Juridical Overview of Existence Community Customary Forests

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Abstract

In principle, forest and forestry management is a management process for all components of the ecosystem, including humans. Utilization of forests to facilitate economic growth has eliminated the interests of customary forest communities, the rights of indigenous peoples have clearly been protected as human rights, as stated in Law Number 39 of 1999 concerning the basic provisions of human rights. The people of Buru District, Grandeng Village, have an area of forest area for other uses of around 600 hectares which can be used for the benefit of local communities, but there are often problems between the Transmigration Community and Indigenous People who have unresolved ownership of land areas under customary law, as well as the involvement of the local government Buru Regency in providing solutions to problem solving, the method used is descriptive qualitative interview instruments and a review of legal documents related to the research theme. The results that can be conveyed are the utilization of Customary forest products and their management by the community in Lolongguba sub-district, often in coordination with Hinolong Baman or the Head of Soa, which means that legally the implementation of the Constitutional Court Decision, No.35 / PUU-X / 2012 concerning the Existence of Community Customary Forests has been implemented in the community, however the institutionality of the Waeapo Plains Indigenous Peoples has not been maximized, both in the implementation of customary law norms, as a result of factors, human resources, economy, social and customary institutions themselves. Based on legal research, it is necessary to formulate a legal umbrella both Government Regulations and Regional Regulations relating to ownership of forests and forest products.

Keywords: Strengthening, Norms, Laws, Customary Forests

1. Introduction

The 1945 Constitution of the Republic of Indonesia in Article 28 I Paragraph 3 states that "The cultural identity and rights of traditional communities are respected in line with the times and civilizations". Lots of customary areas, including customary forests, were claimed by the Company and the Government unilaterally as forest areas and then resulted in overlapping claims that resulted in conflicts, including human rights violations. The rights of indigenous peoples have clearly been protected as human rights, as stated in Law Number 39 of 1999 concerning the basic provisions of Human Rights through Article 6 (2): Paragraph (2) states: "The cultural identity of the customary law community, including protected customary land rights, in line with the times". (Presiden Republik Indonesia)

The review of the Forestry Law, which was submitted by the Indigenous Peoples Alliance of the Archipelago (AMAN), the Kenegerian Kuntu Indigenous Peoples Union and the Kesepuhan Cisitu Indigenous Peoples Unit to

the Constiutional Court with registration number 35 / PUU-X / 2012 (Undang Undang Nomor 41) The three applicants submitted a judicial review of the Articles- The articles in Law Number 41 of 1999 concerning Forestry are related to the status of customary forests and the conditional recognition of indigenous peoples, which then on May 16, 2013 the Constitutional Court granted the petitioners' petition partly (Hadri; Obi et al.). According to the Court, the Constitution of the Republic of Indonesia has guaranteed the existence of indigenous peoples and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated by the Law in Article 18B Paragraph (2) 1945 Constitution. As for the formulation of the problem in this study, namely the extent to which legal protection of the existence of customary forests in Buru District, Lolongguba District, Research Objectives to determine the protection of the existence of customary forests in the principles of national legislation, in addition to knowing the legal consequences of the Constitutional Court decision number 35 / PUU-X / 2012 on the existence of customary forests (Sari and Fu'adah).

The implementation of the institutional functions of indigenous peoples in Lolongguba Subdistrict, Buru Regency has not been maximal, both in the implementation of customary law norms, due to factors, human resources, economy, social and customary institutions, as well as the existence of regional legal products, both local regulations regarding the rights of related communities. customary forest does not exist yet (Nurhayanto and Wildan). With the transfer of administrative authority in the forestry sector from the Regency to the Province, it indirectly limits the authority of the Buru Regency regional government to regulate ownership of customary forests in the community.

