

The Relationship Of State Law And Customary Law: Reinforcement And Protection Of Customary Law In Constitutional Court Judgment

Asnawi Mubarok

Universitas Muhammadiyah Kalimantan Timur, Indonesia
am764@umkt.ac.id

Absori

Universitas Muhammadiyah Surakarta, Indonesia
abs154@ums.ac.id

Harun

Universitas Muhammadiyah Surakarta, Indonesia
har130@ums.ac.id

Sheela Jayabalan

Universiti Teknologi Mara, Shah Alam, Selangor, Malaysia
sheela880@uitm.edu.my

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ABSTRACT

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Purpose of the study: This research analyzes the relationship between state law and customary law and Constitutional Court judgment in strengthening the rights of indigenous peoples and legal protection of the rights of indigenous peoples.

Methodology: This article used normative legal research. Normative legal research is a scientific research procedure based on the logic of jurisprudence (doctrine) to seek truth from a normative perspective, which is conducted in the literature study in the form of relevant legal regulations and norms, especially in the Constitutional Court Judgment Number 35/PUU-X/2012, as well as other relevant sources.

Results: This study reveals that recognition of the nature of the norms created by Indonesian indigenous peoples in the constitution is a facultative norm rather than imperative. Therefore, the state's obligation to recognize and respect indigenous peoples does not have strong binding force, so it is difficult to use apparent guidelines, procedures and mechanisms. This situation provokes conflicts, including between the government and society, society and entrepreneurs, and within society. The protection and reinforcement of

Corresponding

Author:

Asnawi Mubarak
am764@umkt.ac.id

indigenous communities still requires improvements and stronger law enforcement.

Applications of this study: The research provides a comprehensive understanding analysis given that the interaction of state law with customary law or non-state laws both have influences and intersect with each other. However, conflicts between laws that apply to an area often let local laws to be defeated through the authorization process. The state has the right to issue and ratify all policies. State law should not eliminate the existence of customary law, but it is expected that shared likeliness can be sought so that it is consistent in its implementation.

Novelty/ Originality of this study: This research gives a conceptual proposal of protecting indigenous peoples' land rights through: First, strengthening recognition. Indigenous communities whose customary land is in need for development should be recognized, not in the form of funds, but through the construction of public facilities or other forms of benefit to local communities. Second, establishing an independent institution under the President that resolves problems, conflicts, recognition, protection and promotion of the rights of indigenous peoples. Third, regulatory integration between ministries. Fourth, reinforcing the role of regional government and Regional Legislative Council. This conceptual proposal emphasizes the significance of respecting and protecting the rights of indigenous peoples before law, political recognition, autonomy and policies to ensure that the rights of indigenous peoples are respected and upheld.

Keywords:

Indigenous People, Legal Protection, Constitutional Court

ABSTRAK

Tujuan: Penelitian ini menganalisis tentang relasi hukum negara dengan hukum adat dan Putusan MK dalam penguatan hak masyarakat adat serta perlindungan hukum terhadap hak masyarakat adat

Metodologi: Artikel ini menggunakan penelitian hukum normatif. Penelitian hukum normatif adalah suatu prosedur penelitian ilmiah berdasarkan logika yurisprudensi (doktrin) untuk mencari kebenaran dari sisi normatif, yang dilakukan dalam kajian bahan pustaka berupa peraturan dan norma hukum yang terkait terutama dalam putusan Mahkamah Konstitusi nomor 35/PUU-X/2012, juga sumber lain yang terkait.

Temuan: Kajian ini mengungkapkan bahwa pengakuan terhadap hakikat norma-norma yang diciptakan oleh masyarakat adat Indonesia dalam konstitusi adalah sebuah norma opsional dan bukan norma wajib. Oleh karena itu, kewajiban negara untuk mengakui dan menghormati masyarakat adat tidak mempunyai kekuatan mengikat yang kuat, sehingga tidak mudah untuk dijadikan pedoman, prosedur

dan mekanisme yang lebih konkrit. Keadaan ini memunculkan banyak konflik, antara lain antara pemerintah dengan masyarakat, masyarakat dengan pengusaha, serta masyarakat dengan masyarakat. Perlindungan dan pemberdayaan masyarakat adat masih memerlukan perbaikan dan penegakan hukum yang lebih kuat.

