

The Existence of Indigenous Youth on the Credibility of Customary Law Instruments

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ABSTRACT

At the regional level, the government's commitment to the formation of Regional Regulations on the recognition of indigenous peoples as one of the customary law instruments is still low, customary law instruments should be able to form binding forces and provide justice for indigenous peoples. In this case, the existence of indigenous youth is urgently needed in decision-making and their dedicated efforts in climate action, the search for justice, and the creation of intergenerational relationships that preserve their culture and traditions. Indigenous youth are very strategic in mapping customary territories, advocating for policies and succeeding in the management of customary territories based on the culture and wisdom traditions of indigenous peoples. The existence of indigenous youth as the next generation greatly determines the credibility of customary law instruments.

Keywords: *The existence of indigenous youth, customary law instruments*

Introduction

According to the Alliance of Indigenous Peoples of the Archipelago (AMAN) at the First Congress in 1999, defining indigenous peoples are communities that live based on ancestral origins from generation to generation on a customary territory, which have sovereignty over land, and natural resources, socio-cultural life regulated by customary law and customary institutions that manage the sustainability of



people's lives. The unity of the Customary Law Community is a living alliance that is still intact and grows as a legal order that is cared for by its customary leaders.¹

To date, the Customary Territory Registration Agency (BRWA) has registered 1.336 maps of customary territories with an area of around 26,9 million hectares. The map of the customary territory is spread across 32 provinces and 155 districts/cities. Recognition Status of Customary Territories in Indonesia Of the 1.336 total customary territories registered in BRWA, as many as 219 customary territories have been determined to be recognized by local governments with an area of 3,73 million hectares or around 13,9%. There are still around 23,17 million hectares of current territory that have not been recognized by the local government. The Customary Territory Registration Agency (BRWA) is the institution where the registration of customary territories is registered. BRWA was formed in 2010 on the initiative of the Alliance of Indigenous Peoples of the Archipelago (AMAN), the Participatory Mapping Working Network (JKPP), Forest Watch Indonesia (FWI), the People's Forest System Support Consortium (KpSHK), and Sawit Watch (SW). BRWA was formed because the data and information on the existence of indigenous peoples and customary territories as a result of participatory mapping were not well documented. In addition, the government has also not had maps and social data on the existence of indigenous peoples and their customary territories. Of course, this is a problem, both in the government and also in the community when efforts are made to encourage the recognition and protection of the rights of indigenous peoples.²

Indigenous peoples in Indonesia are currently a vulnerable group of people. The vulnerability of indigenous peoples in Indonesia lies in their inability to maintain their sovereignty, autonomy and identity. This is caused by external and internal factors including agrarian conflicts, human rights violations, limited access to

¹ Sulfan dan Muhammad, A. Konsep Masyarakat Menurut Murtadha Muthahhari (Sebuah Kajian Filsafat Sosial) 2018, hal 273

² Badan Registrasi Wilayah Adat (BRWA), Status Pengakuan Wilayah Adat Di Indonesia Pada Hari Internasional Masyarakat Adat Sedunia Tahun 2023, Berita BRWA, 2023.



education and health, and the existence of indigenous youth. Indigenous youth also have an important role in maintaining the existence of indigenous peoples. When returning to their hometowns, indigenous youth will trace the traces of their ancestors and re-recognize themselves.

The Alliance of Indigenous Peoples of the Archipelago (AMAN) noted that the typology of sources of conflict and criminalization of indigenous peoples throughout 2020 created at least 40 cases including plantations (10), mining (5), dams and hydropower plants (6), government (5), Forest Management Units (FMUs) (6), Industrial Plantation Forests (HTI) (3), TNI (1), and environmental pollution in customary territories (4). From these sources of conflict, the TNI is a state institution that is involved in agrarian conflicts with indigenous peoples or society in general. With such a large amount of data, it is proof that special attention is needed in this matter where so many of the cases above are resolved through litigation which results in indigenous peoples' rights being taken away by parties that should not be their rights. In a case settlement or law enforcement, it cannot be done only in a formal way but can also be done through informal channels. This informal path or commonly referred to as the informal justice system where problems that occur in indigenous peoples are resolved according to customary and applicable rules. The process of resolving the case informally is carried out by first examining by community officials and traditional leaders. If the examination of evidence is in the form of evidence and witness statements, the next stage is to hold a deliberation or trial involving the community at large. Informal settlement is an option for the community on the basis that it is fast and cheap, safe from judicial mafia practices, effective sanctions and clear procedures. This shows that the process of settling criminal acts with customary justice as an informal channel can enforce the law.³ By

