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Recognition and legal protection of community ulayat rights (study in the legal territory of west papua)

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Abstract

The purpose of this research is to analyze the nature of ulayat rights as the rights of indigenous peoples in West Papua. The method used by the researcher here is Research, in general, can be classified into two types, namely sociological (field) and empirical research. The results of the study obtained that the government's legal recognition and protection of ulayat rights as the rights of customary law communities in West Papua is caused by factors of legal knowledge, public awareness, community culture, facilities and facilities and factors that influence legal recognition and protection as government policy on ulayat rights as the rights of indigenous peoples are factors of legal knowledge, public awareness, community culture and provide recognition of customary rights for people in West Papua.

Introduction

West Papua Province is socio-culturally within the cultural framework of the Indonesian nation, which is a national unity with the Papua province. Regionally as Papua, Indonesia is different from Papua New Guinea (PNG). Philosophically in the community's acknowledgement, the location of these two provinces is often collectively referred to as Tanah Papua through an agreement or commitment as contained in the sentence "two for one and one for two". The sentence contains the meaning that there is one Special Autonomy Law, namely for the Papua Province

and West Papua Province. The sentence implies that one province with the same background and culture, namely Papua Province and West Papua Province, is actually for one development goal.[1]

Indigenous peoples residing in the Land of Papua, namely Papua Province and West Papua Province, there are 7 divisions of cultural areas, namely Region I referred to as the Tabi or Mamta customary area which is located on the plains of the Mamberamo river, Tami river. cultural customary area of Saireri, namely the tribes that inhabit the Saireri Bay area. Region III is referred to as the Doberay customary area, namely the tribe that inhabits the Bird's Head area. cultural customary area Bomberai which includes the tribes that inhabit the Bintuni Bay area to Mimika. cultural customary area HA-Anim is an area inhabited by tribes living in the Asmat to Kondo (Merauke) area. Region VI is the traditional area of La Pago which consists of tribes that inhabit the mountainous area of the Middle East, and Region VII is the area of customary culture of Me Pago which includes tribes inhabiting the mountainous area of the western part.

Based on the boundaries of the customary law of Papua, the Province of West Papua is the customs territory of the Doberay and Bomberai of the Papuans in the Land of Papua, Indonesia. Papuans who inhabit the traditional cultural areas of Doberai and Bombanberai, West Papua, are also culturally related to the same sex (Homo Humanicus) and have an attachment to nature where they are (homo humanicus). In addition, these individuals also have an emotional attachment to the nature in which they are located (Homo Economicus). In terms of this attachment, it can be seen from the aspect of interaction and communication between them both towards fellow individuals and with the natural surroundings.

Article 1 paragraph (2) emphasizes that "Customary Law Community are indigenous Papuan people who since their birth have lived in certain areas and are bound and subject to certain customary laws with a high sense of solidarity among their members. The establishment of the Papuan People's Council (MRP), is a strategic and consistent step in realizing the protection of indigenous peoples in Papua. Article 19 paragraph (1) "The MRP consists of indigenous Papuans consisting of customary representatives, religious representatives and women's representatives, each accounting for one-third of the total members of the MRP. Paragraph (2) The MRP membership period is 5 (five) years. Paragraph (3) The membership and number of members of the MRP as referred to in paragraph (1) shall be determined by a Perdasus. Paragraph (4) The Financial Position of the MRP is determined by a Government Regulation. In article 20 paragraph (1), the MRP has duties and authorities. Provide advice, consideration and approval of the planned cooperation agreement made by the Government and the Provincial Government with third parties applicable in the Province of West Papua specifically concerning the protection of the rights of indigenous Papuans. Paying attention to and channelling aspirations, and complaints from indigenous peoples, religious communities, women and society in general concerning the rights of indigenous Papuans, as well as facilitating follow-up settlements.[2]

