

LEGAL PROTECTION OF CONSTITUTIONAL RIGHTS OF INDIGENOUS CHILDREN'S INDIGENOUS LEGAL COMMUNITIES IN MUSI RAWAS UTARA REGENCY, SOUTH SUMATERA PROVINCE

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Abstract

A group of people who have the same feelings in a group, living in one place due to genealogy or geological factors is a Customary Law Community. the rules regarding rights and obligations on material and immaterial goods are already owned in their own customary law. the normative legal writing method because it examines statutory regulations, literature, and journals and papers related to the material under study, which consists of the types of data obtained in this study are secondary data, namely data obtained from library research and documentation, which is the results of research and processing of others, which are already available in literature or documentation. Protection for indigenous peoples as regulated in Article 28I paragraph (3) as well as in Article 18 B (2) of the 1945 Constitution and operational regulations are very necessary so that Indonesian legal order can be implemented properly. This problem is because the amendments to the 1945 Constitution at that time were laden with the interests of the administrators at that time. On the other hand, the state also recognizes and respects the rights of indigenous peoples, as well as on the other hand, they are required to fulfill the requirements to realize their rights.

Keywords: *Constitutional Rights, Customary Law Community, Legal Protection Guarantee.*

I. INTRODUCTION

The protection of the rights of the Customary Law Community (MHA) at the conceptual level has been guaranteed by the constitution. The existence of articles 18 B paragraphs (2) and 28I (3) of the 1945 Constitution as well as sectoral laws (Law Number 5 of 1960 concerning Agrarian Principles; Law Number 4 of 2009 concerning Mining, Mineral and Coal; Law Number 7 of 2004 concerning Water Resources; and other related laws) have attempted to provide recognition and respect for MHA Unity. Basically, the central government has guaranteed juridically in implementing a system of government for the welfare of the people, namely by fighting for the fulfillment of constitutional rights and traditional rights.

The constitutional rights referred to are the basic rights and basic freedoms of every citizen, related to education, employment, equality before the law, socio-economic rights, freedom of opinion, rights to live and to reside guaranteed by the

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Constitution. While traditional rights are special or special rights that are inherent and owned by a community over the similarity of origins (geneological), similarity in territory, and other customary objects, rights to ulayat land, rivers, forests and practiced in the community. . However, the constitutional juridical obligations related to the recognition and respect for MHA carried out by the central and regional governments still encounter various obstacles

State policies related to public services increasingly show evidence of their existence as a minority group being treated in a discriminatory manner. An example of such discrimination is a conflict case between the MHA of PT Perusahaan Perkebunan Lonsum Indonesia Tbk which is engaged in the plantation sector. The problem started when the company's land clearing practice caused the Suku Anak Dalam living space to narrow, customary land rights were never recognized by the State and land grabbing was increasing. The construction of oil palm plantations began to be massive since 1990. Any resistance from the Anak Dalam Tribe could immediately be extinguished with a military approach in the New Order era.

However, after the reformation, the community again dared to demand their customary land rights. In its development, physical violence colored this prolonged conflict. Ironically, the state apparatus, which should be neutral and prioritize the public interest, actually sided with the foreign company. Settlement of customary land rights disputes through mediation is the best way to resolve problems between the indigenous people of the Anak Dalam Tribe and PT Perkebunan Lonsum Indonesia Tbk, in Tebing Tinggi Village, Nibung District, North Musi Rawas Regency.

Commission IV of the House of Representatives of the Republic of Indonesia (DPR RI) held a Hearing Meeting (RDP) with PT. London Sumatra, Tbk. (PT. Lonsum) and a number of community leaders as well as representatives of the Suku Anak Dalam (SAD), the meeting was held related to the customary land dispute of the Anak Dalam Tribe and the alleged violation of the Right to Cultivate Permit by PT Lonsum in the North Musi Rawas Regency and Musi Rawas Regency. South Sumatra. Deputy Chairman of Commission IV of the DPR RI, Daniel Johan, emphasized that this issue must be resolved immediately and urged PT Lonsum to immediately return the customary land rights. We immediately encourage PT. Lonsum immediately completed the business and restored the land rights of the Anak Dalam Tribe, in the shortest possible time.