Kegunaan: Penelitian memberikan analisis pemahaman yang lebih komprehensif melihat bahwa interaksi hukum negara dengan hukum adat atau hukum yang bukan berasal dari negara sama-sama memiliki pengaruh dan saling bersinggungan, meskipun demikian konflik antar hukum yang berlaku atas suatu wilayah sering kali menyebabkan hukum lokal dikalahkan melalui proses otorisasi negara yang berhak mengeluarkan dan mengesahkan segala kebijakan. Hukum negara hendaknya tidak menyingkirkan keberadaan hukum adat, namun diharapkan dapat dicari titik-titik persamaan yang ada sehingga sejalan dalam pelaksanaannya.

Kebaruan/Orisinalitas: Penelitian ini memberikan tawaran konseptual perlindungan hak atas tanah masyarakat adat dapat melalui: Pertama, memperkuat *recognitie* masyarakat adat yang tanah ulayatnya diperlukan untuk pembangunan harus diberikan pengakuan, bukan dalam bentuk uang, tetapi melalui pembangunan fasilitas umum atau bentuk lain yang bermanfaat bagi masyarakat setempat. Kedua, Membentuk lembaga independen di bawah Presiden yang menangani permasalahan, konflik, pengakuan, perlindungan dan pemajuan hak-hak masyarakat adat. Ketiga, Integrasi Regulasi antar Kementerian. Keempat, Penguatan Peran Pemerintah Daerah dan DPRD. Seluruh tawaran konseptual ini menekankan pentingnya menghormati dan melindungi hak-hak masyarakat adat dalam konteks hukum, pengakuan politik, otonomi, dan kebijakan untuk memastikan hak-hak masyarakat adat dihormati dan ditegakkan.

Kata Kunci:

Masyarakat Adat, Perlindungan Hukum, Mahkamah Konstitusi

INTRODUCTION

Recognition of indigenous peoples is written in Article 18 B of the Constitution of the Republic of Indonesia 1945 and is reinforced by the provisions of Article 28I Section (3) of the 1945 Constitution, and is the constitutional basis for the government to serve indigenous people constitutionally (Taqwaddin, 2010, p. 36). Thus, this article is a declaration of the state's constitutional obligation to recognize and respect indigenous people as well as their constitutional rights to obtain recognition and respect for their traditional rights. (Helza Nova, 2013, p. 206)

Regulations regulating indigenous communities can be further understood through the following regulations: First, Act No. 39 of 2014 on Plantations. Second, Act No. 1 of 2014 on amendment to Act No. 27 of 2007 on Management of Coastal Zone and Small Islands. Third, Act No. 3 of 2009 on Environmental Protection and Management. Fourth, Act No. 41 of 1999 on Forestry. Fifth, Regulation of Ministry Regulation of Agrarian Affairs and Spatial Planning No. 9 of 2015 on Procedures for the Establishment of Communal Rights of Indigenous Peoples and Communities Living in Special Areas. Sixth, Regulation of Ministry of Environment and Forestry No. 32 of 2015 on Property Forests.

All existing regulations have not been able to address the problems of indigenous peoples regarding the needs of various issues including the regulation of their rights in land use (John Haba, 2010, pp. 255-285). The Indigenous Peoples Bill is far from being approved. As of now, many doubt the protection of the rights of indigenous peoples although natural resources have been depleted, local communities receive barely any benefit. Today, land control by indigenous communities has a propensity to be abandoned (Husen Alting, 2011, p. 88). This state is the result of government policies that do not respect the development of land control by indigenous communities.

