



# *Incompatibility of National Law and Traditional Law in Geothermal Energy Exploration in Manggarai, East Nusa Tenggara*

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**Abstract-** Indonesia has the second largest geothermal energy reserves in the world. Indirect use of geothermal heat for electricity needs can be an alternative renewable energy. One of the plans to explore geothermal energy is in Poco Leok Manggarai. The purpose of this writing is to determine the legal incommensurability between national law and customary law in Manggarai regarding geothermal exploration. The research method uses sociolegal research methodology with primary and secondary legal sources. The research results show that a form of legal incommensurability in geothermal exploration is that the views of the state and customary law communities regarding geothermal are not the same so that the process of transplanting national law to customary law does not run smoothly.

**Keywords-** *Legal Incommensurability, Geothermal energy, customary law communities*

## I. INTRODUCTION

One of the goals outlined in the 4th paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia (RI) is to advance the well-being of the public. The state's aim to advance general welfare is manifested through economic development oriented towards the prosperity of the whole Indonesian people. This means that in developing the country's economy it must be oriented towards the goals of the country which were agreed upon by the national founders or the father of the nation and enshrined in the constitution which is the highest law of the country.[1]The logical consequence of the state's aim to realize general welfare as written in the constitution is that the entire economic development process must be legitimized with fair development policies so that no group does not enjoy the impacts of development. [2]

Justice in development as an ideal for realizing general welfare is the Pancasila value, namely social justice for all of Indonesian.[3] Fulfilling the social justice for the entire of Indonesian people must be the responsibility of the state through various efforts. This is to ensure that the state truly understands what the state's goals are. The extraction of the value of the social justice for the entire of its citizens during the process of economic development is the norming of the basis of the Indonesian economy in Article number 33 of the Constitution of the RI.[4]

Indonesia possesses a relatively uniform distribution of hot or geothermal energy sources. According to available records, there are over 300 points of geothermal sources scattered across the country, spanning from Sabang to Merauke. Utilizing geothermal energy has the potential to substitute non-renewable energy sources like fossil fuels in the generation of electricity and. [5]Utilizing geothermal energy has the potential to substitute non-renewable energy sources like fossil fuels in the generation of electricity and transportation. The use of geothermal energy will actually reduce and help provide electricity which is currently still a problem that has not yet been resolved by the Indonesian Government.[6]

The problem of geothermal energy, apart from the regulatory side, is also from the resistance of indigenous communities. Several geothermal wellpad points in Indonesia are in the areas of traditional law communities with customary laws that are still alive.[7] One of the traditional communities that rejects geothermal energy development is the Poco Leok indigenous community in Manggarai, East Nusa Tenggara. According to the Poco Leok traditional law community,The development of geothermal renewable energy is not for the welfare of the Poco Leok traditional community but for the benefit of meeting electricity needs in the National Economic Strategic Area, namely Labuan Bajo. Referring to the contents of the UUPA which accommodates indigenous people's rights, but on the one hand, the challenge of renewable energy needs is one of the things that must be carried out by the state in the midst of a dirty energy crisis as well as an energy transition process, it is

interesting to research the Inequality of Laws in Energy Development Geothermal (Study on Geothermal Energy Development in Poco Leok, East Nusa Tenggara)

## II. LITERATURE REVIEW

### *A. National Legal Policy Concerning Geothermal Energy Development*

The direction of state policy regarding geothermal energy development is a unified form of the legal politics of energy sovereignty. Apart from energy sovereignty, geothermal energy is also renewable energy which is able to answer the challenges of the energy crisis in the future. Legal politics in the context of realizing energy sovereignty can generally refer to Law Number 30 of 2007 concerning Energy. [8] This Law on Energy is categorized as the main legislation that reflects the legal politics of Energy Sovereignty. This law contains general problems of energy resources from a philosophical, sociological and juridical perspective. It can be said that this law is politically a national law which is an umbrella law that covers the new and renewable energy process. Specifically for geothermal energy, the energy law only states that geothermal energy is a renewable energy source. This law regulates the government's obligation to utilize new and renewable energy as written in Article 2.

State law views energy development as a form of fulfilling general welfare as mandated by the state's objectives written in the constitution. Regulations regarding geothermal energy in various statutory regulations are always discussed as a form of the state's right to control the earth as mandated in Article 33 of the 1945 Constitution of the Republic of Indonesia. The journey of regulations regarding geothermal energy in national law began in 1981 in a Presidential Decree. Number 22 of 1981 concerning the mandate to develop geothermal energy which was then changed again in 1991 with the existence of a norm that allows the use of geothermal energy by state-owned electricity companies on a small scale. The rules regarding geothermal energy were only then explicitly regulated in Law Number 27 of 2003 concerning Geothermal Energy, which came with the spirit of regional autonomy but then failed to answer the challenges of geothermal exploration and utilization until it was later amended in Law Number 21 of 2014 concerning Geothermal Energy.[9] Currently regarding geothermal energy in the job creation law regime, risk-based business licensing is regulated with ease of licensing to realize the acceleration of renewable energy development.