2. Method

The research was conducted in Grandeng Village, Lolong Guba District, Buru Regency. The types and sources of data that the authors use in this study are divided into two types of data, namely: Primary data, namely information that the authors obtain in the field through direct interview survey results with competent parties in this study (Mulyadi). Secondary data, namely information that the authors obtain indirectly such as data and information obtained from the Head of the Waeapao Indigenous Community Association, the Head of Soa - the head of Soa in Lolongguba District, and considering that this research was a case study in Grandeng Village, the data taken were also the community of Grandeng Village, community leaders, Wargerangan Preparatory Village as well as scientific papers and documents that have relevance to this research (Nathan et al.; Harnina Ridwan et al.; Umanailo; Nuraini et al.). Data analysis is a process of arranging data order, patterns, categories and the unity of basic descriptions (Mu'adi et al.; Umanailo). The data obtained through document study and interviews will be analyzed qualitatively and then presented descriptively by describing, explaining and describing regarding how the legal protection of the existence of customary forests in Buru Regency, Lolongguba District, Grandeng Village Case Study.

Then the research data in the analysis based on the results of research in the field found legal problems, problems that occurred in the community in Grandeng Village with the Solissa indigenous community, dualism of the leadership of the Raja in Petuanan Kayeli, and customary law norms that apply in the community related to customary forest management, and lack of Provincial Regulations related to the management of Customary Forests, as well as the authority of the Buru District government in intervening in the formation of legal norms at the regional level, which are then formulated in the form of research concepts and recommendations so that they can be considered later.

3. Results and Discussion

Basically, customary forest and village forest are the legal choices for the community to manage forests in state forest areas. Customary forests are devoted to being given to customary law communities. Meanwhile, a village forest is a state forest that has not been burdened with permits / rights, which is managed by the village and utilized for village welfare. Until now, the implementing regulations governing customary and village forests are still under discussion as can be seen in Table below.

Table 1. **Data on Community Costumary Forest**

Regions	Area (HA)	Potency	
		Standing Stock	Ready to Harvest
Sumatera	220.404	7.714.143	1.285.690
Jawa-Madura	2.799.181	97.971.335	16.328.556
Bali-Nusra	191.189	6.691.612	1.115.269
Kalimantan	147.344	5.157.023	859.504
Sulawesi	208.511	7.297.892	1.216.315
Maluku	8.550	299.250	49.875
Papua	14.165	495.765	82.627
Total	3.589.343	125.627.018	20.937.836

According to the current legal framework, customary forest and village forest are encumbered state forests (Utomo et al.). Because regional autonomy also does not significantly change the management rights granted by the state to the administrative structure of government, and village villages, customary communities or village communities. In terms of symbol, it is a relatively community unit, customary forest is forest that is stable, open and inclusive, village forest is easier to manage customary territories and village forest is located in village territory. Is the forest that is in the customary area, then the government only needs to determine criteria and / or the village area outside the forest area can be said to be the standard of village forest management (adat) according to customary forest or village forest? Does forest only function as forest, dictating that village forest be designated if there is an official government designation? When a (customary) piece of land does not conflict with the public interest, tree-grown land managed as forest guarantees the certainty of rights given or recognized and can be called forest (Lewis; Harnina Ridwan et al.). Community rights over the surrounding forest resources that are born based on customary law is a separate system from ancestry that has practical effects and therefore requires legal protection.

Therefore, the principles of customary law need to be realized in a concrete manner in local regulations that give indigenous peoples the right to manage their natural resources based on ownership that has lasted since their ancestors. In addition to the principles of customary law which must have concrete manifestation, several other principles that are not yet in customary law are also needed, as the government's acknowledgment is at least visible in natural resource management between the government and the community (Achmad and Zunariyah). There is a need for recognition from the government to a certain degree to realize the capacity of the community to maintain the rule of law, law enforcement and justice at the local level without much interference from formal institutions, except in certain cases where the role of the government is really needed (Wood, E.., Tappan, G.., Hadj, A., 2004. Understanding the drivers of agricultural land use change in south-central Senegal. J. Arid Environ. 59 et al.). In the concrete embodiment of customary law in Buru Regency, there is no regulation from the local government regarding the management of customary forest products coupled with a change in the regulation of authority in the forestry sector which is the authority of the Maluku Provincial government.