In this note, the control over 1400 hectares of land in the North Musi Rawas area and 900 hectares in Musi Rawas by PT. Lonsum has violated Law No. 32 of 2009 on Environmental Protection and Management. Daniel emphasized that in addition to violating the rules, PT Lonsum's activities have also harmed the affected community. Therefore, Daniel urged PT Lonsum to stop plantation activities before the legality of the business as well as the rights of the surrounding community according to the applicable regulations were fulfilled. commission IV gives a maximum time of one month (to PT. Lonsum) for two reasons: First, PT. Lonsum has

violated Law no. 32 of 2014, the second is PT. Lonsum runs its plantation activities without a permit, either HGU (Hak Guna Usaha), IUP (Plantation Business Permit), or Amdal (Environmental Impact Analysis)².

Based on the explanation of the background above, the discussion in this article is; First, how is the legal protection for the indigenous peoples of North Musi Rawas district?; Second, how is the guarantee of protection of the constitutional rights of the indigenous peoples of North Musi Rawas district?

In the 1945 constitution and other relevant regulations, it is stated that the customary law community is legally formal, but the level of effectiveness is questionable considering that their constitutional rights have not been legally formalized, so indirectly the level of protection is still weak.

This paper uses a normative legal writing method because it examines legislation, literature, and journals and papers related to the material being studied, which consists of the type of data obtained in this study is secondary data, namely data obtained from library research and documentation, which is the result of research and processing of others, which is already available in the form of literature or documentation.

II. DISCUSSION

Geographically, Muratara Regency is one of the westernmost regencies in South Sumatra Province, bordering Jambi Province in the north, Musi Rawas Regency in the south, Bengkulu Province in the west and Musi Banyuasin Regency in the east. Muratara Regency as a whole has an area of 600,865.51 hectares. Administratively, Muratara Regency is divided into seven sub-districts, namely Rupit District, Karang Jaya District, Karang Dapo District, Nibung District, Rawas Ilir District, Rawas Ulu District and Ulu Rawas District. The seven sub-districts are further divided into smaller administrative areas with a total of 89 regions, consisting of 82 village areas and seven kelurahan areas. In general, the Muratara Regency area has a diverse topography, ranging from lowlands to highlands. The altitude of this district ranges from 125-250 meters above sea level. The land in Muratara Regency is mostly used as agricultural land instead of rice fields, which reaches 48.45% of the total land area. 21.75% of which is plantation land, both owned and managed by the people and by companies. Meanwhile, the land used for rice fields is only 0.97% of the total area of this district. Among these lands remaining 36.28% of non-agricultural land. These include forests and the Kerinci Seblat National Park area, thus making this district one of the buffer areas in South Sumatra Province. In addition to its ecological benefits, forest areas can also have an

² Ahmad Zubaidi, Melanggar UU, Komisi IV Desak PT Lonsum Kembalikan Hak Tanah Suku Anak Dalam, Media Online Radarbangsa.com, Jakarta. Selasa, 24/10/2017 12:33 WIB diakses tanggal 9 mei 2020.

economic impact on Muratara Regency. In this forest and area of the Kerinci Seblat National Park, there are 840 SAD people, some of whom have settled and some still maintain the old way of living on the move. (data from TKS Social Service of Muratara Regency)³.

The social changes that occurred in the KAT-SAD environment in Sungai Jernih Village were quite well organized. This is indicated by their assimilation process with the local community. However, this social change has not occurred completely because there are several aspects of social empowerment for KAT that have not occurred as desired. that social change has not been able to completely relieve them of life's problems to achieve the four pillars of social empowerment goals as stipulated in the Presidential Regulation of the Republic of Indonesia Number 186 of 2014 concerning Empowerment of Remote Indigenous Communities, namely: 1. Protection of rights as citizens; 2. Fulfillment of basic needs; 3. Integration of KAT with the wider social system; and 4. Independence as a citizen.⁴

Legal Protection of Indigenous Peoples of the Indigeous Tribe (SAD) in. North Musi Rawas Regency