³Gilbert Marc Baljanan¹, Lucia Charlota Octovina Tahamata², Saartje Sarah Alfons³, Eksistensi Instrumen Hukum Lokal dalam menjamin hak-hak masyarakat adat dalam perspektif informal Justice System di Kep Kei Besar, SANISA Jurnal Kreativitas Mahasiswa Hukum Universitas Pattimura, Volume 2 Nomor 1, April 2022.



looking at various problems that are questionable whether the formal system that is running is appropriate and able to provide justice, it is necessary to consider the customary law instruments that are supposed to provide justice for indigenous peoples. So many in areas where customary law instruments have not been explicitly promulgated so that the binding force is not so strong, the customary law instruments referred to as state regulations in a village that bind and regulate more relevant related to the problems that exist in the customary village, should not be just customary law.

method

The type of legal research carried out is normative juridical. According to Philipus M. Hadjon, normative legal research is research aimed at finding and formulating legal arguments through analysis of the subject matter.⁴ Therefore, this legal research is focused on examining the rules or norms in positive law, namely legal norms related to the subject matter of the existence of indigenous youth on the credibility of customary law instruments. Meanwhile, the legal approach used is the statute *approach*. This approach conducts a study of laws and regulations related to the subject matter.

Discussion

The Existence of Indigenous Youth in Indonesia

The term youth referred to here is the young generation, both men and women, who are often identified as people who have extraordinary spirits, supported by biological and psychological factors that make these youth productive in social life. These potentials need to be developed by Indonesia's youth today in order to build the nation in a better direction.

⁴ Dr. Bachtiar, S.H., M.H, Legal Research Methods, Unpam Press, Pamulang – South Tangerang, 2018, p. 55.



In an indigenous community in an indigenous area, indigenous youth are the future of indigenous peoples who play a role in maintaining the existence of indigenous peoples, who must continue to defend the rights of their customary territories.

Indigenous youth are the next generation who play an important role in determining the future of indigenous peoples. Meanwhile, the existence of indigenous youth can be seen from their efforts in maintaining and preserving the customs and culture of indigenous peoples, including:

1. Safeguarding the rights of customary territories;
2. Participate in decision-making;
3. Be active in climate action;
4. Seeking justice for indigenous peoples;
5. Maintaining intergenerational relationships;
6. Sharing indigenous culture and identity proudly;
7. Voicing aspirations at the national and international levels;

On the commemoration of the International Day of Indigenous Peoples in 2023, the United Nations (UN) carries the theme "*Indigenous Youth as Agents of Change for Self-Determination*". This theme is to re-show the role that indigenous youth must play in decision-making and their dedicated efforts in climate action, the search for justice, and the creation of intergenerational relationships that preserve their culture and traditions. In the context of advocating for the recognition of indigenous peoples and customary territories in Indonesia, the role of indigenous youth is very strategic in mapping customary territories, advocating for policies and successors in the management of customary territories based on the culture and traditions of indigenous peoples' wisdom. Meanwhile, the condition of indigenous peoples is still marginalized in their customary territories because the recognition and protection of customary territories is still far from the expectations of indigenous peoples.⁵

⁵ BRWA, Loc.cit



Credibility of customary law instruments in Indonesia

Juridically, formal recognition of the existence of customary law communities and their rights in Indonesia is recognized. It is realized that the recognition is very diverse from one sector to another, so that the form of recognition of the existence of customary law communities by regions is also different. In the reform era that began in 1998, the development of the adoption of recognition, respect and protection of the existence of customary law communities and their customary rights in a formal manner can be seen in various laws and regulations as follows:

1. The 1945 Constitution was amended, article 18 B paragraph (2) which states that the State recognizes and respects the units of customary law communities and their traditional rights as long as they are 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. Article 28 I paragraph (3) states that the cultural identity and rights of traditional communities are respected in line with the development of the times and civilization.
2. TAP MPR Number XVII/MPR/1998 concerning Human Rights. This decree affirms that the recognition and protection of customary law communities is part of respect for human rights. Article 32 which states: "Everyone has the right to have personal milk rights and such property rights shall not be taken arbitrarily. Article 41 states "The cultural identity of traditional communities, including the rights to protected customary land, is in line with the times. The MPR TAP has then been translated into Law Number 39 of 1999 concerning Human Rights.
3. Basic Agrarian Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Law Principles (UUPA), has contained provisions stating that this law is based on customary law (Article 5), and recognizes one of the most important aspects of indigenous peoples' rights related to their living space as stated in Article 3, namely what is called customary rights. Article 3: "Taking into account the provisions in Articles 1 and 2 of the implementation of customary rights and similar rights of



customary law communities, as long as they still exist, they must be in such a way that they are in accordance with the national and state interests based on the unity of the nation and must not be contrary to higher laws and regulations".