Based on this policy, land is under government control, especially when issues regarding the interests of the state and private companies. The government and entrepreneurs may have confiscated community land without equal compensation (Lily Bauw and Bambang Sugiono, 2009, p. 116-117). The current phenomenon is that there are several land disputes between the state and its people, between society and entrepreneurs, and between society and society (Ratnah Rahman, 2017, p. 41).

In forest area management disputes, indigenous peoples are only used by certain sectors as objects, not subjects of protection. This situation has brought about several crucial problems and conflicts. As aforementioned, the rights of affected indigenous communities are currently a source of conflict. Conflicts are getting complex and extensive between indigenous communities and private companies, even conflicts between indigenous communities and the government.

Among the conflicts that can be explained in this study is the one between the Rantau Layung indigenous community and several stakeholders. These stakeholders involve

companies, government, and other local/bordering indigenous communities. Several companies operating around the Gunung Lumut Protected Forest include HPH PT Telaga Mas company which operated in the 1970s, PT Rizky Kacida Reana, PT Kideco Jaya Agung, and PT BHP Kendilo Coal Indonesia. Apart from disputes with the company, the Rantau Layung Indigenous Community also went against the surrounding indigenous community, namely the Mului Indigenous Community (in some literature it is written Muluy). Some conflicts happened with local governments and non-governmental organizations as well.

In Gunung Lumut Protected Forest (hereinafter abbreviated as HLGL), two villages share direct borders, namely Mului Village and Rantau Layung Village. Rantau Layung Village is part of Batu Sopang Subdistrict with the village area covering 18,914 hectares of customary forest with a population of 214 natives. Most of the residents of Rantau Layung village come from the Dayak Paser tribe and adhere to Islam. In Rantau Layung Village, customary law still applies which is followed by some of the village community. Customary law encompasses customary forest boundaries, marriage ceremonies, and so on. Moreover, customary law disallows residents of Rantau Layung village from cutting down or taking fruit trees such as Durian, Lahung, and Rambutan and harvesting honey from the Bangris tree (*Compassia* sp.) which is known as a habitat for honey bees. Violations of customary law are punished with customary fines, namely half of the selling profit to be submitted to the village treasury. Likewise, animal hunting should be done only when necessary. The main livelihood of the indigenous people of Rantau Layung is crop rotation, in which rice fields and vegetable fields are used two to three times.

The issue of conflict over regional boundary delineation arose because the community around the area was not involved in HLGL area activities. The HLGL area has undergone boundary restructuring three times. However, the condition of the boundary pallets as area boundary markers is concerning since only 3 boundary markers of 1205 in the HLGL area are in good condition. This boundary disagreement likely results in a logging conflict in the Mului Indigenous Community area.

Regarding conflicts over the use of forest products, there were three cases of conflict in the use of forest products; two of them were horizontal conflicts between communities in the area, that is, between the people of Rantau Layung Village and Mului Subvillage and within the

people of Rantau Layung Village. Conflicts were provoked by illegal logging activities by the community or nonnative in the village. People of Rantau Layung Village cutting down on the border of the Mului and Rantau Layung traditional forests has led to open conflict. This problem was motivated by the Rantau Layung Indigenous Community who collaborated with a plantation company to plant oil palm plantations on part of their customary land. Apart from that, according to information from the Mului customary head, the Rantau Layung Indigenous People do not comply with their own customary laws. As a result, they were facing shortage of wood and coming into conflict with the Mului Indigenous People.

The portrait of legal uncertainty and injustice in implementation arrangements in the field indicates that the government only regulates policies at the regulatory level. Meanwhile, the implementation stage is not accompanied by supervision and law enforcement. In this state of affairs, problems, social conflicts, and police reports arise in the implementation of policies in the forestry sector.

