extent to which present environmental laws safeguard indigenous peoples' rights in the context of natural resource management. The research also includes assessing how environmental legislation is used in reality, with a focus on specific examples where indigenous peoples' rights are jeopardized or infringed in natural resource management. This research will provide an understanding of the gaps and obstacles in preserving indigenous peoples' rights. The findings of this study are intended to contribute to a better understanding of the effectiveness of environmental legislation in protecting indigenous peoples' rights in natural resource management in Indonesia. Furthermore, this research provides policy suggestions and legal procedures that are more inclusive and just, with the goal of improving the protection of indigenous peoples' rights and promoting sustainable natural resource management. Subsequently this study adds to a better understanding of the function and importance of environmental legislation in preserving indigenous peoples' rights in the context of natural resource management in Indonesia. It is believed that this study would stimulate policy changes and legal procedures that are more sensitive to and supportive of indigenous groups' concerns, as well as contribute to Indonesia's environmental sustainability.

Keywords: Protection, Rights, Custom.

1 Introduction

The United Nations' Declaration of the Rights of Indigenous Peoples underscores the significance of respecting indigenous knowledge, culture, and practices, as they contribute to sustainable development and effective environmental management. According to Article 18B paragraph (2) of the Republic of Indonesia's 1945 Constitution (UUD NRI Tahun 1945), the state acknowledges

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and respects customary law communities and their traditional rights, provided these rights align with societal development and the principles of the Republic of Indonesia, as regulated by law.

In coastal regions, customary law communities' rights in overseeing marine resources, formerly known as maritime customary rights, are acknowledged. These customary rights to the sea have long been acknowledged by indigenous peoples, even though they are not as well-established as customary land rights. However, important development partners, like the government and business owners, do not generally acknowledge them.

Law No. 27/2007 on the Management of Coastal Areas and Small Islands governs the exploitation of Coastal Waters (HP-3), allowing rights to be granted to individual Indonesian citizens, legal entities established under Indonesian law, and customary law communities. The management period for HP-3 is initially set at 20 years, with possible extensions subject to applicable laws and regulations.

Furthermore, customary law communities are included as one of the organizations eligible for compensation throughout the land acquisition process for projects driven by the public interest in Government Regulation No. 24 concerning the Implementation of Land Acquisition for Development in the Public Interest. In actuality, Indonesia's current legal frameworks for governing marine and coastal resources are frequently sectoral in nature, concentrating on particular development areas that are either directly or indirectly related to marine and coastal issues. In addition to these beneficial legal measures, customary law also governs the use and management of natural resources in these places. The dynamic between the government and indigenous communities in controlling and managing coastal and marine resources often leads to conflicts. Instances in various regions, such as the Aru Islands Regency, Ety village in West Seram Regency, and Benjina Island in the Aru Islands Regency, highlight how indigenous peoples face limitations in accessing resources due to the dominance of government-backed entrepreneurs.

Similarly, on Saparua Island, Central Maluku Regency, the restriction of traditional fishermen from fishing around a specific area due to the presence of rare marine life demonstrates the imbalance created by certain business activities, despite the constitutional recognition of customary law communities and their sea and land territories.

Therefore, it is essential for the government to maintain consistency and prioritize the existence and rights of indigenous communities in its development policies and legal frameworks. Neglecting these rights may lead to imbalances that can cause societal upheavals and affect the overall well-being of the society, nation, and state. This study aims to analyze the Environmental Law and the Protection of Indigenous Peoples' Rights in Natural Resource Management in Indonesia, emphasizing the need for holistic preservation and support of indigenous rights within the legal system.

2 Results

2.1 Development of Customary Law Communities

The anthropological approach explains that at the first level of the development of society and culture, humans first lived like a herd of animals in groups, where men and women lived freely without ties. Gradually, humans have an awareness of forming a family [23]. Marrying a husband and wife forms a social unit called a household, which consists of a husband, wife and

unmarried children. The characteristic or characteristic of this group is the existence of kinship relationships created because it is based on common descent. This grouping originates from a family or clan whose members feel they are descended from the same ancestors, have broad autonomy, and their rules of behavior are based on long-standing traditions of consciousness on decisions whether taken by many or few people [19].