Of the various laws and regulations that have been issued, starting from Law Number 21 of 2001 concerning Special Autonomy in Papua, Perdasus Number 18 of 2008 concerning the People-Based Economy, Perdasus of Papua Province Number 20 of 2008 concerning Customary Courts, Perdasus Papua Province Number 22 of 2008 concerning Protection and Management of Natural Resources of Customary Law Communities and Papua Province Perdasus Number 23 of 2008 concerning Ulayat Rights of Customary Law Communities and Individual Rights of Indigenous Peoples to Land which are affirmed in its articles, implicitly and explicitly has regulated the protection of customary land law in West Papua, in the context of the welfare state.[3]

The implementation of special autonomy in West Papua, in terms of aspects in the field of culture and customs, at least until 2012 the conditions were widely questioned;[4] (1) have not seriously and implemented the Papua Provincial Government and the Central Government to recognize, respect, protect, empower and develop the rights of indigenous peoples by referring to the provisions of the applicable legal regulations; (2) The rights of the indigenous peoples, which include the ulayat rights of the customary law communities and the individual rights of the members of the indigenous peoples concerned, are not recognized, respected and protected as an obligation by the existing Provincial Government; (3) there is no implementation of ulayat rights carried out by the relevant customary authorities according to the provisions of local customary law, due to respect and recognition and protection from the Government and third parties, on the contrary, they have a strategy to eliminate or take over the rights of their customary law communities; (4) the occurrence of deception and political speculation on ulayat lands and individual lands of customary law community members for various purposes and approaches carried out through deliberation with the customary law communities and the concerned residents to obtain an agreement regarding the transfer of the required land as well as the compensation is a disguised effort of consideration. others which are not usually disclosed in the intended deliberation; (5) there is no provision of active mediation from the Provincial Government to resolve disputes over customary land and former individual rights fairly and prudently, so that land disputes often occur continuously; (6) there is no affirmative protection of the intellectual property rights of the Papuan Indigenous People from the Provincial Government; (7) the existence of deliberate intervention against indigenous Papuan customary institutions by establishing a "puppet" Customary Institution created by the Central Government; (8) the existence of a provocative nature in customary law communities by village government officials, so that the preservation of Papuan cultural values are eroded from time to time; and (9) the existence of the Papuan People's Assembly (MRP) of West Papua Province is not based on the policy of the Special Autonomy Law and has caused a lot of polemics.

The acceleration of the development of the provinces of Papua and West Papua starting in 2015 is carried out using a customary territory-based approach, as described in detail in Book III Chapter II of the 2015-2019 RPJMN Papua Regional

Development Direction. The customary territory-based development approach is used to facilitate development interventions, by grouping the Papua region based on geographical proximity, customs, and culture. The Traditional Area Gathering was carried out in all 5 customary areas (in one of the regencies of Papua Province, namely the traditional territories of Saireri (Biak), Mamta (Sarmi), Me Pego (Mimika), La Pago (Wamena), and Aniem-Ha (Merauke) on March 10-25, 2015.[5]

Efforts to realize the legal protection of customary land in Papua as well as towards a welfare state, of course, have been going on for a long time, at least regarding the issuance of Law Number 21 of 2001 concerning Special Autonomy in Papua, to realize prosperity the Papuan people, a series of economic and infrastructure developments have been and continue to be carried out. In economic development, for example, the management of the copper and then gold mines in Timika, has been going on for more than 30 years. The issue of customary land that is cultivated or worked on by PT Freeport, is often a national political issue which in turn will potentially undermine the protection of customary lands in Papua,

although in recent developments, community rights The customary rights in Papua have been borne by PT Freeport's 10% share ownership managed by the Papua Provincial Government. The problem of protecting customary land in Papua also coincides with the clearing of forests for oil palm plantations which in each company requires hundreds of thousands of hectares. Not to mention the construction of infrastructure in the form of roads that was massively carried out during the administration of President Joko Widodo. Aspects between environmental sustainability and efforts to realize community welfare are also coloured by serious issues with illegal logging of forest areas in Papua. Thus, the patterns of balance between the use of spatial planning for the indigenous peoples of Papua and towards the welfare state should not be violated by parties outside the customary law communities.