Structuring and enforcing laws, especially statutory regulations, development planning, forestry, and the environment, each law in these fields has the means to formulate and implement laws, yet they still do not coexist and have mutually supportive relationships. Amid government restrictions on delimitation and mapping of forest areas, overlapping permits, and monitoring, it is necessary to explore how to strengthen the status of indigenous communities based on Constitutional Court Judgment 35/PUU-X/2012. This includes a discussion of how Malaysia regulates its indigenous communities, as a neighboring country with the closest territory. Moreover, regarding the protection of the rights of indigenous peoples, the regulations remain partial and incomplete. Problems occur in practice regarding how policy implementation ensues legal certainty to indigenous communities following the Constitutional Court Judgment 35/PUU-X/2012.

RESEARCH METHOD

This article applied normative legal research. Normative legal research is a scientific research procedure based on legal scientific logic (doctrine) to search for truth from a normative perspective, which is carried out in literature materials based on existing legal regulations and norms. Normative legal research has become an icon in legal studies which has its features, namely relating to various analyses of legal norms and legal principles (Imam Mahdi, 2016.

p.34). Data obtained from library sources and several primary sources such as interviews were also included to complete the missing information. The legal materials used are primary and secondary legal materials.

RESULTS & DISCUSSION

Constitutional Court Decision and Strengthening the Rights of Indigenous Peoples

In general, in the two Constitutional Court judgments discussed later, the definition of land law is the division of land management into three statuses; state land, customary land, and freehold land, in which the three are mutually exclusive and mutually limiting. In its 2011 judgment Number 34/PUU-IX/2011, the Constitutional Court emphasized its perception that the existence and rights of indigenous peoples, including the rights of individuals and legal entities, must be taken into account when establishing forest areas. This Constitutional Court decision expands Article 4 Section (3) of the Forestry Law which was originally as follows:

"Forest control by the State shall respect the right of customary law community, insofar as they still exist and their existence is recognized and not contradictory to national interests."

Becomes as follows:

"Forest control by the State shall protect, respect, and carry out the right of customary law community, insofar as they still exist and their existence is recognized, the right of customary law community according to law and regulations, and not contradictory to national interests."

What is implied by the phrase "shall protect, respect, and carry out " is in designating a forest area the government must prioritize the opinion of the community as a control function of the government to ensure that their constitutional rights are protected, their physical and spiritual well-being is guaranteed, to have a place to live and obtain a good and healthy living environment, have private property rights and no one can arbitrarily confiscate those property rights, as stated in Article 28H paragraph 1 and Article 4 of the 1945 Constitution. This

strengthens the provisions regarding the sovereignty of indigenous communities which originally departs from the obligation to protect, respect, and carry out their rights.

Therefore, if the government recognizes that there are indigenous peoples who own and/or control land during the consolidation of a forest area, then the government must first carry out a fair settlement with the legal owners of these rights. In fact, positive legal protection will only be implemented if there is positive recognition as well. The Constitutional Court opines that three legal entities in the Forestry Law have a legal relationship with forests, namely the state, indigenous peoples, and the rightful owner of land on which there is forest. (Dyah Ayu Widowati, 2014, p. 45-50)

The Constitutional Court Judgment Number 35/PUU-X/2012 recorded that owners of land rights also entail rights to forests. Thus, it can be interpreted that apart from customary rights, indigenous peoples have rights to customary forests. Consequently, the prevailing customary forests must be preceded by customary lands that are effectively and entirely controlled by indigenous communities. In Judgment Number 35/PUU-X/2012 which recognizes the rights of indigenous communities to control their customary forests, they are given the authority to regulate the function, utilization, and use of customary lands and forests within their territories. Therefore, the authority of the Ministry of Forestry to regulate, determine, and control customary forests can only be exercised if there are regulations regarding customary forests. Constitutional Court Judgment Number 35 is still deemed inefficient because it should be followed by recognition of the common law system, including recognition of customary transactions in common law. Implementation of this decision should be carried out through harmonious laws and regulations, empowerment and cooperation of stakeholders, as well as an adaptive institutional structure.