The next development of kinship groups is to interact with other kinship groups who both inhabit a certain area, giving birth to a group called a local living unit or community. Koentjaraningrat explains that, in contrast to kinship groups, this social unit does not merely have ties with other kinship groups [13]. Kinship groups: This social unit does not have ties based on kinship relations but is more based on kinship relations alone, rather based on the bond of occupying a certain or special area. Because it occupies a certain or special area, the characteristics of a community community are the existence of territory and love for its territory. The form of the community There are large cities, states and countries. While the form of small communities such as neighborhoods, hamlets, or Masyarakat Hukum Adat.

[1] According to Abu Daud Busroh, this is related to the process of primary state occurrence (Primaire Staats Wording), a theory that discusses the occurrence of a state not associated with a pre-existing state. According to this theory, the primary development of the state goes through four phases, namely phases, namely:

1) Phase Genootshap (Genossenschaft)

This phase is a grouping of people who combine themselves for common interests based on similarities. It is motivated by common interests and goals, and leadership here is chosen by Primus Inter Pares or the leading among the same. Here, the element of a nation plays an important role.

2) Phase Reich (Rijk)

At this stage, there was an awareness of the groups of people who joined themselves to the right to own land, giving rise to lords who ruled over land and people who rented land. It gave rise to the system of Feudalism. In this phase, the important element is territory.

3) Phase Staat

In this phase, awareness of a state of life has existed. When they have realized that they are in a group, the seeds of the formation of a state, namely, Nation, Territory and Government, have been fulfilled in this phase.

According to Aristotle, the State occurs because of the merging of families into a larger group. The group merges again until it becomes a Customary Law Society. Then this Customary Law Society joins again, and so on, until the State arises, which is still a city or polis. Customary Law Societies following their nature are genealogical Customary Law Societies, i.e., Customary Law Societies based on descent [26].

Thus, the Customary Law Society evolved from individuals who formed families. People who form families then interact with one another to form family groups that do not interact with one another to form family groups that are bound by a common territory or territorial with the same territory or territory that they occupy together in addition to having a common background of origins or ancestors. In addition to being the foundation of the Customary Law Community, this community unit serves as its seed or predecessor. is the precursor or seed that leads to the

creation of a state. The term "legal community alliance" or "customary law community unit" is a better way to refer to this community unit's unity. or a community unit governed by custom.

According to Ter Haar, legal societies are fixed and organized groups of people with power and tangible wealth [21]. Own wealth, both tangible and intangible. In addition, according to Tolib Setiady, to be a legal community, it must have a certain territory and certain leaders and wealth [20]. So a legal association or legal society (rechtsgemeenschap) is a group of people bound as a unit in a regular arrangement, which is eternal and has its leadership and wealth both tangible and intangible and inhabits or lives on a certain territory.

A community that operates under traditional laws is described as one that passes down its cultural heritage from one era to the next, inhabits a specific geographical region, and upholds a specific collection of beliefs, principles, political systems, traditions, and social conventions, as outlined by the Alliance of Indigenous Peoples of the Archipelago (AMAN). Consequently, a collective of individuals who are bound together by their traditional legal structure as fellow members of a legal community, owing to their shared residence or ancestry, is commonly known as a customary law community.

In relation to societies governed by traditional laws, Dewi Wulansari argues that, in principle, they originate from the presence of connections that unite every member of these societies [6]. The elements that bring about the formation of such societies governed by traditional laws include:

1) Factor genealogist
2) Factor territorial

Based on these two factors, customary law communities are formed based on:

1) Genealogical legal community, which is a legal community that has a binding basis for group members in the form of similarities in descent. It means the group members are bound because they come from the same ancestors. This legal community is also divided into:
   a) Patrilineal societies, where the structure of the community is drawn according to the lineage of the father (male)
   b) Matrilineal societies, where the structure of society is drawn according to the lineage of the mother (female)
   c) Bilateral or parental society, in which the structure of the society is drawn according to the lineage of both parents, namely father and mother (male and female). So, the kinship relationship is parallel. Each family member belongs to either the father's or mother's clan.