4. Law Number 41 of 1999 concerning Forestry. Article 1 letter f: "Customary forests are State forests that are within the territory of customary law communities". Article 4 Paragraph (3): "The control of forests by the State still pays attention to the rights of customary law communities as long as in fact they still exist and are recognized for their existence, and do not conflict with national interests". Article 5 paragraph (1); "Forests based on their status consist of (a) State forests and (b) rights forests. Article 5 Paragraph (2): "State forests as referred to in Paragraph (1) letter a, may be in the form of customary forests". Article 67 Paragraph (1): "Customary law communities as long as they still exist and are recognized for their existence have the right to: (a) collect forest products to meet the daily living needs of the customary people who are transporting; (b) carrying out forest management activities based on applicable customary laws and not contrary to the law.
5. Law Number 45 of 2009 concerning Fisheries. Article 6 Paragraph (2): "Fisheries management for the purpose of fishing and fish cultivation must consider the participation of the community"
6. Law Number 1 of 2014 concerning the Management of Coastal Areas and Small Islands. Article 18 of the right to manage the coast and islands may be granted to: a. Individual citizen of Indonesia, b. Legal entities established under Indonesia law, or c. Indigenous peoples. Article 21 Paragraph (4) The operational requirements as intended in paragraph (1) include the obligation of the holder of coastal and island management rights to: a) empower the community around the location of the activity; b) recognize, respect, and protect the rights of indigenous peoples and/or local peoples; c) pay attention to the community's right to get access to beaches and river estuaries. Article 61 Paragraph (1) The Government recognizes, respects, and protects the rights of indigenous peoples, traditional communities, and local wisdom over



coastal areas and small islands that have been used for generations. Paragraph (2) Recognition of the rights of indigenous peoples, traditional communities as referred to in Paragraph (1) is used as a reference in the sustainable management of coastal areas and small islands.

7. Permendagri Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Indigenous Peoples, is a guideline made by the state through the Ministry of Home Affairs for local governments, especially Regencies/Cities in an effort to provide recognition and protection for customary law communities. In the regional dimension, the recognition and respect and protection of the rights of customary law communities can be seen, for example, in:
 - a. Regional Regulation (Perda) of Lebak Regency No.32/2001 concerning the Protection of the Customary Rights of the Baduy Legal Community.
 - b. Nunukan Regency Regional Regulation (Perda) No.3/2004 concerning the Customary Rights of Customary Law Communities and Nunukan Regency Regulation No. 4/2004 concerning the Customary Rights of Lundayeh Customary Law Communities of Nunukan Regency.
 - c. Maluku Provincial Regulation No.3/2008 concerning Petuanan Area.⁶
 - d. Lamongan Regency Regent Regulation (Perbup) Number 70 of 2019 concerning the Preservation of Customary Institutions, Traditions and Local Culture in Lamongan Regency.

In addition to juridically formal customary law, it also comes from customs or customs that are folk traditions, folk traditional culture, ugeran/rules from original Indonesia culture, feelings of justice that live in society, customary words, and customary jurisprudence.

Customary law is still needed in answering the demands of the complexity of today's problems, because customary law is values (truth and justice) that live in the midst of society, and the demands of society are actually truth and justice, not the

⁶ SANISA, Loc.cit h. 7.



enactment of procedural law. In this case, the credibility of customary law still needs to be upheld, in line with the dynamics of community development. Therefore, according to the author, the existence of indigenous youth as the next generation that greatly determines the credibility of customary law instruments must be optimized, must actively guard the credibility of customary law instruments in each customary area. The existence of indigenous youth can be done, for example, by:

1. Teaching traditions, cultural identities, knowledge, and customary value systems to the younger generation;
2. Initiating the "Pulang Kampung" Movement which prioritizes the spirit of homecoming knowledge, as opposed to modern education that teaches the science of going home.
3. In Lamongan regency with the Inauguration of the Regional Management Board (DPD) of Matra (Indigenous Peoples of the Archipelago) Lamongan and Srikandi Matra Lamongan for the 2023-2028 Period at the Second Floor Building of the Lamongan Tourism and Culture Office, on November 3, 2023.

Closing

The commitment of regional heads and the capacity of local governments is still low to form a Regional Regulation on the recognition of indigenous peoples as one of the instruments of customary law. Even after the Regional Regulation, the implementation of verification until the inauguration of indigenous peoples is still running very slowly. Therefore, the existence of indigenous youth is urgently needed in decision-making and their dedicated efforts in climate action, the search for justice, and the creation of intergenerational relationships that preserve their culture and traditions. Indigenous youth are very strategic in mapping customary territories, advocating for policies and succeeding in the management of customary territories based on the culture and wisdom traditions of indigenous peoples.



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