

LEGAL CONSTRUCTION TO ADDRESS CONFLICT OF USE OF PROTECTED FOREST AREA OF MOUNT RINJANI NATIONAL PARK (TNGR)

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Abstract- The objectives of this Dissertation Research are to (1) analyze the legal basis (philosophy, legal principles, and legal dogmas) in regulating the existence of customary law communities; (2) examine the implications of legal procedures in the recognition and respect of indigenous peoples and their traditional indigenous rights; (3) analyzing the framework for implementing the right legal construction in overcoming conflicts over the use of protected forest areas in the Mount Rinjani National Park (TNGR) between the East Lombok Regency Government and the customary law community. Furthermore, Doctrinal Law Research was carried out using a philosophical, legislative, conceptual, and case approach. The research results obtained are: First, at the normative, philosophical and political juridical level, there have been many legal products promulgated by the Government in terms of providing a basis for legal certainty to provide space for customary law communities in the context of maintaining the existence of customary law communities; Second, the implications of the legal procedure model in recognizing and respecting indigenous peoples and their traditional indigenous rights give rise to a model of recognition of “conditional recognition” and recognition of “layered recognition” of the existence of indigenous peoples; Third, the implementation of an appropriate and effective legal construction model in overcoming conflicts over the use of protected forest areas in the Mount Rinjani National Park (TNGR) between the East Lombok Regency Government and customary law communities not only pays attention to the physical form of conflict, but also the ideological rooted on the clash of basic values that are deeply rooted in the lives of indigenous peoples, as well as normative conflicts rooted in differences in the rules of behavior of indigenous peoples.

Index Terms- Legal Construction, Conflict, Utilization of Protected Forest Areas

I. INTRODUCTION

The latest developments, the existence of capital markets in an Urgency of recognition and empowerment of indigenous peoples' rights, revitalization of customary rules, and development of state life with a local perspective raises the urge to clarify the rights of indigenous peoples in forest management that is inseparable from degraded forest conditions, as well as the

economic condition of the communities around forest areas that are generally below the poverty line.

In a relatively long period of time, there has been a conflict over the control and utilization of customary forest area land between the Sasak Jurang Koak indigenous legal community and the Mount Rinjani National Park (TNGR), which stipulates that the Koak Gorge area is a forest area that should not be used, so for that to be emptied. This decision was made solely to protect the forest area from damage caused by the actions of the surrounding community.

Studies related to the construction of the law damp efforts to resolve conflicts of utilization and management of protected forest areas of Mount Rinjani National Park (TNGR) become urgent considering the problems of philosophical aspects, there has been fundamental disobedience in the recognition and respect of the state to the indigenous legal community that contains the philosophical meaning that the state should always have an attitude of maintaining, protecting, and fulfilling the constitutional rights of the Indigenous Law Community.

Then the problem of sociological aspects, there has also been a clash or conflict of basic values that have actually been firmly rooted in the life of the Sasak Jurang Koak Indigenous Law Community, Bebidas Village, Wanasaba Subdistrict, East Lombok Regency, in addition to normative conflicts rooted in differences in the rules of behavior patterns of indigenous legal communities in the context of conflict control and utilization of protected forest area land between Mount Rinjani National Park Hall (TNGR) with indigenous legal communities.

Furthermore, studies related to the construction of the law damp efforts to resolve the conflict of utilization and management of protected forest areas of Mount Rinjani National Park (TNGR) become urgent considering the problem of juridical aspects, namely there are no regulations at the regional level in the form of Regional Regulations (Perda) that provide a basis for the right to the existence of Indigenous Peoples in forest management. Therefore, this Dissertation Research is expected to assist in the efforts to develop academic manuscripts as part of the process of reforming the Draft Regional Regulation (Raperda) on the rights of the community in forest management in East Lombok.

Departing from the description on the background of the above problems, the main legal issue in this study is formulated in the following issues:

1. How does the law regulate the existence of indigenous peoples in a normative, philosophical, and political way?
2. What are the regulatory implications of legal procedures in recognizing and respecting indigenous peoples and their traditional indigenous rights?
3. What is the framework for the implementation of proper legal construction in addressing the conflict of utilization of protected forest areas between Mount Rinjani National Park Hall (TNGR) and indigenous legal communities?

II. RESULT AND DISCUSSION

1. The Existence of Indigenous Peoples normatively, philosophically and politically

The term indigenous law society continues to be used today in official state documents, such as legislation. In the text of the 1945 Constitution before the amendment can be found the use of the terms *Zelfbesturendelandschappen* and *Volksgemeenschappen*, the first can be translated as Swapraja area, namely kingdoms that have self-government while the second is self-governing communities such as villages in Java, in Sumatra and others. Finally known as *rechtsgemeenschappen* which translates as "indigenous legal society"¹.