### *B. Protection and Recognition of Indigenous Peoples*

First, speaking of customary law cannot be separated from the concept of living law in society. Classified as law the oldest ever used by Indonesian people, apart from existing ones Islamic law and colonial legacy law. Therefore, living law means identical to customary law. According to Cornelis van Vollenhoven, that is the whole positive rules of behavior which on the one hand have sanctions (law) and on the one hand the other party in an uncodified (customary) state.[10] Positive behavior has the stated meaning of the law applies here and now. Meanwhile sanctions what is meant is the reaction (consequence) of another party to a violation against norms (law). Customary Law Community is group of people bound by order customary law as citizens together in a legal association because of similarities residence or on the basis of descent. As for indigenous peoples as legal subjects, legal objects and authority of indigenous peoples as follows: Customary law communities in Indonesia are communities based on territorial similarities (territory), Geneological (heredity) and territorial-geneological, (territory and heredity), so that there is a diversity of forms of indigenous communities from one place to another other places.[11]

## III. METHOD

This research uses a sociolegal approach. This approach is to understand normative juridical texts which cannot be separated from understanding people's social behavior as human actions.[12] The main data in this study refers to the qualitative research tradition which relies on personal sources that are selected and carefully interviewed as primary data supported by natural realities in the Poco Leok indigenous community. Then the normative juridical data includes basic norms and instrumental norms related to geothermal policy. Primary data analysis techniques and secondary data were analyzed using inductive to deductive analysis methods.

## IV. RESULT AND DISCUSSION

State law views energy development as a form of fulfilling general welfare as mandated by the state's goals written in the constitution. Regulations regarding geothermal energy in various statutory regulations are always discussed as a form of the constitutional mandate in Article number 33 of the 1945 Constitution of the RI, which grants the state of the authority to regulate and oversee the land. The journey of regulations regarding geothermal energy in national law began in 1981 in Presidential Decree Number 22 of 1981 concerning the mandate to develop geothermal energy, which was then changed again in 1991 with the existence of norms that allow the use of geothermal energy by state-owned electricity companies on a small scale. The rules regarding geothermal energy were only then explicitly regulated in law, namely in Law Number 27 of 2003 concerning Geothermal Energy which came with the spirit of regional autonomy but then failed to answer the challenges of geothermal exploration and utilization until it was later amended in Law Number 21 of 2014 about Geothermal Energy. Currently regarding geothermal energy in the job creation law regime, risk-based business licensing is regulated with ease of licensing to realize the acceleration of renewable energy development in Law no. 6 of 2023 concerning Determination of Government Regulations Regarding Job Creation.

The plan to expand geothermal energy exploration in the Poco Leok Manggarai mountains, which is an expansion of PLTP Ulumbu 5-6, will be carried out at four starting points, namely Lingko Lapang (mocok drum), Lingko Egypt (Egyptian drum), Lingko Tanggong (lungar drum) and Lingko Lelak (lelak drum). Currently, in October 2023, Lingko Lapang will be moved to Wewo Village (not Poco Leok), because Lingko Lapang is a dense and large Lingko which is very strongly rejected by the community. PLTP Ulumbu 5-6 in Poco is managed by PLN UIP Bali Nusra through its subsidiary, PT PLN Indonesia Power,

which is tasked with supplying electricity from upstream. PLTP Ulumbu 5-6 in Poco Leok is a development of PLTP Ulumbu 1-4 which is located in Wewo Village with a capacity of 10 MW. The construction of the Ulumbu 5-6 PLTP in Poco Leok itself is planned to have a capacity of 2x20 MW or 40MW. PLTP Ulumbu 5-6 is planned to utilize 7 drilling areas, including 5 production well areas and 2 reinjection wells. Currently, construction of the expansion of PLTP Ulumbu 5-6 in Poco Leok is entering the land acquisition stage for the locations of four drilling points (wellpads), namely in Lungar Village (Lingko Tanggong, Lingko Egypt, and Lingko Lelak) and Wewo Village (near PLTP Ulumbu 1 - 4). The determination of this drilling point is based on Manggarai Regent's Decree Number HK/417/2022.