2) An alliance of legal communities whose members have links based on shared habitation is known as a territorial legal alliance. Hilman Hadikusuma goes on to say that a territorial legal community is a regular, permanent group of people who are confined to a specific location of residence, both in the material sense as a place of living and in the metaphysical sense as a site of spirit worship. It demonstrates that territorial ties include both worldly and spiritual dwelling. [11].

According to Van Dijk, as quoted by Hilman Hadikusuma, there are three kinds of territorial legal alliances;

a. Customary Law Community Association (Dorps Gemeenschap). The fellowship of the Customary Law Society is like the Javanese Customary Law Society, which is a common residence within its area, including several settlements around it which are subject to the Customary Law Society apparatus that resides in the center of the Customary Law Society. Meanwhile, Tolib Setiady is of the view that the fellowship of the Customary Law Community occurs when a group of people is bound to a place of residence, which also consists of small residences that include villages (dukun-dukun) and where the leadership or officials of the Customary Law Community reside in the center of the Customary Law Community. the government of the Masyarakat Hukum Adat resides in the center of the Masyarakat Hukum Adat [20].
b. Regional alliances include the Nagari community unit in Minangkabau, South Sumatra and Lampung clans, and Negorij in Minahasa and Maluku. That is, an area of common residence and control of common land rights consisting of several hamlets or villages with a common customary government center.
c. Indigenous Peoples Association, if several Indigenous Peoples or clans located side by side, each of which stands alone, enter into a cooperation agreement to regulate common interests, for example, in regulating joint customary governance, defense, economic life, agriculture or joint marketing.

3) Genealogical-territorial legal partnership, which is a combination of the two legal partnerships above. According to Tolib Setiady, genealogical and territorial factors are important [20]. The same thing is also explained by Hilman Adikusuma, who states that the genealogical-territorial legal alliance is a fixed and regular community unit whose members are not only bound by residence in a certain area but are also bound by descent in blood ties and or kinship [11].

Thus, historically and based on de facto recognition of the rights of indigenous peoples in the control and management of natural resources, including in coastal and marine areas. Including in coastal and marine areas, have automatically been inherent since the unity of the Indigenous and has been legitimized or recognized de jure in Article 18 of the Constitution. De jure in Article 18 of the 1945 Constitution.

2.2 Principle of Recognition of Customary Law Community Unity

Recognition in terminology refers to the act, method, or process of acknowledging, while the term recognizes signifies affirming the legitimacy (Abu Daud Busroh, [1]). This acknowledgement is of two types, as articulated by Abu Daud Busroh, namely:

1. De facto recognition, which is a provisional acknowledgment of a new State's emergence or establishment, based on its existence and factual circumstances, even if its legal procedures are still subject to debate, necessitating further investigation. According to Moh Kusnardi and Bintan Saragih, as quoted by Husein Alting, de facto recognition is a temporary validation of the position of a new State government, gauging its support from the populace and its efficacy, thus ensuring stability. If this situation endures and progresses, de facto recognition naturally transitions into de jure recognition. This principle extends to the acknowledgment of the

existence of indigenous communities or villages, grounded in the preservation and support of their customary systems, thereby upholding their efficacy within the community's life (Abu Daud Busroh, [12]).

2. De jure recognition, or Juridical Recognition, represents the broadest and enduring validation of a State's emergence or establishment, based on legal foundations. According to Husein Alting, de jure recognition involves one State recognizing another, accompanied by legal actions like establishing diplomatic relations and entering into agreements with other States. Similarly, de jure recognition of customary law communities transpires when their existence aligns with customary values, receiving continuous support from the community, resulting in state regulation within applicable laws or being safeguarded under positive law (Abu Daud Busroh, [12]).

