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ABSTRACT

The Constitution of 1945 NRI mandates the protection and constitutional protection of the unity of indigenous peoples. However, the constitutional protection of indigenous peoples has not realized justice for the unity of indigenous peoples themselves. This study uses socio-legal approaches, in order to answer the problems studied. The causal factors for the realization of justice for the unity of indigenous peoples are: (1) The absence of a special law governing the unity of indigenous peoples and the diversity of the term used to mention the unity of indigenous peoples, (2) Recognition of the existence of indigenous peoples unity has not all been outlined in the regional regulations. Both reasons have an impact on conflicts that often occur between the government and the unity of indigenous peoples.

I. Introduction

As a tangible form of State recognition to guarantee the rights of indigenous peoples, namely by spurring the spirit of the people to utilize or explore the wealth contained in this Indonesian earth. One of the efforts of the community is to utilize therightsof indigenous peoples who are in each region with different shapes and patterns. Regardingtherights of indigenous peoples (ulayat) of the unions of legal communities, will seat that right in a reasonable place in the country of Indonesia today (Marhcel R. Maramis, 2013).

The existence of indigenous peoples in Indonesia has factually existed since the days of ancestors until now. Indigenous peoples are territorial or geneological communities that havetheir own wealth, have citizens who can be distinguished from other citizens and can act in or out as a legal entity (legal subject) that is independent and self-governing (Husein Alting, 2010: 31). Experts argue that indigenous peoples should be distinguished from indigenous peoples. The concept of indigenous peoples is a certain society with certain characteristics. While indigenous law communities are characterized by technically juridical understanding that refers to a group of people who live in a certain area (ulayat) residence and living environment, have wealth and leaders who are tasked with safeguarding the interests of the group (out and out), and have rules (system) of law and government (Taqwaddin, 2010: 34). Indigenous peoples are legal subjects who are persons of rights (traditional rights) and stakeholders; indigenous law communities, have a legal position, just like other legal subjects; such as individuals and legal entities. Indigenous law societies evolved evolutively;this concept refers to the opinion of classical sociologist Emile Durkheim about the evolution of the development of society, from mechanical to organic society. In this sense, indigenous law communities are the initial stages (mechanical societies) towards modern society (organic society), so that in its development indigenous law communities can be "changed" and even "extinct" in a new form, called modern society.

Seeing thedevelopment of indigenous peoples will be much better in a country,because it is based on the understanding ofnationality and the principle of people's sovereignty. Indigenous peoples who live for generations on ulayat land in their respective territories are a comprehensive part of the country concerned. But it needs to be recognized there are still some conceptual obstacles that are enough to hamper effortsto systematically followup the original intent of the Founders of the State into state policies and national laws and regulations (Hilman

Indonesia Prime, p-ISSN: 2548-317X, e-ISSN: 2548-4664
Vol. 6, No 1, November 2021, pp. xx-xx

Hadikusuma, 2013). The obstacle is among others due to the lack of development of knowledge on the development of indigenous law communities. While on the other hand, indigenous peoples themselves grow and develop and may undergo evolution in the development of their characteristics. The journey and dynamics of constitutional recognition of indigenous peoples until the 1960s, were not much questioned, let alone sued. But in its development,the protection of the existence and rights of indigenous peoples is considered to decrease with the increasing interest of certain parties to natural resources within the territory of the indigenouspeoples, especially outside theisland of Java. The birth of several laws and other laws and regulations is then felt to increasegi, hinder, limit,and /or revoke the traditional rights and historical rights ofexisting indigenous peoples. And then it becomes a picture that is a violation of human rights according to Law 39 of 1999.

The occurrence of various cases of the expropriation of the rights of indigenous peoples by the State and private companies as evidence that the State ignores the mandate of the constitution which states "The State must respect the rights of indigenous peoples" ". When recorded since 2014 there have been 48 conflicts against the rights of indigenous peoples, including customary forests of 90,558 hectares. Criminalization of imprisonment of indigenous peoples who defend their territory continues to occur. In fact, approximately 224 members of indigenous peoples were arrested and tried in court (Arizona and Cahyadi, 2013: 44).

Large-scale land-based extractive development patterns are the main cause of marginalization of indigenous peoples. The development pattern is supported by the politics of agrarian law that marginalizes the rights of indigenous peoples, so that in the operational level there is land grabbing action(land grabbing)of large-scale customary lands. This situation resulted in conflicts of land and natural resources smoldering everywhere, which took years. These conflicts are to the highest degrees transformed into complex social conflicts. The marginalization of indigenous peoples' rights itself contributes to two things, namely; First,the taking of customary lands with theright to control the State (State power over land). The harvesting of these customary lands occurs mostly in forest areas, which control 52.3% of Indonesia's territorial area. Second,the destruction of indigenous social units through the uniformization of village models in the new order period. Social units of living indigenous peoples, such as nagari, huta, marga and others experienced a cut in traditional rights and authority through the new order village model, which contributed to the collapse of the legal capacity of indigenous peoples as rulers of customary lands. In other words, the deprivation of indigenous peoples' rights to land and natural resources is systemic and structural, so there is a potential violation of human rights, especially on the level of economic, social and cultural rights.