The plan to develop geothermal energy in the Poco Leok traditional area has received strong resistance from the traditional law community in Poco Leok. The basis of the traditional law argument for rejecting geothermal energy development is on the grounds that Manggarai customary law has 5 traditional pillars (Lampeke Lima) which must be adhered to, namely Mbarun one (House), Nantas Bate Labar (Page for playing/socializing), Compang bate takung (Altar for offerings), Wai bate teku (Water to draw), Lingko Pe'ang (Garden land). If geothermal exploration is carried out in the Poco Leok traditional territory, it will eliminate one of the pillars of customary law, namely Lingko. Lingko will be purchased privately if geothermal exploration is carried out, and the consequence of this is that the existing lingko is no longer related to drums, meaning that a structure of customary law that has been believed for generations in the Poco Leok traditional area is destroyed. The rejection of geothermal exploration is also based on ancestral beliefs, where they believe that geothermal exploration will destroy ancestral lands.

Of the 14 drums in the Poco Leok customary jurisdiction area, there are 10 drums that reject geothermal exploration, these drums are Mocok, Mucu, Mori, Nderu, Nعمار, , Lungar, Rebak, Tere, Jong, Cako. Meanwhile, the 4 drums that received were Egypt, Leda, Lelak, Mano. The reason for the rejection is because their customary law has five noble principles, where if one principle is missing then the value of customary law is also lost. Another reason for rejection is people's fear of the threat of natural landslides due to the mountainous terrain. So the reason the traditional law community in Poco Leok refuses geothermal energy is because of the noble principles of customary law values and because of fear of the environmental effects and impacts that arise.

The indigenous community's fear is due to several incidents regarding the environmental impact that emerged from other Ulumbu PLTPs. I Gusti Ayu Ketut in his journal stated that the use of geothermal heat at PLTU Ulumbu contains noncondensable gas (NCG) in the steam that is released into the open air, such as H<sub>2</sub>S gas, methane and other gases. The liquid waste produced by the Ulumbu PLTU which is discharged into the Waekokor river is still below the quality standards set by the government. PLN as the owner of the Ulumbu PLTP does not exceed the regulations set by the government regarding waste water quality standards for geothermal exploration and production businesses and/or activities. In some locations, the use of geothermal energy has even caused a decrease in groundwater. Regarding the operation of the Ulumbu GPP, the government needs to carry out supervision considering the potential for environmental pollution.

The development of geothermal energy by the state through existing laws and regulations and based on customary laws that still exist can be analyzed using several views. Firstly, in terms of the value of the nation's economic philosophy, geothermal development suggests it is a form of state fulfillment of energy social justice. This can be seen from several considerations in statutory regulations, which generally state in their philosophical basis that social justice is realized through the state's oversight of crucial production sectors that significantly impact the livelihoods of numerous individuals.[13] State control over geothermal is ontologically interpreted as meaning that the state, through its statutory regulations, claims to have provided legal certainty for social justice, which at the same time, in its juridical basis, links statutory regulations with the 1945 Constitution of the RI becomes the constitutional legitimacy. However, this situation becomes paradoxical when considering the resistance from traditional legal communities with longstanding roots in Indonesia concerning the advancement of geothermal energy, as is the case in the Poco Leok Manggarai traditional law community. The paradox lies in the fact that the constitutional recognition of customary law communities is acknowledged in accordance with the provisions of Article 18B paragraph (2) of the 1945 Constitution, despite the inherent conflict arising from the second amendment stipulation that

"The state acknowledges and honors the community units governed by customary law and their traditional rights, provided that they remain in existence and align with the evolving needs of society and the principles of the unitary state of the Republic of Indonesia, as specified by the law."

The recognition of customary law communities in the constitution has the consequence that the state must provide protection to all citizens without exceptions expressly stated in the state constitution, and thus state arbitrariness presented by the authorities towards its citizens is not justified. [14] The state's protection of the people has been laid down by consensus when establishing the state which is stated in the goals of the state. Including the prohibition does not necessarily negate the right to life, sacred space and cultural space which are Customary law social capital.

The second analysis of the differences in the perspective of national law and customary law in viewing geothermal development can be seen from the perspective of legal objectives. The purpose of law can be seen from various legal lenses, firstly, the ethical legal school considers that the purpose of law is solely for justice, which is sometimes considered to be very rigid and positivistic from the perspective of justice.[15] Meanwhile, in the utilitarianism school, the law views that it must be able to provide as much benefit and happiness as possible. Looking at the geothermal management process, the analysis of legal objectives shows that the state is more dominant because it has the ability to control the lives of many people in the production branch and tends to circumvent justice for customary law communities. If we use the theory of legal objectives from the utilitarianism school where the law is for happiness, then customary law communities should be involved

in the process of making geothermal management policies starting from the policy planning process. This is because the values of indigenous communities have long existed and are also one of the material legal sources of Indonesian legal development. [16] As a societal norm, law is inherently connected to the prevailing values within a community. It can be asserted that the law mirrors the values upheld in society. A sound law is one that aligns with the dynamic legal principles within society, inherently reflecting or conforming to the values upheld by that society. As a societal norm, law is inherently connected to the prevailing values within a community. It can be asserted that the law mirrors the values upheld in society. A sound law is one that aligns with the dynamic legal principles within society, inherently reflecting or conforming to the values upheld by that society. [17]