The policy rules relating to amendments to the 1945 constitution with the existence of MHA as well as the freedom to carry out their traditions, namely case 18 B part 2 (two) of the constitution reads: "The state recognizes and respects customary law community units and their traditional rights as long as still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in the law". The conclusion of the constitution as stated in the provisions of 4 issues of justification as well as respect for the existence of MHA as well as their freedom of tradition are: as long as they exist; see the development of the named society; in line with the objectives of the Indonesian State; limited by law (Syamsuddin, 2008, p. 3 4 6 in Abdurrahman).⁵

In relation to the justification for MHA, the law with environmental guarantees is more specific in terms of burden and authority, more specifically in maintaining the surrounding environment so that it is more well-maintained and maintained for survival, this problem can be seen; case 63 letter t, consistent with the guidelines on how to accept justifications related to the existence of the Customary Law Community, the wisdom around us, as well as the freedom of MHA with regard to guarantees and managing the environment coincides with/controlled by the central

³ BPS Musi Rawas (2015). Kabupaten Musi Rawas Utara dalam Angka 2018

⁴ Rizal Tristo, Peningkatan Kesadaran Pentingnya Pendidikan Bagi Suku Anak Dalam Provinsi Sumatera Selatan Melalui Penyuluhan Sosial, Penyuluh Sosial Pertama, Dinas Sosial Kabupaten Musi Rawas Utara, Provinsi Sumatera Selatan, Quantum Jurnal Ilmiah Kesejahteraan Sosial, Vol XIV Nomor 25 Januari-Juni 2018.

⁵ Abdurrahman, draft laporan pengkajian hukum tentang mekanisme pengakuan masyarakat hukum adat, pusat penelitian dan pengembangan sistem hukum nasional badan pembinaan hukum nasional kementerian hukum dan hak asasi manusia r.i. Jakarta 2015.

and regional governments; case 63 part 2 (two) the authority is at the provincial level, based on the interpretation of the information in letter n; consistent with the guidelines on how to justify the existence of indigenous peoples, the wisdom around us and the freedom of MHA related to the guarantee of environmental sustainability management centers for future life at the provincial level; case 63 section 3 (three) the authority is at the city or district level based on the information in letter n: “consistent with the guidelines relating to procedures for managing and justifying the existence of MHA in relation to guaranteeing and maintaining environmental sustainability at the district/city level.⁶

The discourse on MHA basically cannot be separated from the discussion on local government. This can be seen in the placement of Article 18B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which is part of Chapter VI concerning regional government. This means that the recognition and respect for MHA is not only seen as the implementation of the protection of human rights, but also must be understood as part of the implementation of regional autonomy. Regional autonomy which is the basic principle of regional government administration based on regional autonomy. The term autonomy comes from the Greek, *autonomos/autonomia*, which means self-ruling. Referring to these two words, autonomy can simply be interpreted as a regulation made by one entity (self-government). Regional autonomy is the right, authority and obligation of the region to regulate and manage its own household in accordance with the applicable laws and regulations.

The realization of free will that binds every human being is something that is absolute and is appreciated as a gift from God.⁷

Clarke and Stewart place autonomy as a model of the relationship between the center and the regions by using the term the relative autonomy model in addition to the agency model and the interaction model. The difference that becomes the emphasis of the autonomy model is the granting of considerable freedom to local governments while respecting the existence of the central government. The existence of regional autonomy cannot be separated from the concept of decentralization, deconcentration, and co-administration. The three principles are different but complementary in accordance with the existing legal design, so that all three are often found in the practice of administering regional autonomy simultaneously.⁸

⁶ Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup.

⁷ Rudy, 2012, *Hukum Pemda Perspektif Konstitusional Indonesia*, Bandar Lampung: *Indepth Publishing*, p. 23

⁸ Clarke dan Stewart dalam Ni'matul Huda, 2012, *Hukum Pemerintahan Daerah*, Bandung: Nusamedia, p. 12.

Furthermore, according to Muchsin,⁹ Legal protection is a matter that protects legal subjects through applicable laws and regulations and enforced its implementation with a sanction. Legal protection can be divided into two, namely:

a) Preventive Legal Protection

Protection provided by the government with the aim of preventing violations before they occur. This is contained in laws and regulations with the aim of preventing a violation and providing signs or limitations in carrying out an obligation.

b) Repressive Legal Protection

Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given if a dispute has occurred or a violation has been committed. In relation to the conception of legal protection, if it is associated with MHA, both preventive and repressive forms of protection must be included in laws and regulations that specifically regulate MHA and their rights, including violations of their rights. This arrangement needs to be formulated at least in a special law, to serve as the main guideline and at the same time avoid different interpretations regarding the rights of MHA themselves.