This condition can be used as one of the requirements for the indigenous cultural community that has differences from the Papuan cultural indigenous community found in the other five regions. In terms of understanding the conditions of the life of the Papuan people (customary culture of Doberai and Bomberai Papua), then we should be able to see from the aspect of the oldest institutions to regulate the lives of local people as homo culturalists. These institutions cover the kinship system, language kinship, folklore (Folklore), marriage typology and other customary norms or laws such as traditional political aspects to the control of land rights.

Research methods

The type of research applied is normative empirical legal research.[6] Empirical normative legal research is a combination of normative legal research and empirical legal research. In this type of research, the author conducts research by combining two types of research, namely normative legal research and empirical legal research in legal research. In research, the focus of research is double, namely

conducting research or observations on the normative (*law in the book*) and empirical (*law in action*) domains.[7] This research was conducted in the customary law area of West Papua Province. The reason for choosing this research location is because they often carry out customary law activities. However, this research still pays attention to the scientific principles (*enunciative field*) in which the implementation of customary law takes place.

Discussion

on the Government's Legal Recognition and Protection of Ulayat Rights as the Rights of Indigenous Peoples in West Papua

Government's Recognition of Ulayat Rights

Until around 1960, the constitutional recognition of this customary law community was not much questioned, let alone challenged. Part of the reason for this was because the guarantee was deemed appropriate, partly because the Republic was still busy with the war of independence. However, the protection of the existence and rights of these customary law communities has declined sharply since 1960, along with the increasing interest of the state in natural resources which are after all within the ulayat territory of the customary law community, especially outside the island of Java.

With various laws and regulations, the State develops various policies, the essence of which is to reduce, hinder, limit, and or revoke the existing traditional rights and historical rights of indigenous and tribal peoples, nota bene without providing any compensation at all. Retrospectively, it can be said that intentionally or unintentionally, all state policies that reduce, hinder, limit, and or revoke the traditional rights and historical rights of indigenous and tribal peoples are violations of human rights.[8]

In particular, it should be noted the ambivalent attitude adopted by the Basic Agrarian Law (UUPA) towards customary law and customary law communities. On the one hand, this law expressly states that customary law is the source of our national agrarian law. But on the other hand, the existence of customary law communities which is the socio-cultural context of the birth of customary law is burdened with several conditionals, which sooner or later open up opportunities for the indigenous peoples to be denied. Of course, indigenous peoples are not silent about the reduction, expropriation, or revocation of their traditional rights. Throughout the archipelago, there have been criticisms, protests, and even open resistance, from indigenous peoples, who generally fail to defend their existence and traditional rights. As might be expected, 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 which systematically marginalized the existence of customary law communities and enforced their rights as such generally continued from 1960 to 1998, when gradually in the Reformation

era the legal basis was laid back for formal recognition of the existence and traditional rights of legal communities. This custom, of course, takes time to be implemented in reality.

The regulation on Guidelines for Recognition, Protection, Empowerment of Indigenous Law Communities and Customary Territories in West Papua Province has even been found in the Special Regional Regulation Number 9 of 2019. In article 17 it is determined that based on the Provincial Government is responsible for protecting the Indigenous Peoples (MHA) in the territory West Papua Province contains it that MHA is protected by all local governments where MHA has customary institutions that are formed, recognized and enforced at the tribal, sub-tribal, clan, and sub-marga levels in the customs territory of West Papua Province. Furthermore, customary institutions carry out socialization steps, and coordination before the identification, verification and validation process of the existence of MHA and customary areas is carried out.

a Article 20 Special Regional Regulation Number 9 of 2019 concerning Guidelines for Recognition, Protection, Empowerment of Indigenous Law Communities and Customary Territories in West Papua Province.