In the context of recognizing the existence of indigenous communities, these principles become evident. De facto village recognition refers to acknowledging the historical reality of the continued existence of indigenous communities in Indonesia. Conversely, de jure recognition concerns legal validation of villages in the country. The diversity of customary law communities in Indonesia is recognized de facto, given the multitude of islands where various communities abide by their distinctive customary laws, as categorized by Van Vollenhoven into at least nineteen customary law regions (Adatrechtskringen) spanning large and small islands, with the following division [21]:

1. Aceh
2. Gayo-Alas and Batak and Nias lands
3. Minangkabau and Mentawai
4. South Sumatra
5. Malay (East Sumatra, Jambi and Riau)
6. Bangka and Belitung
7. Kalimantan
8. Minahasa-Manado
9. Gorontalo
10. Toraja
11. South Sulawesi
12. Ternate Islands
13. Maluku, Ambon
14. Irian
15. Timor Islands
16. Bali and Lombok (with Sumbawa Besar)
17. Central and East Java (along with Madura)
18. Swapraja Regions (Surakarta and Jogjakarta)
19. West Java.

Meanwhile, de jure recognition can be seen in various provisions of legislation governing the existence of customary law communities in the context of villages, including in Article 18 of the 1945 Constitution, which reads, "The division of Indonesian regions into large regions and small regions, with the form of government structure shall be determined by law, with due regard and commemoration of the basics of consultation in the state government system and the rights of origin in special regions."

The explanation provided by Article 18 of the 1945 Constitution number II then clarifies the provisions of Article 18 of the 1945 Constitution, stating that: There are about 250 zelfbestrurunde landscapes and olkgemeencshappen in the territory of Indonesia, such as villages in Java and Bali, Negeri in Minangkabau, Dusun and clans in Palembang, and so on. These areas might be regarded as unique regions since they have a unique structure. The Republic of Indonesia recognizes these unique regions' status and ensures that their rights of origin are upheld in all official rules pertaining to them.

events that followed, including the 1945 Constitution's Article 18 being changed into Articles 18, 18 A, and 18 B. According to Article 18B, paragraph (2) of the 1945 Constitution, as long as customary law communities continue to exist and adhere to the legal principles that govern the Unitary State of the Republic of Indonesia, the State will acknowledge and respect their unity and traditional rights.

2.3 Realizing Balance in Natural Resource Management in the Coastal and Marine Areas Coastal and Marine Areas

Hazairin suggests that customary law communities represent self-sufficient social entities, characterized by a shared legal framework, cohesive governance, and a unified environment that revolves around communal access to land and water resources. The specific structure of their family law (whether patrilinear, matrilinear, or bilateral) significantly impacts their agricultural, pastoral, fishing, forestry, and water-based activities, with a minor involvement in hunting, mining, and crafts. Within these communities, all individuals share equal rights and responsibilities, fostering a collective spirit that nurtures values of collaboration and mutual support.

Based on this, the adage that where there is a society, a law (ubi societas ubi ius) becomes real, considering that there will be rules regulating community life in any society. Soepomo, as further elaborated by M. S. Kaban in describing customary law communities/customary law associations, stated that legal associations in Indonesia can be divided into (a) those based on a lineage (genealogical); (b) those based on the regional environment (territorial) and (c) arrangements based on both bases (genealogical and territorial) [15].

Social arrangements in customary law communities are based on traditions based on hereditary experiences that have guaranteed the harmonious social order of the communities concerned [8].

According to Bagir Manan, cultural, social, religious and political backgrounds cause various legal systems to simultaneously apply in Indonesia, including customary, Islamic and continental legal systems [3]. Therefore, according to the provision in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the acknowledgment of customary law communities and their entitlements implies the State's acknowledgment of the diversity of legal frameworks within the country. This recognition ensures the legitimacy of diverse legal systems, including customary law systems.