Recognition of the existence of indigenous peoples gets a special place in the Constitution of the Republic of Indonesia year 1945, namely in Article 18B paragraph (2) and Article 28I paragraph (3) becomes the most frequently referred constitutional basis when discussing the existence and rights of indigenous peoples.

In the Preamble to the 1945 Indonesian Constitution, Aline IV has been affirmed that the State of Indonesia aims to protect all Indonesian bloodshed (including indigenous peoples). The affirmation of the state objectives outlined in this opening philosophically means that the State of Indonesia is obliged to recognize and respect the indigenous legal communities that already exist, live, grow and develop before and after the Indonesian state stands.

Philosophically, the recognition and respect of the state to the indigenous legal community includes 3 (three) things, namely:

- a. the existence of indigenous legal communities;
- b. the existence of institutions/institutions that exist in the indigenous legal community; and
- c. the existence of rules/norms of customary law in the life of indigenous peoples².

The form of recognition and respect of the state to the indigenous legal community in Indonesia can be traced from the provisions contained in the Constitution of the Republic of Indonesia year 1945, provisions, laws, and government regulations.

¹ The term "indigenous legal community" is not accepted by everyone, especially non-governmental activists who prefer to use the term "indigenous people", arguing that the term "indigenous legal community" will ultimately only narrow the entity of indigenous peoples to the extent of legal entities. See in Rikardo Simarmata, Towards the End of the Indigenous Century: Conditional Confession Resistance, 2004

² Rikardo Simarmata. 2006. Legal recognition of Indigenous Peoples in Indonesia. Jakarta: UNDP., p.16

In addition to the provisions in the constitution, the application of customary law in positive law is spread in various laws and regulations. One of the quite revolutionary and fundamental provisions in Law No. 5 of 1960 on Agrarian Basic Law (UUPA) came into force on September 24, 1960. UUPA is a national law that fundamentally conducts an overhaul of the applicable land law. Uupa has listed a number of basic provisions that provide a benchmark of what and how should customary law and the right to custom in the national agrarian legal system³.

Politically according to Soetandyo, the existence and function of Customary Law became increasingly minimal again as the struggle for national legal development was identified with efforts to create revolutionary law in the Old Order era and then build laws that served as tools to engineer society⁴. Provision of Article 18B paragraph (2) of the Constitution of the Republic of Indonesia year 1945⁵ it can be understood that the Constitution of the Republic of Indonesia in 1945 tends to prioritize written laws rather than unwritten ones.

The above fact, means that recognition of customary law that still lives in a community in an area must be done by regulation in the legislation (written). To analyze the position of customary law in the legal system should be considered one of the traditions, The Position of Customary Law in the Legal System in the legal sciences namely, Sociological Jurisprudence delivered by Eugen Ehrlich. Furthermore, the basic conception of Ehrlich's thinking about the law is what is called living law. A good and effective positive law is a law that is in accordance with the living law of society that reflects the values that live in it.

2. Implications of Legal Procedures in Recognition and Respect of Indigenous Peoples and Their Traditional Indigenous Rights

In the context of real history we are very lucky because the prayer of one figure of the designer of the 1945 Constitution, Prof. Mr. Dr. R. Soepomo is an expert in Indigenous Law who really knows the position of indigenous peoples in Indonesia who then lists the state's recognition of indigenous legal peoples (*volksgemeenschappen*) in the draft constitution that he was drafting at the time. However, it is unfortunate that the recognition, respect, and protection of indigenous peoples is not stated explicitly and explicitly in the dictum of the 1945 Constitution, but is only placed in Article 18 which is not the legal norm⁶.

³ A fairly complete description of the issue of customary law in the Agrarian Basic Law (UUPA) next see Abdurrahman, 1994. Position of Customary Law in National Agrarian Legislation, Jakarta : Publisher akademika Pressindo

⁴ Mochtar Kusumaatmadja, Legal Concepts in Development, Center for The Study of Wawasan Nusantara, Bandung: Alumni, pp. 13-14

⁵ Article 18B paragraph (2) of the Constitution of the Republic of Indonesia year 1945 states "The State recognizes and respects the unity of the indigenous legal community and its traditional rights as long as it is alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which is stipulated in the law" (bold letter from researchers). According to Article 18B paragraph (2) this recognized customary law is a real-life customary law, clear material and the scope of indigenous peoples.