Line with this article confirms that; (1) The Provincial Government has the following obligations: (a) provide a budget sourced from the West Papua Province special revenue for economic empowerment activities, protection of the rights and identity of the community in the Customary Territory; (b) provide a budget in the Provincial APBD, mainly sourced from special autonomy funds and other sources that are channelled to MHA in the mapping of Customary Territories; and (c) involve MHA in making decisions regarding the use of their Customary Territory. (2) The Provincial Government appoints the Regional Apparatus having the task, authority and function in terms of empowerment and protection of MHA to regulate the direction of budget management as referred to in paragraph (1).

With this goal, West Papua Province for economic empowerment activities, protection of community rights and identity in the Customary Territory which in the end is expected to be a harmonious meeting point between the Indigenous Law Community (MHA) and the government while preventing negative impacts due to the mapping of customary areas. The underlying nature of the mapping of customary areas is to realize the integration and harmony of spatial mapping of customary areas on various resources so that the implementation of mapping of customary areas is expected to be consistent in minimizing conflicts and is expected to increase the integration between sectors and customary law areas.

The central and local governments are mandated to disseminate information on general plans and mapping of customary areas. The regulation of mapping of customary areas by the government by involving the Indigenous Humuym Community (MHA), where this involvement includes planning, utilization and control. Experience so far shows, that in agrarian conflicts, MHA is always in a weak position. The Customary Law Community (MHA) has a strong position because it has been confirmed in the constitution. Article 18B Paragraph (2) of the 1945

Constitution states that the State recognizes and respects customary law community units and their traditional rights as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law.

The existence and rights of Indigenous Peoples (MHA) are not something given by the state because they existed even before the state was formed. So, when the existence of MHA and their rights are recognized in the constitution and various other legal regulations, it is declaratory. In fact, not only in Indonesia but also in the world, the existence and rights of MHA are recognised. The September 2007 United Nations (UN) Declaration states that MHA has the right to access to prompt decisions through fair and mutually agreed on procedures in resolving disputes with States and other parties, as well as for effective remedies for violations of their individual and collective rights. The decision must take into account the customs, traditions, regulations and legal systems of the indigenous peoples (Article 40 of the United Nations Declaration on the Rights of Indigenous People).

b. Article 21 Special Regional Regulation Number 9 of 2019 concerning Guidelines for Recognition, Protection, Empowerment of Indigenous Law Communities and Customary Territories in West Papua Province

This article clearly regulates matters; (1) The Regency/Municipal Government is responsible for protecting the existence of MHA within the territory of the Regency/City regional government; (2) The protection of MHA and their territories as referred to in paragraph (1) is carried out in the form of: (a) Regency/Municipal Regulations which regulate the protection of parts of customary areas and the utilization of certain customary areas as well as the management of the natural resources contained therein; (b) MHA Census; (c) Regional Regulation concerning the existence of MHA in the area of regional government based on the results of the census as referred to in letter b; (d) Regency/City Regional Regulation concerning Traditional Villages; and € Regional policies in annual regional development programs and long-term regional programs aimed at protecting MHA; (f) Dissemination of legal provisions in the land sector; (g) Facilitation of dispute resolution in Customary Territory between MHA and MHA and business entities; and (h) Guidance for MHA in terms of the management of Customary Areas; and (3) not issue a permit to use part of the customary area and/or natural resources contained therein to other parties if it does not meet the legal requirements of the agreement.

The central and local governments are mandated to be responsible for protecting the existence of MHA through mapping customary law areas. Through zoning arrangements and instructions for mapping customary law areas. The mapping of customary law areas is carried out by the government by involving the community, where the involvement includes planning, utilization and control. Experience so far shows, that in agrarian conflicts, MHA is always in a weak position. The Customary Law Community (MHA) has a strong position because it

has been confirmed in the constitution. Article 18B Paragraph (2) of the 1945 Constitution states the State recognizes and respects customary law community units and their traditional rights as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in the Act.