In addition, the marginalization of indigenous peoples occurs in the field of government and development that arises due to centralistic state domination, where the capacity of indigenous peoples with a set of rights is paralyzed. This condition was born as a result of the systematic removal of traditional customary institutions by modern state institutions, especially in the context of new order model villages. As a result, decisions about government no longer take into account indigenous voices and local traditions. There are at least three issues of protection and recognition of indigenous peoples, namely: First,theproblem of the regime of conditional recognition of indigenous peoples as a subject of law. Conditional recognition of indigenous peoples becomes a proposition of position abandonment, subordinated from local political forces, and marginalized. In this context, the 'autonomy' of indigenous peoples needs to be affirmed. Second,'Autonomy' alone is not enough, because the working of the system of capitalism against indigenous peoples working through the forces of regional elites, villages and indigenous elites, resulting in the deprivation of the rights of indigenous peoples. For example, the sale of indigenous assets occurs through these elite forces, so in that context, state law and customary law are sought to interact to prevent the deprivation of rights. Third, the destruction of socio-cultural systems in the context of legal politics is often subordinated to local government and indigenous peoples' systems occur, which is also a form of abandonment of citizenship political identity at the local level (Nurul Firmansyah, 2018).

Recognition and protection of the rights of indigenous peoples is indeed important and must be recognized that indigenous law

Communities were born and existed long before the Unitary State of the Republic of Indonesia was formed. But in its development these traditional rights must be adjusted to the principles and spirit of the Unitary State of the Republic of Indonesia through normative requirements in the laws themselves. On many sides, normative requirements are an obstacle to the existence of indigenous peoples' rights (Academic Manuscripts). Bill of Recognition and Protection of The Rights of Indigenous Peoples, p2,

Indicators of the existence of indigenous legal peoples are based on the Decision of the Constitutional Court of the Republic of Indonesia as a de facto indigenous law society (actualexistence),whether territorial, genealogical, or functional, or at least contain elements: (i) the existence of a society whose citizens have group feelings (ingroupfeeling).), (ii) the existence of customary government institutions, (iii) the existence of property and / or customary objects, (iv) the existence of customary legal norms and, (v) the existence of certain areas. By Jimly Asshiddiqqie in Zakaria (2014: 22), explained that the five elements are not cumulative, so the proof of indigenous peoples can use one or more elements of the five elements. Meanwhile, de jure legal recognition of indigenous peoples is carried out through a legal determination.

Indigenous Law Communities that are in accordance with their nature are Indigenous Law Communities that are genealogical, namely Indigenous Law Communities based on descendants (Soehino, 2014, 24-25). Indigenous peoples evolved from individuals who make up families, then it is from these families that interact with each other to form family groups that not only have a common background of origins or ancestors, but they are also tied to the similarity of the territory or territory they live in together. The unity of this community is what makes up the Indigenous Law Society, and at the same time is the seed or forerunner for the formation of a country. The unity of this community is then better known as the alliance of legal communities or the unity of indigenous law communities. These fixed and organized groups of people have their own power and own wealth both tangible and intangible (Hilman Hadikusuma, 2013: 105). In addition, the legal community must have a certain territory in addition to having certain leadership and wealth (Tolib Setiady, 2010: 76). So a legal alliance or legal society(rechtsgemeenschap)is a group of people who are bound as a unit in an orderly order, who are eternal and have their own leadership and wealth both tangible and intangible and inhabit or live over a certain territory.

Indigenous law communities as a community that has hereditary ancestral origins live in a particular geographical area, and have a distinctive value system, ideology, political, cultural and social economy (Husen Alting, 2010: 31). Thus, indigenous peoples as a group of people who are bound by the customary legal order as waga together with a legal alliance because of the similarity of residence or on the basis of descendants (Husen Alting, 2010: 31)

Regarding indigenous law communities, theoretically the formation is due to the factor of the bond that binds each member of the indigenous law community. The bonding factors that make up indigenous law communities are (DewiWulansari, 2010:25) geneological factors (heredity) and territorial factors (regions). Based on these two factors, the formation of indigenous law communities based on (DewiWulansari, 2010). Genealogical legal alliance, i.e. the alliance of legal societies that have a binding basis for group members is an equation in offspring. This means that the members of the group are bound because they feel they are from a common ancestor.