For the implementation rules, the Minister of Home Affairs Regulation No. 52 of 2014 concerning the details of the justification and authority is in place ¹⁰, even though it only leads to group justification, there is also no justification specification related to the area. With regard to authority, it can be explained in Article 3 sections 2, 3, and 4, as follows:

Part 2

The highest leadership at the provincial level (governor) and at the district/or city level (mayor/regent) implement justifications as well as guarantees against MHA.

Part 3

Associated with institutions to join the structure, namely: a. the said regional or district secretary as chairman; b. The head/head of the regional work unit in the field of Pemmas as Secretary; c. the head of the city/district legal division for members; d. sub-district head with another language as a member; e. the leader/head of the regional apparatus unit is related to the uniqueness of the customary law community as a member.

⁹ Muazzin, Hak Masyarakat Adat (Indigenous People) atas Sumber Daya Alam: Perspektif Hukum Internasional, Padjadjaran Jurnal Ilmu Hukum Volume 1 No. 2 Tahun 2014

¹⁰ Peraturan Menteri Dalam Negeri Nomor 52 Tahun 2014 Tentang Pedoman Pengakuan dan Perlindungan Masyarakat Hukum Adat.

Part 4

The organizational structure of the city/district MHA committee is ratified/established by the decision of the mayor/regent. the method of implementation is stated in articles 4, 5, and 6; as for the explanation of the description of justification contained in the article, namely article 4 the justification and the guarantee referred to in article 2 are carried out through a process of stages: a) identification of MHA; b) Validation and verification of MHA, and c) Determination of MHA.

Article 5

- (1) The mayor/regent through the sub-district head/in other words carry out the identification as described in article 3 letter a by involving MHA/community.
- (2) Recognition/identification based on part (1) is carried out by observing: a. MHA history; b. customary area; c. customary norms; d. customary objects or customary assets; and, e. customary government system.
- (3) The conclusion of the identification results is stated in section (2) validation and verification of the city/district MHA committee is carried out.
- (4) (4) The conclusion of the validation and verification results as stated in paragraph (3), shall be notified to the local MHA within 1 month.

Article 6

- (1) The city or district MHA committee board submits a delegation to the mayor/regent based on the results of the validation and verification as stated in Article 5 section (4).
- (2) The mayor or regent implements the determination of the justification and guarantee of MHA based on the delegation of the MHA committee board with the decision of the leadership/decision of the regional head.
- (3) (3) In this case the MHA exists in 2 or more cities or regencies, the justification and guarantee for MHA is determined by agreement and joint decision of the leadership in this case the regional head.

Guaranteed Protection of the Constitutional Rights of Indigenous Peoples of the Suku Anak Dalam (SAD) in North Musi Rawas Regency

The term constitution has existed and has been used since the time of the Greeks, where the Constitution of Athens was invented. The initial understanding of the constitution at that time was only a collection of regulations and customs. In essence, the constitution is a legal form of people's sovereignty.¹⁰⁵ In its development, the constitution is defined as the basic law that is used as a guide in

the administration of a country. The constitution can be in the form of a written basic law commonly called the Basic Law, and it can also be unwritten. Meanwhile, Indonesia uses a written constitution, namely the 1945 Constitution of the Republic of Indonesia (UUD 1945).¹¹

Jimly Assiddiqie in Rudi Wijaya's Thesis ¹² formulate 27 human rights materials that have been adopted into the second amendment of the 1945 Constitution, namely:

- 1) Everyone has the right to live and has the right to defend his life and life.
- 2) Everyone has the right to form a family and continue the lineage through a legal marriage.
- 3) Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination.
- 4) Everyone has the right to be free from discriminatory treatment on any basis and is entitled to protection against such discriminatory treatment.
- 5) Everyone is free to embrace religion and worship according to his religion, choose education and teaching, choose work, choose citizenship, choose a place to live in the territory of the country and leave it, and has the right to return.
- 6) Everyone has the right to freedom to believe in beliefs, to express thoughts and attitudes, according to his conscience.
- 7) Everyone has the right to freedom of association, assembly and expression.
- 8) Everyone has the right to communicate and obtain information to develop their personal and social environment and has the right to seek, obtain, possess, store, process, and convey information using all available channels.
- 9) Everyone has the right to personal protection, family, honor, dignity, and property under his control, and has the right to a sense of security and protection from the threat of fear to do or not do something which is a human right.
- 10) Everyone has the right to be free from torture or treatment that degrades human dignity and has the right to obtain political asylum from another country.
- 11) 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..

¹¹ Rudi Wijaya, *Perlindungan Hak Konstitusional Masyarakat Hukum Adat (Studi Pada Masyarakat Kasepuhan Ciptagelar Kabupaten Sukabumi Provinsi Jawa Barat)*. Skripsi, Universitas Lampung Bandar Lampung 2018 p 45.

¹² Ibid.

- 12) Everyone has the right to get facilities and special treatment to get the same opportunities and benefits in order to achieve equality and justice.
- 13) Everyone has the right to social security that allows his/her full development as a dignified human being.
- 14) Everyone has the right to have private property rights and such property rights cannot be taken over arbitrarily by anyone.
- 15) Everyone has the right to develop themselves through the fulfillment of their basic needs, the right to education and to benefit from science and technology, art and culture, in order to improve the quality of their lives and for the welfare of mankind.
- 16) Everyone has the right to advance himself in fighting for his rights collectively to build his community, nation and state.
- 17) Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law.
- 18) Everyone has the right to work and receive fair and proper remuneration and treatment in an employment relationship. 19. Everyone has the right to citizenship status.
- 19) The state, under no circumstances, cannot reduce everyone's right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right to not prosecuted on the basis of retroactive law.
- 20) The state guarantees respect for the cultural identity and rights of traditional communities in line with the development of the times and the level of civilization of the nation.
- 21) The state upholds the ethical and moral values of humanity taught by every religion, and guarantees the independence of every citizen to embrace and practice the teachings of his religion.
- 22) The protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government.
- 23) To promote, enforce, and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated and set forth in laws and regulations. 23) To promote, enforce, and protect human rights in accordance with the principle of a democratic rule of law, then the implementation of human rights is guaranteed, regulated and set forth in laws and regulations.
- 24) To ensure the implementation of Article 4 paragraph (5) above, an independent National Human Rights Commission is formed according to the provisions stipulated by law. 24) To ensure the implementation of Article 4 paragraph (5) above, a National Human Rights Commission is formed. independent in accordance with the provisions regulated by law.

- 25) Everyone is obliged to respect the human rights of others in the orderly life of society, nation and state.
- 26) 26) In exercising his rights and freedoms, everyone is obliged to comply with the restrictions established by law for the sole purpose of guaranteeing the recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with moral considerations, values religion, security and public order in a democratic society.

The 1945 Constitution has mandated that in the implementation of human rights human rights are guaranteed, regulated, and set forth in laws and regulations. In this regard, the government on September 23, 1999 has ratified and promulgated a law on human rights, namely Law Number 39 of 1999 concerning Human Rights (State Gazette of 1999 Number 165). This law is a more detailed description of the regulation of human rights in Indonesia, including the protection of human rights itself. 54 The Human Rights Law, in general, has also regulated the rights of Indigenous Peoples. The formulation contained in Article 6 of this Human Rights Law mandates the state to pay attention to and protect the human rights of Indigenous Peoples. In addition, cultural identity, MHA including rights to customary land must also be protected.¹³ These efforts are part of the framework for upholding human rights in general, and must be pursued by the law, society, and government.¹⁴