The existence and rights of Indigenous Peoples (MHA) are not something given by the state because they existed even before the state was formed. So, when the existence of MHA and their rights are recognized in the constitution and various other legal regulations, it is declaratory.[9] In fact, not only in Indonesia, but the world also recognizes the existence and rights of MHA. The September 2007 United Nations (UN) Declaration states that MHA has the right to access to prompt decisions through fair and mutually agreed on procedures in resolving disputes with States and other parties, as well as for effective remedies for violations of their individual and collective rights. The decision must take into account the customs, traditions, regulations and legal systems of the indigenous peoples (Article 40 of the United Nations Declaration on the Rights of Indigenous People). However, the guarantees in the constitution have not been followed by laws and regulations that provide protection to MHA. The position of MHA was for the first time included in Law Number 5 of 1960 concerning Agrarian Principles (UUPA). It was not long after that, that several other laws emerged, particularly the law in the field of natural resources which helped regulate the position of MHA. However, the regulation of MHA rights in various laws is carried out on a sectoral basis, by regulating MHA according to their sectoral interests, without taking sides, and even tends to reduce them. Some of these laws also ignore conservation aspects, on the contrary, are exploitative and pro-capital.

The absence of a legal umbrella that provides guarantees for Indigenous Law Communities (MHA) results in a weak position when there are disputes over claims to land, forests, or other natural resources, and often experience discrimination accompanied by criminalization and violence. This relates to the field of natural resources, it can be shown that natural resources in Indonesia which were previously controlled by indigenous peoples (traditional common property) have shifted to control by the state (state property) and are now (mainly) controlled by private corporations (private property one of the important rights of MHA is customary rights.

In some areas, these customary rights include not only land but also rights to the sea and rights to waters, which are indeed common property rights. For the record, Law No. 31 of 2004 concerning Fisheries and Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands have indeed included the existence of Indigenous Peoples (MHA), but have not been accompanied by strict regulations regarding their rights.

Customary rights are also related to the legal relationship between the Customary Law Community (MHA) and the land within their territory. The definition of land and the environment in its territory—using Ter Haar's conception of land

plus—includes MHA's authority over land, including its contents, namely waters, forests, and wild animals within their territory which are their source of livelihood. However, this definition of land plus only includes natural resources that are above the ground and does not include rights to natural resources that are below the ground. Because, according to legal provisions, the natural wealth contained in the earth is not included in the authority of the holder of the land rights on it.

c. Implementation of the mechanism for recognizing Indigenous Law Communities The

development of legislation regarding the recognition of Indigenous Law Communities (MHA) in the last ten years is still marked by developments in terms of numbers. This also happened in West Papua, where during this period, several regions, such as Central Kalimantan, enacted local legal products regarding the recognition of MHA. At the national level, legislation at the level of the Law, such as Law No. 6/ 2014 on Villages. The increase in the number of legislation that regulates or contains clauses regarding the recognition of MHA is a continuation of the practice that has been going on since the beginning of the Reformation Era. However, when compared to the previous decade, the last ten years have been marked by at least three new things. First, local legislation simplifies the procedure for recognizing rights. Second, several decisions of the Constitutional Court corrected several laws because they were considered to be contrary to the 1945 Constitution. In the concept of rule of law, these decisions can also be interpreted as control of the judiciary over law-making institutions so as not to abuse their authority. through legislation. Third, the implementation of law in the form of regulatory implementation of the law, especially at the ministerial regulation level, has grown significantly.

In addition to the three things above, something new has also happened in the understanding of the criteria for the Indigenous Law Community (MHA). Previously, the MHA criteria, which consisted of several, were cumulative. The Village Law changes it to a combination of cumulative and optional. Mandatory area criteria are paired with one other criterion that is optional. The second development is the issuance of implementing regulations regarding the recognition of MHA. In terms of time, the implementing regulations were issued only in the last two years. The implementing regulations are: (i) Joint Regulation of 2014 concerning Procedures for Settlement of Land Tenure in Forest Areas; (ii) Permendagri No. 52/2014 on Guidelines for Recognition and Protection of Indigenous Peoples; (iii) Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 9/2015 concerning Procedures for Determining Communal Rights to Land of Indigenous Law Communities and Communities Located in Certain Areas; and (iv) Minister of Environment and Forestry Regulation No. 32/2015 on Private Forests.