In general, Judgment No. 35/PUU-X/2012 humanizes and respects the rights of indigenous peoples. If the Constitutional Court's jurisprudence is viewed philosophically, it appears that this decision-making power leads to the development of human rights legislation to protect the rights of indigenous peoples to customary forests. Decision Number 35/PUU-X/2012 is moving to a progressive perspective with the following material: it has ideology that supports people, functions for the liberation of customary rights, aims to empower indigenous communities, and provides social justice for indigenous communities (Faiq Tobroni, 2013, pp. 473-478)

Judgment Number 35/ PUU-X/2012 has approved some demands for the development of indigenous people in Forestry Law of progressive law framework. In Article 18B Section (2) of the 1945 Constitution, the Constitutional Court interprets that indigenous peoples are legal subjects. As legal subjects, they are obliged to receive attention like other legal subjects when they are juxtaposed before the law, particularly when the law regulates the distribution of livelihood highlighting progressive legal approach (Satjipto Rahardjo, 2007, p. 154).

Decision Number 35/PUU-X/2012 aims to protect indigenous communities and reduce state injustice in maintaining the status quo of state control over customary forests/customary ownership. The core of progressive law supporting indigenous communities was interpreted by the Constitutional Court in the context of releasing customary forest status from state forest status, following the amendments to Article 1, Article 6, Article 4 Section (3), Article 5 Sections 1, 2, and 3.

Efforts to separate customary forest status from state forest status are the responsibility of Indonesian law enforcement officials to guarantee legal certainty and justice for indigenous peoples because their livelihoods are directly affected by changes in the legal structure. This arrangement is more respectful of the level and dignity of indigenous peoples. Recognition of these rights becomes more obvious and robust when communicating with the state. This concept is strengthened by the repeal of Article 1 Section (6) of the Forestry Law, as long as the word "state" is deemed to conflict with Article 1 (3), Article 28C (1), and Article 28D (1), Article 28G (1) and Article 33 (3) of the 1945 Constitution (Satjipto Rahardjo, 2004, p. 17).

This legal interpretation means that the state may not grant rights to customary land to certain legal entities without the consent of the indigenous community, followed by a legal obligation to pay compensation to the indigenous community. Therefore, this legal construction opens the possibility that it is normatively feasible to build a new legal order in a balanced relationship pattern among indigenous communities, the private sector, and the state. The Constitutional Court also decided that Article 4 Section 3 of the Forestry Law and the clause "insofar as they still exist and their existence is recognized and not contradictory to national interests" are conditionally unconstitutional.

More than a decade has passed since the Constitutional Court Judgment Number 34/PUU-IX/2011 and Number 35/PUU-X/2012, however, law enforcement regarding the

presence of indigenous communities is yet to be implemented adequately. This can be found in cases faced by indigenous communities. First, indigenous peoples, as a minority group, are in a very disadvantaged position, including economic, legal, socio-cultural and human rights. Second, indigenous communities are marginalized in the development process because customary/traditional lands belonging to indigenous communities are not fully recognized. Third, indigenous communities often experience conflict, both within indigenous communities, between indigenous communities and other indigenous communities, and external actors, including the private sector and individuals, as well as between communities and the government. Fourth, conflicts often arise when customary law and Indonesian domestic law conflict when resolving problems related to indigenous peoples. The law states that for indigenous peoples to obtain protection, empowerment, and rights, they should first undergo a recognition process, which is a formal legality. The recognition process is carried out by a committee that identifies and verifies the existence of indigenous communities in the area based on the characteristics regulated in this law, thus the egalitarianism of these indigenous communities is determined by regional regulations.

Once recognized as indigenous peoples, they have the right to protect and enforce their rights. The rights of indigenous peoples include rights to customary territories, rights to natural resources, rights to development, rights to spirituality and culture, and rights to the environment. Excluding rights, indigenous peoples also have responsibilities. To encourage the empowerment of indigenous peoples, the central and regional governments have created appropriate information systems for them.