However, the State's recognition of community unity is weak concerning the management of natural resources, especially those controlled by customary law communities, because the State seems to prioritize the principle of State recognition based on Article 33 of the 1945 Constitution. In pursuing economic growth, the State will ignore various aspects that can hinder realizing economic development objectives, such as socio-cultural aspects, community participation and

human rights. It can be seen with the uncontrolled destruction of forests, which shows that development has placed the State as the sole ruler of forest resources because of the absolute authority and legitimacy of the State in the control and management of natural resources, which only aims to increase State revenue [9]. This condition is often a source of conflict between the State and the customary law community unit in controlling natural resources within the territory of the customary law community unit.

Related to this, according to W. G. Vegting, as quoted by Ronald Titahelu, the State is not the owner of the land or the relationship between the land and the State is not based on the relationship of property [22]. Another view quoted by Ronald Titahelu from the opinion of Karl Marx and Friederich Engels, who took their starting point from economic theory, especially the value of labor, that the State as an ideal building from the application of the real economic system is the bearer of the ideals of society, namely a society where there is no class conflict. It is done because there is no private ownership other than communist community ownership. In this case, land is seen as a means of production controlled and owned by the community in the form of the State 34.

In this context, there is a conflict of thought regarding the State's control rights in land tenure. On the one hand, the State does not have rights, and on the other hand, the State is given rights. In the life of the State, this condition creates a conflict between customary law, which is the basis for customary law communities to control natural resources, and State law, which is the basis for the State to control natural resources. In Indonesia, a very pluralistic country, the ideals of the Unitary State of the Republic of Indonesia are to form a state-building that protects all Indonesian blood. Building a unitary state will bring closer to the value of togetherness to achieve national goals while still paying attention to existing differences. Togetherness does not mean uniformity but strives to protect various forms of diversity in governance [10].

This fact makes the Indonesian nation a community with pluralism. Pluralism provides space for intercultural communities to continue to coexist without losing their identity because life must respect each other in their respective cultural views in unity and togetherness formed within the framework of the Unitary State. Thus, the existence of space for local law (adat) to be implemented by the supporting community shows recognition of the existence of the customary law community unit. According to Eka Dharmaputra, the problem faced in a pluralistic group is the issue of identity and modernity. It relates to how to maintain identity without hindering progress and achieve progress without sacrificing identity [7]. This view shows that efforts to maintain the rights of indigenous peoples can be carried out without having to hinder the implementation of development, and conversely, the implementation of development can be carried out without ignoring the community's rights.

Bernard Tanya explained that the clash between culture (customary law) and modern law (State law) places a burden on communities that still maintain and live by their customs because to please the State, State law will be tried to be obeyed, while customary law will have to be temporarily put aside [2]. Meanwhile, according to Eka Dharmaputra, in the life of a state and society in a pluralist society, power holders tend to face problems related to limiting the freedom of various groups of society to benefit society. It is related to the sacrifice of the community to be limited in freedom, which is positively interpreted that the sacrifice to limit freedom is not only considered necessary but also right and good [7].

The sacrifices people make to limit their freedoms, individually and to different groups, for the benefit of society as a whole shows that there has been an agreement within society,

indicating that there is integration in a particular society. The agreement is a rule of living together recognized in the community. Thus, law is one of the means for creating integration in society. It shows that a common life can be realized if community members are willing to obey and follow various mutually agreed rules or normative behavior patterns. However, this is not only limited to rules, but a matter of good and right, which is not just a normative rule but a matter of value or a kind of shared view of life that is considered good and right, and not only regulates and limits. Thus, according to Theodore Steeman, quoted by Eka Dharmaputera, society needs norm integration and value integration, namely the conception of an understanding of life, how life should be lived, and the basic commitments guiding life together [7].

The reality concerning the interaction between state law and customary law tends to give birth to conflict, considering that the two legal systems have different properties and characters. According to Dean Pruit and Jeffrey Rubin, conflict is not only related to a fight, war, struggle or physical confrontation between several parties [5]. However, conflict also includes sharp disagreement or opposition over various interests, ideas or others. Based on this, the interaction between state law, which is full of formal forms, procedures and bureaucracy of public administration and is a reflection of the will of the ruler in regulating his society [14], and customary law, which comes from traditions based on hereditary experience [8], cannot be done at the level of norms but at the level of values.