In the Constitutional Court decision No. 35 / PUU-X / 2012 concerning the Existence of Community Customary Forests, if we review it before the Constitutional Court decision No. 35 / PUU-X / 2012, the principles of regulating Law Number 41 Year 1999 are: First, there are 2 (two) types of forest, namely state forest and private forest, where private forest is forest located on land encumbered with land rights (Article 1 point 5 Law Number 41 Year 1999.) and state forest are forests located on land that are not encumbered with land rights (vide: Article 1 point 4 Law Number 41 Year 1999). Second, what is referred to as “customary forest” is state forest within the territory of a customary law community (in Article 1 number 5 Law Number 41 of 1999 pre-decision of the Constitutional Court No. 35 / PUU-X / 2012). Thus, although the existence of customary forests as forests related to the existence of customary law communities is regulated by Law Number 41 of 1999, customary forests are actually state forests and therefore, even though the term is referred to as "customary forests" In fact, customary law communities do not have full power over this type of forest. Through the Constitutional Court Decision No. 35 / PUU-X / 2012, the above principles have been changed quite radically. Thus, the regulatory principles in Law Number 41 of 1999 concerning the existence of customary forests are as follows:

The so-called customary forest is separated from the state forest. Based on the opinion of the Constitutional Court which states that in accordance with the provisions in article 18B paragraph (2) of the 1945 Constitution, the customary law community unit is a legal subject that has the capacity to carry rights (and obligations), and therefore customary law communities should have rights over forests. (MK Decision No.35 / PUU-X / 2012). Law Number 41 Year 1999 only recognizes 2 (two) types of forest, namely state forest and private forest, based on the first principle above that customary law community units should also have rights over forests, then referring to the opinion of the Constitutional Court, what is referred to as customary forest is part of private forest and not part of state forest (MK No. 35 / PUU-X / 2012, pp. 173, 179, 181).

Customary forest after the Constitutional Court decision no. 35 / PUU-X / 2012 is defined as "forest within the territory of customary law communities" (MK No. 35 / PUU-X / 2012, pp. 185). Customary forest as a forest whose rights belong to a customary law community unit will be recognized if the existence of the customary law community unit is recognized, and in order for a customary law community unit to be recognized, it must meet the recognition requirements as regulated by the 1945 Constitution, namely the customary law community in fact. still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia (MK Decision No. 35 / PUU-X / 2012, pp. 185-186). This changes the principle that existed previously, where in order to be recognized, a customary law community unit must meet requirements, one of which is that it cannot conflict with national interests. Referring to the new regulatory principles regarding customary forests after the Constitutional Court decision no. 35 / PUU-X / 2012 as above, it can be seen that now customary law communities have confirmed rights to forests, which are then referred to as customary forests. Thus, the rights of indigenous peoples to the forest have been explicitly recognized by Law No. 41/1999 after the Constitutional Court Decision No. 35 / PUU-X / 2012.

Outside the Forest Area in Grandeng Village based on an interview with the Head of the UPT Maluku Forestry Service, Buru Regency, including the APL area, other use areas with an area of 6000 hectares, in which there are areas, agriculture, plantations, eucalyptus forest, and other forests, areas APL is intended for residential locations, public facilities, agricultural land and community plantations, industry, public infrastructure development, and many other functions for the benefit of the community in Grandeng village.

Legal facts often occur over land, on land with the certificate of the Transmigration community by the Solissa Indigenous People, whether it be residential settlements or, rice fields belonging to transmigrants, based on the results of interviews with PLT head of Grandeng village, Indigenous people often claim ownership of land by the community transmigration, has no permanent legal force and no legal basis for land acquisition, in the area of Land II covering an area of 249 hectares, the transmigration community has 3 certificates with an area, the first is a 50x50 yard certificate, 100x100m of rice fields and 2 fields of 75 x 100m. However, according to Hinolong Baman, the head of the Waepo Indigenous Peoples' Alliance, said to his knowledge there were no problems reported, ever in 2010, there was a meeting between the Indigenous people and the trans community, and the result was that for the construction of the General Falitas there must be land acquisition and permission from the Indigenous people. According to him, the Transmigration Society has been considered a close family, whether there have been marriages between Indigenous Peoples and Javanese people, as well as the existence of the Trasmigration community has had a major impact on economic, social and religious growth in the Waeapo plain.