Legal protection for indigenous communities in Malaysia initially experienced identical problems as in Indonesia. Indigenous peoples also faced the burden of proving recognition by showing physical evidence of control and existence, and it was laborious to process recognition in formal administrative processes (J. Gilbert and B. Begbie-Clench, 2018:9). Applicants for customary rights should prove the principle of continuity and maintenance of traditional land use, as is the recognition mechanism in Indonesia. Wolfe in Jeremie refers to the process as 'repressive indigeneity', in which indigenous peoples are forced to prove their 'authentic' traditional ways of using land to earn the right to use their very own territory (Y. Subramaniam and C. Nicholas, 2017:70). This process of 'authenticity' is also at odds with international human rights-based approaches to cultural rights, which have supported a rights approach that is not

limited in the meaning of 'tradition' and 'authenticity', rather than simply supporting modernity and adaptation to contemporary conditions (M. Scheinin:2000:25).

However, since 1996, Malaysian courts have recognized pre-existing customary land rights of indigenous people without requiring formal evidence, either recognition from the legislature or the executive. In the case of *Adong bin Kuwau C Ors against the Kingdom of Negeri Johor and Anor*, the High Court awarded an amount of RM 26.5 million as compensation for the loss of Orang Asli Jakun livelihood land which was expropriated for the construction of a dam on the basis of special rights owned by the Orang Asli of Peninsular Malaysia regulated by the constitution, laws, and common law statutes. The decision allowed indigenous communities to assert their pre-existing customary territorial rights in a court outside the codified laws applicable in the jurisdiction of Sabah and Sarawak (Y. Subramaniam and C. Nicholas, 2017:70).

In 2007, the high court in Malaysia Suit No 22-28-99-I in the *Nor Anak Nyawai* case ruled that Malaysian customary law recognizes and protects the pre-existing rights of indigenous peoples with respect to their land and resources (Y. Subramaniam and C. Nicholas, 2017:70) The land law in Sarawak writes provisions that recognize indigenous rights of customary land. These provisions allow ownership rights over customary land to be granted to the original owner. Judge Chin commented that this recognition of customary ownership dates back to the first King, James Brooke (Sanders, 2002:3).

According to the Federal Court, the *Madeli bin Salleh* case has become a source of recognition of customary rights to land and resources under common law. Residents should be fully respected and the ruler's rights or interests are subject to the rights of native residents to the land. Since then, Malaysian courts have developed their own common law domestic jurisprudence regarding the recognition of customary rights to land, territory, and resources guided by regional law and circumstances.

Courts in Malaysia have shown an apparent reluctance to apply such provisions as legally binding or 'holding to said provisions' (Sanders, 2002:3). In the *Nor Anak Nyawai* case, the judge stated "UNDRIP did not affect my decision regarding the issues in this case because the document is not applicable law in our country." (Sanders, 2002:3).

From the above explanation, although new legal construction has been made regarding the legal reinforcement of the rights of indigenous peoples which is coordinated with existing regulations, in practice it remains demanding to achieve the goal. This is because the paradigm change is still fragmentary and has not been fully understood and implemented at the provincial and regional levels, thus no change in spirit in strengthening the law. In contrast, when encountering injustice in society, the court of Malaysia undoubtedly stipulates laws so that it is easier to resolve problems. Indonesia is also in need of progressive law, in which the state should recognize the existence of indigenous peoples without imposing elaborated and administrative burdens of proof.

Legal Protection of the Rights of Indigenous Peoples: A Conceptual Proposal

Today, state policies regarding land control by indigenous peoples are getting minimal (Husen Alting, 2011, p. 88). This situation is displayed by government policies that do not support or address the development of land control by indigenous peoples. In this policy, land will be controlled by the State, especially when issues arise that relate to State and business interests. The current phenomenon is land disputes between the government and the community, the community and entrepreneurs, and within the community (Ratnah Rahman, 2017, p. 41).