In this context, according to the author, the value that must be prioritized to find solutions to conflicts between indigenous peoples and the state in natural resource management is the value of justice. [28] According to John Rawls, justice is conceptualized as fairness. According to him, justice is the first policy of social institutions as the truth of systems of thought. Therefore, an elegant theory must be rejected or revised if it is untrue. Likewise, legal rules and institutions must be reformed and abolished if they are unjust. The concept contains the principles of justice, namely (i) the principle of equal liberty, namely that everyone has the right to individual freedom that is equal to the rights of others; (ii) the principle of equal opportunity, namely that economic injustice in society must be regulated to protect the disadvantaged, by providing equal opportunities for everyone on fair terms. Thus, the government cannot use the State, State policies and the notion of sovereignty attached to the State as a justification for suppressing the community. The value of justice in managing natural resources controlled by customary law communities is to pay attention to the rights of customary law communities.

In connection with this, the fundamental aspect of a nation or governing body is not merely seeking endorsement or concurrence, but rather, it should ensure inclusive engagement of the populace, encompassing customary law communities, in the progression of society to prevent their marginalization. Nevertheless, within the broader scope of the nation, native communities should be considered an essential component of the developmental trajectory. This implies that the active involvement of the community must be met with affirmative responses from the government both in terms of policy-making and in political and legal decisions. The development of indigenous communities should not be solely dictated by governmental dictates, but rather they should be empowered to exercise their creativity in accordance with their capabilities, thereby establishing a sense of equilibrium. Development strategies should be harmonized, with due recognition of indigenous peoples and their customary legal practices as an integral part of the national legal framework [17].

According to R. Z. Titahelu customary law communities are communities that have social, economic, cultural and political institutions from generation to generation and have laws that are

manifested in rules or norms related to their values and outlook on life, and all of these appear specifically when compared to other communities in the State concerned [18]. Thus, customary values still maintained by indigenous peoples are expected to be one of the basic assets that the government can utilize in supporting the implementation of government and development, as well as a form of community participation in supporting the course of government and development. In order to involve the community in the process of governance and development in the regions, including the management of natural resources under the jurisdiction of communities governed by customary law, the government is expected to use the customary values that indigenous peoples continue to uphold and hold dear.

It refers to the principle of social justice for all Indonesian people. Social Justice means justice that applies in society in all areas of life, both material and spiritual. All Indonesians refer to all persons of Indonesian descent, including those who reside within the borders of the Republic of Indonesia as well as Indonesian nationals living elsewhere. Accordingly, social justice for all Indonesians refers to treating all Indonesians equally in the domains of law, politics, society, the economy, and culture. In accordance with the 1945 Constitution, fairness and prosperity are also included in the definition of social justice.

To realize social justice in managing natural resources controlled by customary law communities is to involve customary law communities in managing these natural resources. The provision of opportunities for the community to participate in the administration of government in the region provides an opportunity for the creation of development in the region that comes from the aspirations of the community. In addition, the participation of the community is very important in determining the realization of the implementation of development in the region, but it must be accompanied by not ignoring the customary values owned by a region as a specialty of the region.

In this perspective, good law offers more than just procedural justice. A good law should be competent as well as just. Such a law should be able to recognize the wishes of the community and have a commitment to the achievement of substantive justice48. It indicates that a law that recognizes the community's wishes is the nature of responsive law. Responsiveness can be interpreted as serving the needs and social interests experienced and found in society. Customary law communities into State law is needed to adjust customary values with regional autonomy based on State law.

3 Closing

This research contributes to strengthening the understanding of the role and urgency of environmental law in protecting the rights of indigenous peoples in the context of natural resource management in Indonesia. It is hoped that this research can encourage improvements in legal policies and practices that are more responsive and in favor of the interests of indigenous peoples and support environmental sustainability in Indonesia.

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