The third analysis is regarding differences in development perspectives which, if analyzed using a holistic approach, can be concluded that the management of geothermal energy from a national legal perspective is oriented to fulfill national energy development which is oriented towards economic development. Meanwhile, the development perspective of the Poco Leok indigenous community does not see geothermal development as an element of national development due to differences in development perspectives. The Poco Leok indigenous people see that the integrity of the land and ancestral values are things that must be maintained. They consider that the development of geothermal energy is not intended for the welfare of the community but for tourism development. This is of course contradictory to the spirit of developing energy sovereignty and clean energy programmed by the government because Indonesia currently still relies on fossil energy which is not environmentally friendly.[18]

The fourth analysis regarding legal incommensurability is regarding the disharmony of state legislation and customary law. The incompatibility of the two legal systems is inevitable, namely between state law and customary law. This incommensurability then gives rise to a paradox due to the existence of diversity in addition to similarity between the legal systems of the recipient (host system, recipient) and the origin (home system, models).[19] In terms of geothermal energy management, national law dominates with values in legislation that are more in the public interest, from the concept of renewable energy development to the issue of climate change. What is also highlighted in the incompatibility of national law with customary law regarding geothermal development is that tenure rights are theoretically accommodated in the drafting of legislation in the geothermal sector but customary rights do not appear in the norms. This will certainly have the potential to threaten tenure security in Indonesia. According to Robert Seidman in his research which made Indonesia the object of his research said that: [20]

*“The individual who originated the concept of ‘the Law of Norm Transferability of Law’ contended that transferring rules from one culture to another is ineffective because a rule is not anticipated to elicit the same type of role-performance as it does in its original context”.*

This view explains how the original cultural values of a region play a very important role in the operation of law in a country. Due to the condition of legal incompatibility between state law and customary law in viewing geothermal energy in Manggarai, East Nusa Tenggara, it is necessary to a holistic approach to find society's sense of justice towards injustice that arises from legislative products that arise from state power. The rights of indigenous peoples need to be understood from a philosophical perspective because humans are a valuable animal. [21] Humans act and work because there is something they are pursuing, namely a certain good to give meaning to their life. In terms of geothermal management, the state considers that geothermal energy will provide a lot of meaning for the progress of the nation, which also includes indigenous communities. Meanwhile, indigenous peoples consider that the meaning of life for them is their ancestral land and all traditional legal institutions.[22] A holistic approach is carried out by first involving indigenous communities long before the geothermal exploration plan is carried out through cultural approaches. Second, provide an evaluation of geothermal energy which still has environmental impacts. Third, take an approach in accordance with the characteristics of indigenous communities and do not use repressive force. Fourth, in formulating national policies, which are policies that concern the livelihoods of many people, must prioritize economic democracy that involves the community, including indigenous communities, with existing values. So far, the approach taken by the government has been more of a repressive approach, giving rise to increasing resistance from the public regarding the current legal system.

Deep holistic efforts portraying geothermal energy development as a form of state responsibility to ensure that natural wealth is a potential thing that must be explored for the benefit of the nation. State paradigm The state, through the government, is the institution responsible for efforts to fulfill general welfare to achieve state goals. According to Kranenberg, apart from creating order, the goal of the state is that the state must also pay attention to the welfare and happiness of its citizens.[23] Efforts to realize general welfare as a state goal are carried out through the sovereignty policy of new and renewable energy, one of which is geothermal/geothermal energy, the benefits of which can certainly be felt by the community. This means, don't let the use of geothermal energy not be for the community but only for industry. This is to realize an energy sovereignty based on social justice for all Indonesian people.

## V. CONCLUSION

Legal incommensurability in geothermal management can be seen from the lack of accommodation of customary law community values in national law, however, when legislation regarding geothermal emerged, it was deemed capable of

legitimizing the geothermal development process. This legal incompatibility gives rise to the paradox that both things, namely geothermal development, are a form of development in accordance with Article 33 of the 1945 Constitution of the Republic of Indonesia, but on the one hand, the recognition of the rights of customary law communities is also a constitutional right as regulated in Article 18 B paragraph (2).

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