Indigenous peoples are only used as objects by certain sectors, not subjects that should be protected and prioritized. The rights of indigenous peoples in the field have not been fully protected, such as: First, the rights of indigenous peoples are vulnerable to being violated. The fading community and being replaced by current developments will have an impact on indigenous communities in several aspects and possibly be exploited by individuals with personal interests. One instance is when the existence of traditional communities is decreased and enfeebled, then their rights to customary land will be vulnerable to misuse. In the future, it is not impossible that it may be disturbed by irresponsible individuals who wish to establish industries such as factories or companies. Their rights will certainly be harmed if strengthening protection for indigenous communities is not holistically addressed and enforced appropriately (Jawahir Thontowi, et al, 2012).

Second, the existence of indigenous communities is increasingly declining. The existence of indigenous people way before Indonesia's independence is a real manifestation of

the existence of these indigenous peoples (S Davidson, 2011, p. 2.). They are the initial owner of forests and managers who fully care about sustainability conditions. Their role in maintaining the sustainability of animals and plants in the ecosystem is very dominant. However, their numbers are decreasing, either due to intervention by interests or their inability to in the complex problems they face.

Third, the reality of gap between *das sollen* and *das sein* regarding recognition and respect for indigenous peoples and traditional rights is evident. One of the reasons why legal uncertainty arises is that the construction of imperative norms does not have strong coercive power. Further, the paradigm developed by the government has not been holistic, both from a regulatory perspective and law enforcers, from central provincial, and regional. The nature of the norms constructed in Article 18B Section (2) and 23I Section (3) are more facultative rather than imperative norms. As a result, the state's obligation to recognize and respect indigenous peoples does not have a strong binding force, therefore it is difficult to use it as concrete guidelines, procedures, and mechanisms. The thoughtfulness of the government's legal politics in reinforcing the rights of indigenous peoples appears to be lukewarm.

Fourth, the boundaries of these customary forests are not guaranteed with other state forest distribution. Such conditions are the cause of conflict with the position of customary forests being weaker than the position of permit holders (production forests) and forest managers (protection and conservation). This is because indigenous peoples have different methods of controlling forests. Forest boundaries for indigenous peoples are not static. Indigenous peoples are accustomed to using obscure boundaries, for example, mountain peaks, and large rivers where these boundaries naturally hinder/unmanageable for their normal activities. Meanwhile, the company city residents are used to boundaries in the form of border markers accompanied by very specific coordinate points.

Fifth, national development policies (including construction) abandon, marginalize, and suppress indigenous peoples and their traditional rights. In fact, over the last three decades, the government has followed legal policies that are oriented towards the ideology of legal centralism, hence state law products neglect, displace, and even formalize the non-state regulatory system (Constitution) that grows and develops empirically in society. This phenomenon is known as the neglect of legal pluralism in the development of state law.

In protecting the rights of indigenous peoples and forest conversion policies, it is necessary to improve the law both at the paradigm level and harmonization level of regulations from central and regional categories, as well as its implementation level. At the later level, the government faces limitations in identifying and mapping forest areas, overlapping permits and control, and limited physical and legal evidence to support indigenous peoples' claims. Therefore, civil society group initiatives have emerged to support the process of reinforcing claims in mapping through assistance to indigenous communities. It is worth noting, acknowledges it, and uses it as a foundation for further policy. The form of conceptual proposal to protect indigenous peoples' land rights can be carried out as follows:

First, as stated in the Universal Declaration of Agrarian Law, indigenous peoples should have their ancestral land recognized and facilitated. This recognition is not monetary in nature but rather takes the form of building public facilities or other forms of benefit for the community. Recognition is the state's effort to recognize the sovereignty of the community to fully implement a land management system, but the government is an active party. The state does not interfere with the community in implementing the ownership regime, even if the autonomy is recognized by state legal instruments. This recognition denotes a country's political recognition of a group of people who have the authority to regulate land, natural resources, and tenure relations within its territory. It is referred to as political recognition because through this recognition the state acknowledges that people's rights have been confiscated by the state (Bedner and Berenschot, 2010: 8).