Basically, the legal protection of customary law communities over customary forests is a government obligation that must be fulfilled as regulated in Article 18B of the 1945 Constitution. 35 / PUU-X / 2012 and What is the role of local government in realizing the Legal Protection of Indigenous Peoples after the Constitutional Court Ruling. Customary forest is separated from State Forest, customary forest is private forest and customary forest Indigenous peoples of Lolongguba District Have rights to forests based on results The interview for petuanan rights started in Waetele to village in 12 areas of Kepala Soa which were controlled by Hinolong Baman. Basically the forest area in Grandeng Village is an APL Forest area (Other Settlement Areas based on an August 2020 interview with the head of the UPT District Forestry Service, the area of Aral, the Grandeng forest is around 6000 hectares, including rice fields, plantations belonging to the people of Grandeng Village. The Sago Forest in the Lolongguba Plain is quite extensive, the sago forest is not only owned by one soa but also can be processed by each existing clan and the sago forest area in their respective areas, this is explained by the Head of the Waeapo Plains Indigenous Alliance, that

sasi forest for They forbid the community to cultivate and wait until the sago tree is old and can be processed, then Sasi is opened by the customary elders for the customary community around the Sago tree forest.

The customary law in Petuanan Kayeli Kecamtan Lolongguba actually recognizes that the control of a country petuanan area is marked by the existence of a Traditional Village and the activities or activities of the citizens or children of the country, for example through gardening activities, hunting for forest products and so on (Ter Haar) All This is evidence that the citizens or children of the country of the country have repeatedly exploited the place or territory, so that they actually (de facto) control the area. The problem is whether legally (de jure) this is acceptable. In connection with this legal issue, it actually has to be accompanied by or followed by a verbal or written acknowledgment that the area actually belongs to the citizen or belongs to the country. We can see this from the agreements between citizens or certain countries, which are adhered to by them both individually (individually) and by citizens of the country as a whole. It should be acknowledged that de facto and de jure control as mentioned above is sometimes not recognized by the Regional Government, thus creating conflict or contradiction. The state comes with various forms of regional regulations which tend to harm its own citizens. Whereas the Regional Government should recognize and protect the rights of indigenous peoples to the Customary Forest and their agrarian resources (Agrarian sources include land or land and goods or objects contained therein, including in the territorial waters and air) they own.

So far there are weaknesses that indigenous peoples have, namely, the Dualism of Raja Kayeli and unclear territorial boundaries, who is the right holder of the area, what objects are on the land and what types of rights are attached to the land that and so on. This condition makes indigenous peoples have a rather weak bargaining power, facing certain parties, say the government and businessmen who get permission from the government because they have power and money.

4. Conclusion

In the Constitutional Court Decision No. 35 / PUU-X / 2012 concerning the Existence of Community Customary Forests is a source of law in customary forest management. In principle, customary law needs to have a concrete manifestation in regional regulations that give customary communities the right to manage their natural resources based on ownership that has lasted since their ancestors. In the village of Grandeng, Lolongguba District, Buru Regency, the implementation of customary forest utilization has been carried out from generation to generation, the use of forest products and forest management, often through customary law mechanisms by asking permission from traditional leaders, the Head of Soa and Raja Kayeli. However, in the implementation of customary law norms, not administratively but through discussions without a written agreement, as for the ownership of land by the Indigenous people, most of them also do not have a certificate and distribution to Soa or Marga has not been done in writing, therefore it is necessary to intervene by the Regional Government, District or District. Maluku Province to help resolve the Issue of Customary Forest Ownership in Grandeng Village, Lolongguba District, Buru Regency,

Reference

Achmad, Fauzi, and Siti Zunariyah. “Modal Sosial Masyarakat Dalam Pengelolaan Hutan Rakyat (Studi Fenomenologi Hutan Rakyat Di Kelurahan Selopuro, Kecamatan Batuwarno, Kabupaten Wonogiri).” *Jurnal Sosiologi DILEMA*, vol. 30, no. 1, 2015, pp. 40–49.