Regulation of the Minister of Agrarian Affairs/Head of BPN No. 5/1999 on Guidelines for the Settlement of Indigenous Law Community Rights Issues is the only ministerial-level regulation regarding the recognition of Indigenous Law

Communities (MHA). The promulgation of the four implementing regulations at the level of the ministerial regulation has two meanings. First, it is an indirect acknowledgement from the central government that the pattern of recognition of the Indigenous Law Community (MHA) is not solely in the hands of local governments. Previously, several ministers and departmental officials argued that the department was waiting for the local government to confirm or establish the existence of MHA. Second, to clear the bottleneck of the regulatory implementation of the law, which has not moved after the amendment to the 1945 Constitution and the making of several sectoral laws.

As implementing regulations (administrative rules), the four regulations at the level of ministerial regulations above are placed as instruments so that the target group (regulated group) feels the impact of the Act. Thus, the four implementing regulations are instruments for the state to reach the target group. In this regard, it is necessary to examine how far the legislation made in the last decade, especially the four implementing regulations, can be implemented (implementable), so that it affects the target group.

Legal arrangements regarding the recognition of Indigenous Law Communities (MHA) include legislation or statutory regulations and judges' decisions. The fact that there are multiple MHA recognition schemes is not something planned but an excess of sectoral egoism. Previously, it was suspected that the excess was in the form of an MHA arrangement which was not holistic but partial. Some laws and regulations only regulate customary law or institutions, and others regulate the rights of MHA.[10] The Alliance of Indigenous Peoples of the Archipelago (AMAN) proposed the establishment of a separate law for customary law communities to end this partialism.

Several markers can be used to identify variations in the recognition scheme. The first sign is the form of legal products of inauguration or determination of the existence of the Indigenous Law Community (MHA). The second sign is the type of authority or right that is recognized. For the first sign, namely the form of legal products, there are at least 3 groups of laws and regulations, namely: (i) groups that determine that the confirmation or determination of the existence of MHA is based on local regulations; (ii) the group that determines that the inauguration is carried out by Decree of the Regional Head (Bupati/Mayor); and (iii) the group that determines the inauguration or determination of existence can be carried out by a Team formed by the Regent/Mayor.

The third sign is the difference in authority or recognized rights. Variations due to differences in this matter can be divided into two, namely: (i) laws and regulations governing the recognition of rights to natural resources; and (ii) laws and regulations governing the recognition of Indigenous Law Communities (MHA) as self-governing communities and thereby recognizing their authority to administer government affairs. Apart from the two signs above, variations can also be identified from the types of rights recognized. The stages of MHA recognition can be broadly divided into two, namely: (i) confirmation or establishment of

existence; and (ii) recognition of rights or authorities. The following describes the two stages. Establishment or establishment of existence is a process to check the fulfilment of MHA criteria by a community.

The criteria for checking the existence are demands from the provisions in the constitution and other laws and regulations that require that they are still alive to recognize the Indigenous Peoples (MHA). Thus, the state of being still alive is measured by several criteria. The end of the stage of confirmation or determination of existence is the clarity of the social unit that will act as a legal subject. By clarifying the social units that will become legal subjects, this stage prepares the way for the second stage, namely the recognition of authority and rights. The second stage requires clarity of subjects whose rights to natural resources or other traditional rights will be recognized, or the authority to carry out government affairs.