The enactment of state law and the implementation of its systems removes these rights from the people who hold them. With this recognition, the state returns these rights to the community. This recognition structure explains the legal relationship between the state and common law society. Many customary rights arising from the customary legal system have been abolished by new land rights granted by the state to customary territories. This recognition also creates other concepts related to the autonomy of indigenous peoples (Aarce Tehupiory, 2018, p. 59).

Indigenous communities are an element of the state and state law, making their autonomy semi-autonomous. The authority to regulate the customs area is semi-autonomous, thus the realm of customs follows suit. Therefore, in Moore's definition, this is interpreted as the ability of social relations in a society to develop and apply its own rules and customs, but it

is simultaneously vulnerable to interference from outside rules and decisions (Sally Falk, 2000, p. 5).

Second, establishing an independent institution under the President who resolves problems, conflicts, recognition, protection, and promotion of the rights of indigenous peoples. This also includes resolving indigenous community tenure conflicts, horizontally and vertically within the forest areas.

Third is the integration and harmonization of regulations between ministries: Ministry of Law and Human Rights, Ministry of Home Affairs, Ministry of Environment and Forestry, Ministry of Marine Affairs and Fisheries, Ministry of Agrarian and Spatial Planning/National Land Agency, Ministry of Energy and Mineral Resources, Ministry of Agriculture, and Ministry of Social Affairs. This integration occurs through reviewing and harmonizing regulations and policies related to the management and administration of natural resources that do not follow the principle of respecting and protecting the rights of indigenous peoples over their territories in forest areas, do not have a forest function, and reaffirming the boundaries of private forests, state forests and customary forests according to the Constitutional Court Judgment 34/PUU-IX/2011, No. 45/PUU-X/2011, and No. 35/PUU-X/2012.

Fourth, the Government and provincial/Regional Legislative Council should conduct a thorough investigation into the existence of indigenous communities and their ancestral territories and assure that all permits related to forestry, mining, plantations, and other management granted to companies have been approved. In-depth research into the existence of indigenous peoples and their traditional territories should involve academics and other competent parties. Review and revise regency or neighborhood/ward to cover rural areas and establish special mechanisms at the provincial and regency levels to resolve natural resource disputes.

Given the possibility that granting permits by regional governments can remove the land rights of indigenous communities, regional governments need to recognize and protect the land rights of indigenous peoples. This role is crucial and the duty of local governments in recognizing and protecting indigenous peoples' rights to land has long been complex. Therefore, it is necessary to have special authority so that their whereabouts can be recorded by the regional

government and the regional government can provide training to develop the potential of natural resources they have on customary land.

CONCLUSION

Recognition of indigenous peoples in Indonesia is regulated in Article 18B and strengthened by Article 28I Section (3) of the 1945 Constitution of the Republic of Indonesia. However, the nature of the norms constructed in Articles 18B Section (2) and 23I Section (3) is more facultative and is not imperative. As a result, there is no obligation for the state to pay to address the existence of indigenous communities and be proactive in acknowledging and respecting them. This issue results in slow recognition and results in vertical and horizontal conflicts. Constitutional Court Judgment No. 35/PUU-X/2012 has reinforced the rights of indigenous peoples to forests where the state recognizes that indigenous peoples have rights to customary land and forests. However, this decision has not yet had an impact on recognizing the existence of indigenous communities, so there are many matters such as marginalization, conflict, and contradictions between customary law and state law. This occurs because the paradigm change is fragmentary and has not been fully understood as well as implemented by the relevant authorities, thus no legal strengthening.

Protection and empowerment of indigenous communities still require improvement and stronger enforcement. The concept of protection includes: first, a change in the recognition paradigm that is proactive, rather than facultative. Second, form an independent institution under the president that specifically resolves indigenous peoples. Third, integration and harmonization between ministries. Fourth, investigate the business license which has received approval from the indigenous community.

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