Constitutional rights of indigenous peoples ¹⁵ ;

a) Constitutional Rights and Traditional Rights of MHA

Indigenous peoples have rights according to the laws and regulations, they should be treated more, as well as ordinary citizens also have rights. Because customary law communities are people who have traditionally had special rights as citizens. Protection, guarantees and legal certainty are highly prioritized as Indonesian citizens and are also recognized theoretically, but in reality the fate and socio-economic level are financially far behind. Affirmative action is one way to bind closely to protection. Therefore, legal rights put more emphasis on efforts to fight for the rules regarding the basic rights of MHA in the 1945 Constitution, although in its realization many are negated by the secular law. In general, the constitutional rights of MHA are the same as the constitutional rights of other communities. Among them, as stated in Article 27 paragraphs 1,2, and 3 of the 1945 Constitution, namely the right to equal status in law and government and the obligation to uphold the law and government without exception, the right to work and a decent living for

¹³ *Op.cit*

¹⁴ Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia

¹⁵ Jawahir Thontowi, Pengaturan M H A dan Pelaksanaan Perlindungan hak Tradisionalnya, Fak. Hukum, UII, Jurnal pandecta vol. 10 No. 1 juni 2015 p. 7.

humanity, and the right to and the obligation to participate in the defense of the State. Then in Article 28 it is stated that the right to freedom of association and assembly, to express thoughts verbally and in writing and so on is stipulated by law, as well as in Article 29 paragraph (2) the right to embrace their respective religions and to worship according to their religion and beliefs. The rights of MHA according to the Human Rights Commission and the 1986 International Labor Organization (ILO) Convention include; the right to self-determination, the right to participate in government, the right to food, health, habitat and economic security, the right to education, the right to work, children's rights, workers' rights, the rights of minorities and indigenous peoples, land rights, rights to equality, the right to environmental protection, the right to good government administration, the right to a fair law enforcement. Meanwhile, in particular, MHA has constitutional rights that are traditional or called MHA traditional rights. Based on Article 18B paragraph (2) of the 1945 Constitution, recognition and respect for MHA units and their traditional rights must be based on the following conditions: 1. As long as they are alive; 2. In accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia; 3. regulated by law.¹⁶

In line with that, Law 24/2003 concerning the Constitutional Court also stipulates the same requirements for the customary law community unit to become an applicant in the Constitutional Court. Both the 1945 Constitution and Law 24/2003 concerning the Constitutional Court jo. Law 8/2011 concerning amendments to Law 24/2003 stipulates certain conditions for MHA units to have legal standing to be able to litigate in the Constitutional Court. Thus, the state has guaranteed legal recognition and protection for MHA units, even though there are constitutional requirements that must be met. At this time, the customary lands of indigenous peoples have begun to be exploited by foreign investors, the result of which in the form of petroleum continues to flow out of the country every day, by generating abundant foreign exchange, which is a significant contribution to the interests of this country. However, the fate of MHA has never been a concern of the central or regional governments until now. On July 5, 1959 the President by decree stipulates the dissolution of the Constituent Assembly, the 1945 Constitution applies again to the entire Indonesian nation and the entire homeland of Indonesia, and the 1950 Provisional Constitution is no longer valid.

b) Forest Management and Utilization Rights

Regarding forestry, it can be explained that forest located on land that is not burdened with land rights according to law number 5 of 1960, including the entire forest which has basically been placed by customary law

¹⁶ Undang-undang Dasar Negara Republic Indonesia 1945

communities which is also called ulayat forest, clan forest, or community forest. This other designation is called State forest based on Law No. 41 of 1999. In the sense of State forest, it is forest forest occupied by customary law communities, which is the impact of the feasibility of controlling and administering it by state institutions as the highest institution in Indonesia. In this way, customary law communities can use the forest and its forest products.¹⁷

c) Ulayat Rights and Land Tenure

The government and/or regional government while still recognizing and respecting customary law community units and their traditional rights. in Law Number 7 of 2004 concerning Water Resources in Article 6 paragraph (3) the customary rights of customary law communities to water resources as regulated always justify as long as there is still state ownership of the contained water resources. 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, such as the ulayat rights of the local customary law community and rights similar to that. except Papua Province can be seen in the rules of Law Number 21 of 2001.¹⁸

d) Management Rights over Fields or Plantations

Management of land rights for plantation businesses as regulated in Law Number 18 of 2004 concerning Plantations must still pay attention to the customary rights of customary law communities, as long as in reality they still exist and do not conflict with higher laws and national interests.¹⁹

e) Environmental Protection and Management

In terms of environmental protection and management, it is regulated in Article 63 paragraph (1) letter t which reads that the 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. life. Then in Article 63 paragraph (2) letter n it is also stated that the Provincial Government has the duty and authority to establish policies regarding procedures for recognizing the existence of customary law communities, local wisdom, and customary law community rights related to environmental protection and management at the provincial level. . At the Regency/City level as regulated in Article 63 paragraph (3) letter k that the Regency/City Government has the duty and authority to implement policies regarding procedures for recognizing the existence of indigenous peoples, local wisdom,