Amri, M., Tahir, S. Z. A. B., & Ahmad, S. (2017). The implementation of Islamic teaching in multiculturalism society: A case study at pesantren schools in Indonesia. *Asian Social Science*, *13*(6), 125.

Hadri, Hadri Law. “Pemenuhan Hak Masyarakat Hukum Adat Dalam Penguasaan Hutan Adat Di Kabupaten Lampung Barat.” *Istinbath : Jurnal Hukum*, 2018, doi:10.32332/istinbath.v15i2.1210.

Harnina Ridwan, et al. “Public Understanding of Tourism Communication in the Coastal Region of Southeast Sulawesi.” *Indonesian Journal of Social and Environmental Issues (IJSEI)*, vol. 1, no. 3, 2020, pp. 199–205, doi:10.47540/ijsei.v1i3.96.

Lewis, Sarah. “Qualitative Inquiry and Research Design: Choosing Among Five Approaches.” *Health Promotion Practice*, 2015, doi:10.1177/1524839915580941.

Mu’adi, Sholih, et al. “Transfer of Function Agricultural Land.” *Proceedings of the International Conference on Industrial Engineering and Operations Management*, vol. 0, no. March, 2020, pp. 2568–74.

Mulyadi, Mohammad. “Penelitian Kuantitatif Dan Kualitatif Serta Pemikiran Dasar Menggabungkannya.” *Jurna Studi Komunikasi Dan Media*, 2011, doi:DOI 10.1016/j.chemphys.2012.06.006.

Nathan, Sally, et al. “Qualitative Interviewing.” *Handbook of Research Methods in Health Social Sciences*, 2019, doi:10.1007/978-981-10-5251-4_77.

Nuraini, Nuraini, et al. “Political Policy for the Development of Education.” *International Journal of Scientific & Technology Research*, vol. 8, no. 10, 2019, http://www.ijstr.org/research-paper-publishing.php?month=oct2019.

Nurhayanto, Puji, and Dadan Wildan. “Transformasi Nilai-Nilai Kearifan Lokal Masyarakat Adat Cireundeu.” *SOSIETAS*, 2016, doi:10.17509/sosietas.v6i1.2872.

Obi, Success Esomchi, et al. “The Socio-Economic Impact of Covid-19 on The Economic Activities of Selected States in Nigeria.” *Indonesian Journal of Social and Environmental Issues (IJSEI)*, vol. 1, no. 2, 2020, pp. 39–47, doi:10.47540/ijsei.v1i2.10.

Presiden Republik Indonesia. “Undang-Undang No . 39 Tahun 1999 Tentang : Hak Asasi Manusia.” *Undang-Undang Republik Indonesia Nomor 39 Thn 1999 Tentang Hak Asasi Manusia*, 1999.

Sari, D. M., and A. Fu’adah. “Peran Pemerintah Daerah Terhadap Perlindungan Hutan Adat Pasca Putusan Mahkamah Konstitusi Nomor 35/Puu-x/2012.” *Jurnal Penelitian Hukum*, 2014.

Umanailo, M. Chairul Basrun. “Dominance of Economic Capital.” *International Journal of Scientific and Technology Research*, 2020.

Undang Undang Nomor 41. “Kehutanan.” *Presiden Republik Indonesia*, 1999.

Utomo, Bekti, et al. “Strategi Pengelolaan Hutan Mangrove Di Desa Tanggul Tlare Kecamatan Kedung Kabupaten Jepara.” *Jurnal Ilmu Lingkungan*, 2018, doi:10.14710/jil.15.2.117-123.

Wood, E.., Tappan, G.., Hadj, A., 2004. Understanding the drivers of agricultural land use change in south-central Senegal. J. Arid Environ. 59, 565–582., et al. “Urban Forest and Rural Cities: Multi-Sited Households, Consumption Patterns, and Forest Resources in Amazonia.” *Ecology and Society*, 2008, doi:10.1186/1556-276X-7-150.

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