Recognition of the rights of indigenous peoples by states is based on: (i) the existence of a indigenous peoples and their traditional rights; (ii) The recognized existence is the existence of the unity of indigenous peoples; (iii) the indigenous peoples are indeed alive (still alive); (iv) In its particular environment(lebensraum)as well; (v) Recognition and respect are given without neglecting measures of worthiness for humanity in accordance with the level of development of the existence of the nation; (vi) the recognition and respect should not diminish the meaning of Indonesia as a unitary state of the Republic of Indonesia (Jimly Ashiddiqie, 2013: 32-33). This provision gives recognition and appreciation to indigenous peoples(adatrechtgemeenschappen)which is a basic concept or joint pillar of customary law (Abdurrahman, 2017: 191).

The status of recognition of indigenous peoples until the end of 2019, Badan Registrasi Wilayah Adat (BRWA) has registered 839 maps of indigenous areas with

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Vol. 6, No 1, November 2021, pp. xx-xx

an area of 10,593,317 hectares, with RECORDED status (50 maps, an area of 1,526,208 ha), TEREGISTRASI (632 maps, an area of 6,061,718 ...

In South Sulawesi there are units of indigenous peoples with their own characteristics that have existed since hundreds of years ago as illustrated in the following table:

Table 1: Community Community in South Sulawesi

No	Name of Komuitas	Location
1	Indigenous peoples of Sillanan	Toraja Regency
2	Ammatoa Indigenous Peoples	Bulukumba Regency
3	Karampuang Indigenous Peoples	Sinjai Regency
4	Pana Indigenous Peoples	Enrekang Regency
5	Indigenous peoples of Barambang Katute	Sinjai Regency
6	Pattontongan indigenous peoples	Maros County
7	Matteko indigenous peoples	Gowa Regency
8	M asyarakat adat Seko	North Luwu County
9	Masyarakat data Karonsi'e	Dongi East Luwu County

Data Source: AMAN(Alliance of Indigenous Peoples of The Archipelago) South Sulawesi

When referring to the constitution, there has been a wise political will in accommodating customary rights. However, inconsistencies between the 1945 NRI Constitution and the legislation under it are still common. It is the exercise of indigenous peoples' rights over customary forests which, in the laws and regulations of this country, still harbor tragedy. The emergence of the concept of "customary forests are state forests located in customary territories" is a problem that proves the weakening of customary rights. Not only has the potential to bring a mindset that betrays the 1945 Constitution of the Republic of Indonesia, but this tragedy is also a portrait of weak recognition, fulfillment and protection of indigenous peoples' rights to their customary forests at the level of legislation.

The objectives achieved in this study, namely:(i) analyze the mechanism of recognition of legal society and everything surrounding it; (ii) analyze the public recognition of the law in relation to the constitution of the State. The conceptual framework of the research can be seen in the following image"

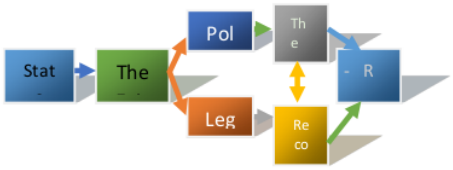

Figure 1.

Conceptual framework of state recognition of the existence of indigenous peoples' rights.

II. Method

This study focuses more on normative legal research. Nevertheless, it still uses empirical research data even though it only serves as a support. With normative juridical methods intended to explain various laws and regulations related to theism of recognition of Indigenous peoples.To explain the recognition of indigenous peoples also used socio-legal approaches, with the intention of looking further than just doctrinal shortness, so as to have a broader perspective by looking at the law in relation to the social, cultural and economic systems of the community, Especially in the cultural system. In terms of data collection, observations, library studies, and interviews (individual or group). Furthermore, the data collected, analyzed to be able to understand and get conclusions in the study.

Data analysis uses qualitative analysis. Operationally qualitative data analysis is the process of compiling data (classifying it in themes or categories) so that it can be interpreted or interpreted. In principle, this analysis is carried out at all times during the study. The data collection and data analysis activities in this study are not separate from each other. Both take place simultaneously and the process takes the form of cycles (Creswell, 1994). Therefore, the study used interactive model data analysis through three activity flows, namely: 1) data reduction, 2)

data display, and 3) conclusion/verification withdrawal (Miles and Huberman, 1984), as in Figure 2. Intercative models through data reduction, data display and conclusion/verification withdrawal are used to analyze interview data, obesity and documentation studies related to the problems that are the focus of the study.