⁶ In number II, Article 18 of the 1945 Constitution is stated: "In the state of Indonesia there are approximately 250 "Zelfbesturende Landschappen" and "Volksgemeenschappen" such as villages in Java and Bali, the country in Minangkabau, hamlets and clans in Palembang and so on. These areas have an original arrangement, and can therefore be considered special areas. The State of

With various laws and regulations, the State then developed various policies that are essentially reducing, blocking, restricting, and even revoking the traditional rights and historical rights of the existing indigenous legal peoples, nota bene without providing compensation at all. Retrospectively, it can be said that intentionally or unintentionally, all state policies that reduce, impede, restrict, and or revoke the traditional rights and historical rights of indigenous peoples are a violation of human rights⁷.

In response to the above facts, of course, indigenous peoples do not stand still against the reduction, takeover, or revocation of traditional rights. There has been criticism, protests, and even open resistance from indigenous citizens who generally fail in maintaining their traditional rights and extension throughout Indonesia. It is certain that they are not in a position to defend themselves because they do not have access to power, either in the legislative, executive, or judicial branches.

The situation that systematically marginalizes the existence of indigenous peoples and efforts to uphold their traditional rights, in general, has continued since 1960 when gradually in the Reformation Era has been laid back the legal basis for formal recognition of the existence and respect for the traditional rights of indigenous peoples, which has been ensured to take time to actually be implemented in reality.

Experience shows that the recognition, respect, and protection of the State to indigenous peoples does not happen automatically and must be fought in a planned and organized manner. If contemplated, the root of the problem that we will discuss today comes from the fact that many indigenous legal communities have existed for hundreds of years, then built empires or national state. Both indigenous legal communities have their own interests, which can be completely contradictory. Nowadays, the assumption is that indigenous peoples are communities that will be "eliminated" to become modern society, which will practice the production, distribution, and consumption of the modern economy.

Legal recognition of indigenous peoples was further formulated fifteen years later when Law No. 5 of 1960 on Agrarian Basic Law (UUPA) was enacted. UUPA recognizes the existence of indigenous peoples and ulayat rights. Recognition of civil rights is done as long as it is in fact still present, not contrary to the national interest and should not be contrary to other higher laws and regulations. In contrast to the 1945 Constitution before the amendment, Law No. 5 of 1960 on agrarian basic law introduced the concept of "conditional recognition", which was then followed by default by the legislation afterwards. The mechanism through this concept of "conditional recognition" continued to develop during the New Order administration and has become the standard of normative recognition on all policy instruments.

the Republic of Indonesia respects the position of these special regions and all state regulations concerning that area will remember the rights of the origin of the region".

⁷ In Article 1 number 6 of Law No. 39 of 1999 concerning Human Rights, there is an explanation that: "Violation of human rights is any act of a person or group of persons including state officials either intentionally or unintentionally, or negligence that unlawfully reduces, obstructs, restricts, and or revokes the human rights of a person or group of persons guaranteed by this Law. , and do not obtain, or are feared that there will be no fair and correct legal settlement, based on the prevailing legal mechanisms.

Such a confessional model and showing the existence of "conditional recognition" also introduces "layered confessions". In short, conditional recognition is layered in addition to having to meet sociological, political, and normative-judicial requirements but must also meet procedural requirements, i.e. stipulated by a Regional Regulation (Perda). According to researchers, that mechanism makes the recognition of the law not actually intended to give basic freedom to indigenous peoples but rather determine its limitations.

3. Implementation of Legal Construction in Resolving Conflict utilization of Protected Forest Area Between Mount Rinjani National Park Hall (TNGR) with Indigenous Legal Community

The conflict over the utilization of the protected forest area of Mount Rinjani National Park (TNGR) between the East Lombok Regency Local Government and the Indigenous Law Community is rooted in the conflict in the conservation forest, namely in the Pesugulan Forest area of Mount Rinjani National Park. The conflict that occurred due to the claim of forest area as an ancestral land conducted since June 14, 2015, where a group of people from Dusun Jurang Koak, Dasan Erot, and Burne Hamlet have occupied and penetrated the forest area by burning forests to open land, felling trees, making roads and turning forest areas into areas planted with seasonal crops (onions, tomatoes, chilies, sweet potatoes, carrots, cabbage, and more).