¹⁷ UU NO. 41 Thn 1999 tentang kehutanan

¹⁸ Undang-Undang Nomor 7 Tahun 2004 tentang Sumber Daya Air

¹⁹ Undang-Undang Nomor 18 Tahun 2004 tentang Perkebunan

and rights of indigenous peoples related to the protection and environmental management at the district/city level.²⁰

f) Coastal Area Management

Article 61 paragraph (1) of Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands states that the Government recognizes, respects and protects the rights of indigenous peoples, traditional communities, and local wisdom over coastal areas and islands. small ones that have been used for generations.²¹

It has been regulated in the 1945 Constitution Article 18 B section 2 (two) and has also been disclosed in accordance with the sectoral laws contained in the Basic Agrarian Law, Forestry Law, Water Resources Law, Plantation Law and Environmental Management Law. waterfront and the Environmental Law. considering the unavailability of operational regulations, the customary rights which are the constitutional rights of the Indigenous Law Community in their implementation are not easy to implement.

According to Sirait in the journal *Jawahir Thontowi*, the authority and mechanism when compared to the scope of its implementation, the determination of the Customary Law Community is given to the guidelines of regional leaders. Recognition and respect for customary law communities is also regulated in Article 28I paragraph (3) Apart from Article 18B paragraph (2) of the 1945 Constitution which reads, "Cultural identity and rights of traditional communities are respected in line with the development of times and civilization". Article 28I paragraph (3) will never bind with the conclusions of Article 18B part 2 (two) which in time leads to the context of legal philosophy, so that everything is easy to understand. On the first hand, case 281 part 3 (three) and case 18B part 2 (two) are burdensome basic rules with difficult and burdensome provisions. On the other hand, in the form of stifling MHA freedom, it is related to the struggle over time as long as the way the ruler implements it centrally means that there is an element of political power that is not genuine. Although the 1945 Constitution recognizes the existence and rights of customary law communities formally, especially related to customary land rights, the reality is that these rights have been continuously undermined by both the Government and non-Governmental parties. Actions against this rule include violations of economic, social, and cultural rights that end in violations of civil and political rights. The continuous violation of rights is one of the causes of horizontal and/or vertical conflicts that are very likely to cause loss of life and property.

Likewise, the recognition and respect for the Indigenous Law Community is difficult to realize, especially since there were a handful of sect leaders at that time

²⁰ Undang-Undang Republik Indonesia Nomor 32 Tahun 2009 tentang perlindungan dan pengelolaan lingkungan hidup

²¹ Undang-Undang Nomor 27 Tahun 2007 tentang Pengelolaan wilayah Pesisir dan Pulau-Pulau Kecil

(the new order) who were still within the scope of the People's Consultative Assembly at that time still wanted a centralized system of government, based on Article 18B paragraph (2). the idea of amendments, of course, does not have to be all accepted by them. then the emergence of the formulation of the amendment article in Article 18 B paragraph (2) became ambivalent due to the tug of war that occurred by the government.

In addition, the traditional rights of the state's MHA also respect and recognize this obligation. However, on the other hand, being burdened with provisions is so difficult to implement them at the same time. This problem has created a feeling of concern for a few groups who care about reviving the Indigenous Law Community, which requires fundamental traditional values. In relation to the local democratic process, in their view, the existence of the Indigenous Law Community can also be a heavy burden, automatically rubbing against the customary rights if you want to use the lands controlled by the Indigenous Law Community for development, which should be controlled by MHA officials, there is a possibility of incompatibility between government that wants regional development autonomously. Regarding justification and appreciation by the government, it cannot be separated from the point of meeting/consensus, just wanting diplomatic pleasure as a result of the ambiguous construction of constitutional articles. Likewise, the inability to give birth means benefits for MHA by the Constitutional Court as a protector of the constitution²².