The latest legislation governing the form of legal products of inauguration or determination of existence is Minister of Environment and Forestry Regulation No. 32/2015. This regulation expands legal products that can be used for inauguration or determination of the existence, into regional legal products. By the provisions of Permendagri No. 1/2014 regional legal products include regional regulations or other names, regional head regulations, joint regional head regulations, DPRD regulations and decisions. The decisions themselves include Regional Head Decrees, DPRD Decisions, DPRD Leadership Decisions and DPRD Honorary Body Decisions.

In addition to differences in the form of legal products, the stages of inauguration or determination of existence can also be distinguished based on how they relate to the second stage. Permendagri No. 52/2014 does not link the inauguration or establishment of existence with the stage of recognition of authority. This is different from the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN No. 9/2015 which places the confirmation or determination of existence as a condition for recognizing communal rights to land.

The term recognition of authority refers to the administration of government affairs as regulated in the Village Law and its implementing regulations. Recognition of the authority specifically refers to the authority based on origin. The Village Law is one of the laws and regulations that directly link the recognition of authority with the confirmation or determination of existence by making the latter a condition for recognition of authority. By determining that the customary village is the owner of assets such as customary rights, forests and springs belonging to the village, the Village Law also recognizes the rights of public legal entities.

2. The Government's Legal Protection Against Customary Rights

In reviewing the philosophical basis regarding the mechanism for protecting indigenous peoples, it is necessary to pay attention to the Special Regional Regulation Number 9 of 2019 concerning Guidelines for Recognition, Protection,

Empowerment of Indigenous Law Communities and Customary Territories in West Papua Province, among others;

a. Article 1 Special Regional Regulation Number 9 of 2019 concerning Guidelines for Recognition, Protection, Empowerment of Indigenous Peoples and Customary Territories in West Papua Province.

This article stipulates in number 6, namely the West Papuan People's Assembly, hereinafter abbreviated as MRPB, is a cultural representation of indigenous Papuans, who have duties and authorities as well as rights and obligations in the context of protecting the rights of indigenous Papuans by fostering customs and culture. , empowering women and strengthening religious harmony. In this case, the protection is a constitutional perspective and the protection of human rights, in the perspective of implementing regional autonomy in Indonesia, specifically through the Papua Special Autonomy, the Papuan customary law community in the West Papua Province area is guaranteed legal protection through Law Number 21 of 2001 concerning Special Autonomy. For Papua Province. Special Autonomy for the Papua Province is a policy that wants to protect, respect and fulfil the human rights of Indigenous Papuans. One form of protection of human rights in Law Number 21 of 2001 is the protection of the rights of indigenous peoples.

This is as stated in Article 43 which regulates the protection of the customary rights of the customary law community and the individual rights of the members of the customary law community concerned. Before the amendment of the 1945 Constitution of the Republic of Indonesia which explicitly gave recognition to customary law communities and their traditional rights, the protection of the customary rights of customary law communities had been regulated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. The existence of customary law communities about the implementation of development and state government often does not receive recognition, protection and respect by various parties in the use of their customary rights in the form of neglect and violation of their rights and the state's protection of the existence of indigenous peoples is less than optimal.

Customary rights are jointly owned and controlled by customary law communities in West Papua which consist of land areas and everything that is above and in the land, sea areas and waters along with everything that is under and under the seabed, space areas The air that is attached to it is a gift from God Almighty and is part of the identity of the indigenous peoples that must be managed sustainably for the greatest prosperity of the Indigenous Papuans for both present and future generations.

b. Article 25 Special Regional Regulation Number 9 of 2019 concerning Guidelines for Recognition, Protection, Empowerment of Indigenous Law Communities and Customary Territories in West Papua Province