Various efforts have been made in easing conflicts, mediation, repressive efforts (Joint Operations), arrests, until the form of settlement offer with the Cooperation Agreement (PKs). But in fact, the settlement offered by the Mount Rinjani National Park Hall (BTNGR) not many of the communities around the forest and the parties involved in the conflict agreed and were willing to resolve the conflict with the cooperation agreement of Mount Rinjani National Park Hall (BTNGR).

Mount Rinjani National Park (TNGR) is one of the ecosystems with mountain and savanna rainforest type located on the island of Lombok, West Nusa Tenggara. Mount Rinjani National Park (TNGR) is designated as a National Park area through the Decree of the Minister of Forestry No.280/Kpts-II/1997 with an area of 40,000 ha, although in the field, the area is more than 41,000 ha⁸.

The Issuance of the Decree of the Minister of Forestry of the Republic of Indonesia No.280/Kpts-VI/1997 concerning the Designation of Mount Rinjani National Park covering an area of 40,000 hectares located in the District level II West Lombok, District Level II Central Lombok and District Level II East Lombok, Province Level 1 West Nusa Tenggara, which basically states that Mount Rinjani is designated as the area of Mount Rinjani National Park (TNGR).

Law enforcement by the Management of Mount Rinjani National Park against citizens who claim or control the land of forest areas that according to their perception they have been controlled for generations, but by bordering the land of forest areas controlled by the citizens of Jurang Koak community with Mount Rinjani National Park, then there is a dispute between the

⁸ Mount Rinjani National <https://id.wikipedia.org/wiki/Taman>. Accessed on May 20, 2020

two sides, for several reasons including, that the management of Mount Rinjani National Park said that there is no definite boundary between Mount Rinjani National Park and the land of forest areas controlled by the community.

Principles that can be applied in the efforts to handle conflicts of use of protected forest areas between Mount Rinjani National Park (TNGR) and the Indigenous Law Community of Jurang Koak, Bebidas Village, Wanasaba District, East Lombok Regency, especially related to the interests of the general public in general, among others are:

1. Strive that the weak can benefit from provisions containing dubious matters without defeating the law's general purpose. Strive for compassion to prevail if there is real doubt;
2. Public welfare is the highest law of any country, *Salus Populi suprema lex*. No construction shall be contrary to the laws of all these laws;
3. If the constitution recognizes the rights required by citizens, then the freedom of citizens is realized through careful interpretation as a provision. Everything related to power must be carefully interpreted; anything related to the security of citizens and the protection of individuals shall be construed in full and shall include all parties.

The needs, benefits, interests, and welfare of the community or citizens as a whole for the public benefit are the highest law. This means that the law must not serve the power or ruler. Even in dubious cases, the weak should not be sacrificed even if the law's general-purpose should not be defeated.

The above principle emphasizes the need for a creative balance between the interests of the weak and the interests of the general public as a whole. With this principle, justice as a legal purpose no longer means that everyone should be treated equally, so the principle of "equal taste", but rather the interests of every component of society must be taken into account. Therefore, the possibility of power intervention in the interpretation of the law and the vagueness of the provisions of the law itself opens the possibility for the power to interpret the provisions, rules, or laws according to its interests.

Addressing the conflict of the utilization of protected forest areas between The Mount Rinjani National Park Hall (TNGR) and the Indigenous Law Community of Jurang Koak, Bebidas Village, Wanasaba Subdistrict, East Lombok Regency, according to researchers that moral considerations have a higher degree of enforceability than legal considerations because morality (moral values) is a source for the law. Thus the law (literate) and legal considerations should not harm morality or by any other formulation that legal considerations should ultimately be justified in the face of moral considerations. A good law is a law that embodies morality, while a law that harms morality is not good.

When reviewed from the construction of legal refinement or legal narrowing (*rechtsverfijning*), regulations of a general nature are applied to events or special legal relationships with explanations or constructions by giving characteristics. In resolving the conflict of the utilization of protected forest areas between The Mount Rinjani National Park Hall (TNGR) and the Sasak Jurang Koak Indigenous Law Community, Bebidas Village, Wanasaba District, East Lombok Regency, the existing laws and regulations that should be used to resolve the conflict, turned out to be ineffective in their application.

In connection with the implementation of legal construction in addressing the conflict of utilization of protected forest areas between the Gunung Rinjani National Park Hall (TNGR) and the jurang customary legal community, Bebidas Village, Wanasaba Subdistrict, East Lombok Regency that the law serves as a mechanism to integrate various interests of citizens, which applies whether there is a conflict or no conflict. However, it should also be known that in the resolution of societal conflicts, moreover horizontal conflicts involving the Mount Rinjani National Park Hall (TNGR) and the indigenous legal community of Jurang Koak related to the utilization of protected forest areas of Mount Rinjani National Park, not only the law of the only means of integration, but there are still other means of integration such as religious methods, moral methods, and so on.