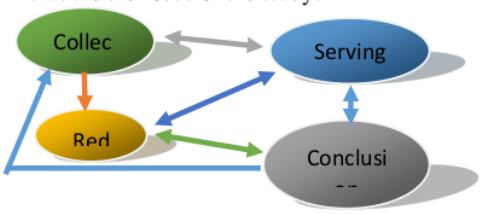

Figure 2 Data Analysis and *interactive models*

III. Discussion

In the context of the mastery, utilization and management of natural resources of forests and the surrounding environment, Article 4 paragraph (1) of Law No. 41 of 1999 on Forestry, the phrase "controlled" in the Article is not meant "owned", but the state as a constitutionally legitimate authority obtains the mandate in the form of authority to make arrangements in order to create legal certainty and social order. The formulation of Article 4 paragraph (2) of Law No. 41 of 1999 on Forestry explicitly describes the obligation and authority of a country to regulate forest natural resources. In Government Regulation No. 44 of 2004 on Forestry Planning, it was stated that in organizing the strengthening of forest areas, the Minister set criteria and standards for strengthening forest areas. Based on the criteria and standards of strengthening the forest area, the governor set guidelines for the implementation of boundary arrangements. Furthermore, based on the guidelines for the implementation of boundary arrangements set by the governor, the Regent / Mayor sets instructions for the implementation of boundary arrangements and is responsible for the implementation in their territory. The criteria and standards for strengthening forest areas have been regulated in the Decree of the Minister of Forestry No. 32/Kpts-II/2001 on Criteria and Standards for Strengthening Forest Areas. In its development, the Minister's Decree was revoked and replaced with The Minister of Forestry Regulation No: P.50/Menhut-II/2011 on The Strengthening of Forest Areas. Furthermore, this regulation was repealed and replaced with The Minister of Forestry Regulation No. P.44/Menhut-II/2012 on The Strengthening of Forest Areas, which was established on December 11, 2012 and promulgated dated December 12, 2012.

Indigenous peoples are also given a place for the protection of forests that become their areas, namely customary forests. This is confirmed in Government Regulation No. 45 of 2004 on Forest Protection, Article 8 paragraph (4). Protection of forest areas by indigenous peoples is carried out based on traditional wisdom that applies in indigenous communities concerned with assistance from the government, provincial government, and district / city government (Bambang Eko Supriyadi, 2013).

IV. The causal factor has not realized justice for the unity of indigenous peoples

One of the indigenous peoples who are temporarily in the process of state recognition in gowa regency is the matteko indigenous people who are in Tombolo Pao district with a population of 323 people with 88 families, 159 men and 164 women. The daily language of Makassar-Konjo, and rarely the citizens are fluent in Indonesian.

The results of research in the Area of Matteko Indigenous Peoples of High District Of Muncong Gowa Regency showed that the problems related to violations of the rights of matteko indigenous peoples not only concern violations of land rights, forests or other resources but have an impact on the occurrence of criminals where there are around 6 people of Matteko indigenous people who are now detained for violating the rules of the Minister of Forestry are to cut down pine trees in the state forest area. Whereas based on the Constitutional Court's Decision customary forests are still returned to the local indigenous people.

This is behind the conflict in the forest area, where the Matteko indigenous people consider the pine forest to be customary forests, while the State claims that pine forests enter. in the forest area of the country.

2
Indonesia Prime, p-ISSN: 2548-317X, e-ISSN: 2548-4664
Vol. 6, No 1, November 2021, pp. xx-xx

Although since 2012, the Matteko Indigenous Law Society has been recognized because it has qualified based on the results of the data collection of AMAN (National Indigenous Peoples Alliance) of South Sulawesi.

Even Mapping matteko customary forests, in Pao Village, Tombolo Pao Subdistrict, Gowa Regency, South Sulawesi (Sulsel), one of the advocacy programs of the Alliance of Indigenous Peoples of The Archipelago (AMAN) Sulsel. Since 2012, preparations began but only gained momentum, as the decree of MK No. 35 / PUU / X / 2012 strengthened the recognition of customary forests. Mapping for a week, July 17-24, 2013, is a clarification of the results of mapping in March 2013. From the results of the improvement of this map, a regional spatial plan will be drawn up, then given to the Gowa Government to be integrated on the district RTRW.

Matteko indigenous people live for generations are known to care deeply about environmental sustainability. This looks like various forms of wisdom to maintain the forest that existed since long ago. One, they have ompo or customary forests, can only be taken for common needs such as the construction of mosques, schools, bridges, and others. Forests are protected by the community because it is ulu ere or upstream water, so it cannot be taken wood. Matteko indigenous peoples maintain forests because they feel direct benefits as a source of irrigation for rice fields. People who are negligent or violating are sanctioned or fined by customary stakeholders.

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