This article clearly stipulates that Regency/City Regional Governments are obliged to: (a) provide budget sourced from Regency/Municipal APBD City for the

mapping of Customary Areas; (b) determine the standardization of land selling value based on NJOP according to land classification; (c) involve MHA in making decisions regarding the utilization of their Customary Territory; (d) provide protection for sacred places; (e) determine the amount of rental and contract value for the utilization of the Customary Area; (f) supervising permits for the utilization of Customary Areas by involving MHA; (g) submit the plan for the use and/or management of the customary territory and natural resources of MHA that the Regency/Municipal Government intends to carry out to the MRPB; (h) determine the standard value of leases and contracts for customary land use; (i) carry out activities to recognize, empower and protect the rights of MHA in this Special Regional Regulation; (j) involve MHA in making decisions regarding the utilization of their Customary Territory; (k) establish a team for resolving conflict disputes between MHA and/or MHA and other parties; (l) provide financial support from the APBD for the mapping of Customary Territories at least 15% (fifteen percent) since this Special Regional Regulation is enacted every fiscal year until the entire Customary Territory is mapped; (m) the financial support as referred to in letter n can be in the form of assistance for mapping facilities, experts and accompanying organizations as well as other support that accelerates the mapping process; and (n) appoint an OPD who is responsible for managing all matters relating to customary law communities in accordance with their main duties and functions.

In addition to the perspective of the constitution and protection of human rights, from the perspective of implementing regional autonomy in Indonesia, specifically through the Special Autonomy for Papua, the indigenous peoples of Papua in the West Papua Province are guaranteed legal protection through Law Number 21 of 2001 concerning Special Autonomy for the Papua Province. . Special Autonomy for the Papua Province is a policy that wants to protect, respect and fulfil the human rights of Indigenous Papuans. One form of protection of human rights in Law Number 21 of 2001 is the protection of the rights of indigenous peoples. This is as stated in Article 43 which regulates the protection of the customary rights of the customary law community and the individual rights of the members of the customary law community concerned. Before the amendments to the 1945 Constitution of the Republic of Indonesia which explicitly gave recognition to customary law communities and their traditional rights, the protection of the customary rights of indigenous peoples had been regulated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles.

The existence of customary law communities about the implementation of development and state government often does not receive recognition, protection and respect by various parties in the use of their customary rights in the form of neglect and violation of their rights and the lack of state protection for the existence of indigenous peoples; Customary rights that are jointly owned and controlled by customary law communities in West Papua which consist of land areas and everything that is above and in the land, sea areas and waters along with everything that is under and under the seabed, space areas The air that is attached

to it is a gift from God Almighty and is part of the identity of the indigenous peoples that must be managed sustainably for the greatest prosperity of the Indigenous Papuans for both present and future generations. The guarantee of the rights of indigenous peoples in the provisions of other applicable laws and regulations is not sufficient to provide recognition, protection and empowerment of the community over the rights to their ulayat lands and customary areas as a whole. Therefore, to follow up the provisions of Article 43 of Law Number 21 of 2001 concerning Special Autonomy for the Papua Province as amended by Law Number 35 of 2008 to give responsibility to the Government, Provincial Government and Regency / City Government to provide protection and empowerment regarding the customary rights of customary law communities and the Minister of Home Affairs Regulation Number 52 of 2014 concerning Guidelines for Recognition and Protection of Indigenous Law Communities, it is necessary to stipulate a Special Regional Regulation concerning Guidelines for Recognition, Protection and Empowerment of Indigenous Law Communities and Customary Territories in West Papua Province.

Conclusion the

nature of ulayat rights as the rights of indigenous and tribal peoples in West Papua is an effort made by using a scientific approach in finding the truth about the upholding of norms based on Law Number 21 of 2001 concerning Special Autonomy in Papua, Perdasus Number 18 of 2008 concerning People-Based Economy, Perdasus Papua Province Number 20 of 2008 concerning Customary Courts, Perdasus of Papua Province Number 22 of 2008 concerning Protection and Management of Natural Resources of Indigenous Law Communities and Perdasus of Papua Province Number 23 of 2008 concerning Ulayat Rights of Customary Law Communities and Individual Rights of Citizens The Customary Law Community and the responsibility of the West Papua Province government to issue regulations on natural resource management by prioritizing customary law in West Papua.

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