According to Jawahir Thontowi, the Immaterial Traditional Rights of the Indigenous Law Communities, the State protects the traditional freedoms of the Indigenous Law Communities, not in the form of immaterial objects other than the freedom of material traditions. The fundamental freedoms of time lapse include freedom of brand, patent, and invention as well as others including immaterial freedom. immaterial rights are closely related to the Indigenous Law Community²³ is as follows:

a) Copyright

We often know the subsystem of intellectual property rights globally as Intellectual Property Right which is the meaning of Copyright (copyright).

b) Right of title

For example, for men in Bali, Ida Bagus is a title for people from the Brahmin caste, which is the highest title. Good titles, Gusti, Cokorda, Dewa, Ngakan, and so on. the titles of Pande, Kbon, Pasek, and so on are known from the Sudra caste. Special aristocratic designations related to genealogy or status levels in society are Javanese culture, especially in autonomous regions.

²² Jawahir Thontowi, Pengaturan MHA dan Pelaksanaan jaminan kebebasan Tradisionalnya, FH, UII, jurnal Pandecta Volume 10. Nomor 1. June 2015 p 9.

²³ Jawahir Thontowi, *Pengaturan Masyarakat Hukum Adat dan Implementasi Perlindungan Hak-hak Tradisionalnya*, Fakultas Hukum, Universitas Islam Indonesia, jurnal Pandecta Volume 10. Nomor 1. June 2015 p 10

Among the Javanese, it is still used within the scope of the Jogjakarta palace, for example Kanjeng Raden Tumenggung, Bendara Raden Mas, Raden Mas, and so on.

c) The right to the wealth of oral and literary traditions

MHA has the right to develop, revitalize, utilize and provide opportunities for future generations of heirs, oral traditions, history, language, writing and literature, as well as distinctive characters and use their own names for these associations, institutions and people. is the right of indigenous peoples contained in case 13 (thirteen) part 1 (one) of the United Nations Declaration on the Rights of Indigenous Peoples.²⁴

d) Intellectual property rights

Indigenous and tribal peoples have the right to control, protect, maintain and defend their cultural heritage, knowledge and various customary expressions according to tradition, as well as the actualization of MHA knowledge, technology, culture, including genetic human resources and so on, medicines, seeds, arts and cultural heritage, and traditional games and traditional knowledge are contained in case 31 (thirty one) section 1 (one) of the United Nations Declaration on the Rights of Indigenous Peoples.²⁵

III. CONCLUSION

Minister of Home Affairs Regulation no. 52 of 2014 concerning the details of the implementation of the justification and authority was placed, however it is only limited to justification for a group and specifically there is no justification regarding their territory. Article 28I paragraph (3) of the 1945 Constitution and Article 18 B paragraph (2) are also as regulated in the Sectoral Law in the Basic Agrarian Law, Forestry Law, Water Resources Law, Plantation Law and Management Law. The Coastal Zone and the Environmental Law have been regulated in it related to the government's appreciation of MHA and various traditions that are MHA rights.

However, implementing and realizing it is not easy to implement given the unavailability of operational regulations. When the amendment to the 1945 Constitution of the formulation of the case amendment case 18 B part 2 (two) resulted in a tug-of-war between the interests of the authorities and ambiguity (ambivalent). In addition, the state respects and recognizes Indigenous Peoples with various kinds of traditional rights they have. Besides, it is reported that the provisions are so difficult to implement, they must be carried out simultaneously.

The formulation of the language is the main reason that the constitutional order cannot be implemented because the construction of Article 18 B paragraph (2) uses a language formulation that is not commonly used in the language of the

²⁴ United Nations Declaration on the Rights of Indigenous Peoples dalam sesi ke-61-nya di [Markas PBB](#) di [New York](#) pada hari Kamis, 13 September 2007

²⁵ Ibid.

1945 Constitution. The making of spelling related to statutory cases with spelling rules indicates that the rules are very difficult to apply . The existing problems constrain the spelling rules in the Constitution which must be made objective, clear (obvious), and must be applicable (applicable), not contain multiple interpretations (non-multi interpretation), so as not to harm or benefit certain groups.

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