By using an understanding of the nature of social conflict and the nature of Indonesian society as a multicultural society, especially related to the implementation of legal construction in addressing the conflict of utilization of protected forest areas of Mount Rinjani National Park (TNGR) between the Local Government of East Lombok Regency and indigenous peoples, the following are some principles that researchers need to describe in an effort to effectively handle social conflicts through the laws and regulations, among others, namely:

1. Conflicts related to the utilization of protected forest areas of Mount Rinjani National Park (TNGR) between the East Lombok District Government and indigenous legal communities should be accepted as one of the nature's social realities of togetherness. This is an illusion about the creation of an automatic togetherness can lead to the birth of a conflict avoidance attitude that ultimately paralyzes the ability of society to manage conflicts independently in coexist life.
2. Handling conflicts related to the utilization of protected forest areas of Mount Rinjani National Park (TNGR) between the East Lombok District Government and indigenous legal communities can also be done early by prioritizing patterns of contact and social communication so that it is expected to be able to predict negative forms of social interaction from two individuals or groups.
3. Handling conflicts related to the utilization of protected forest areas of Mount Rinjani National Park (TNGR) between the East Lombok District Government and indigenous legal communities can actually be done more effectively by identifying and studying more carefully the various specific interests that are a consequence of the fundamental and natural differences of indigenous legal communities that build such social unity.
4. Handling conflicts of the utilization of protected forest areas of Mount Rinjani National Park (TNGR) between the East Lombok District Government and the indigenous legal community is not only done when the conflict is open, which is usually too late. But it is expected that the handling of the conflict needs to be done early by carefully identifying the forms of hidden conflicts, the level of tension arising from the hidden conflict. These potential factors trigger conflicts between the East Lombok District Government and indigenous peoples and the influence of intervening

important variables that contribute to accelerating the process of turning a hidden conflict into an open conflict.

5. Effective handling of conflicts between the Local Government of East Lombok Regency and indigenous legal communities can also be done by identifying the conflict's dimensions quickly and accurately. Vertical conflicts, need to be handled differently from horizontal conflicts because they involve two different individuals or social groups strata and their hegemonic power.
6. Handling conflicts between the Local Government of East Lombok Regency and indigenous legal communities effectively pay attention to not only the form of physical conflict, but also ideological ones that are rooted in the clash of basic values that are already firmly entrenched in the lives of indigenous peoples, as well as normative conflicts that are rooted in differences in the rules of behavior patterns of indigenous legal communities.

Based on several implementations of legal construction in addressing the conflict over the utilization of protected forest areas of Mount Rinjani National Park (TNGR) between the East Lombok District Government and indigenous legal communities, researchers emphasized the importance of the role of multicultural education, both formal education in schools and informal in the family and community environment. Education that does not deprive each individual of his or her identity and cultural roots, but at the same time can give birth to individuals and community groups who are capable of sharing life with other individuals and groups synergistically, no matter how different they are.

III. CONCLUSION

Departing from the subject matter studied, the research and writing of this Dissertation can be concluded as follows:

- 1) The Constitution has mandated the state to recognize and respect the existence of indigenous peoples in a normative, philosophical, and political manner towards the unity of indigenous peoples and all their traditional rights. The mandate is then technically implemented by the Government as the state organizer. In normative, philosophical and political juridical settings, the Government enacted many legal products in terms of providing a basis for legal certainty to provide space to indigenous legal communities in the context of maintaining their existence.
- 2) The implications of the model of legal procedures in the recognition and respect of indigenous peoples and their traditional indigenous rights give rise to the model of recognition of "conditional recognition" and recognition of "layered recognition" of the existence of indigenous legal peoples. In this case, conditional recognition is layered in addition to having to meet sociological, political and normative-juridical requirements but must also meet procedural requirements, i.e. stipulated by a Regional Regulation (Perda). The mechanism that makes the recognition of the law is not actually intended to give basic freedom to indigenous peoples but rather determine its limitations.
- 3) Implementation of the right and effective legal construction model in addressing the conflict of utilization of protected

forest areas of Mount Rinjani National Park (TNGR) between the Local Government of East Lombok Regency and indigenous legal communities not only pays attention to the form of physical conflict, but also the ideological ones rooted in the clash of basic values that have been firmly rooted in the lives of indigenous peoples, as well as normative conflicts rooted in differences in the rules of conduct patterns of indigenous legal communities

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