

Management Of Natural Resources Based On Local Wisdom By Traditional Law Communities

Triono Eddy

Pascasarjana Universitas Muhammadiyah Sumatera Utara

* Corresponding author:

Email: trionoeddy@umsu.ac.id

Abstract.

Natural resources are gifts and mandates given by Allah SWT to the Indonesian people as priceless wealth. The availability of natural resources, both biological and non-biological, is very limited. Therefore, these natural resources must be managed wisely so that they can be used in an efficient, effective and sustainable manner for the greatest prosperity of the people and can even continue to be enjoyed and felt by the present generation and for generations to come. This research was conducted with a normative research method. Normative research is a scientific research procedure to find the truth based on scientific logic from the normative side. Recognition and respect for customary law communities and traditional communities can be realized in the form of protection and empowerment in accordance with their characteristics. This can be seen in the still scattered and scattered regulations regarding indigenous peoples in natural resource management which are sectoral in nature so that they have not accommodated the legal needs of indigenous peoples.

Keywords: *Natural Resource, Traditional Law, Local Wisdom*

I. INTRODUCTION

The potential of natural resources owned by the Indonesian people is the basic capital in national development. In line with Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that the earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people, the management of natural resources is conceptually integrated and comprehensive. and constitutional must be based on the approach of values prevailing in society in order to be able to properly feel the benefits of the community itself. Indonesia is known throughout the world as a country that has rich and abundant natural resources. Natural resources are renewable (renewable) and non-renewable (non-renewable), as well as in the form of natural capital (natural resource stock), such as watersheds, lakes, protected areas, coasts, swamp and peat areas, and others, as well as natural resources in the form of commodities (natural resource commodities) such as wood, rattan, mining minerals, oil and gas, fish, and others, are evenly distributed throughout the sovereign territory of the Unitary State of the Republic of Indonesia (NKRI) [1].

Indonesia's tropical forest (tropical rain forest) is the second largest in the world after the tropical forest area of the Amazon River basin in Brazil. Indonesia's

tropical forest area reaches 133 million hectares, or about 71% of Indonesia's land area, which holds the richest and most complete biodiversity (mega biodiversity) in the world [2]. In addition, Indonesia's coastline of 81 thousand kilometers makes Indonesia the country with the longest coastline in the world. The wide sea waters provide a comfortable place for the population growth of various types of fish, seaweed, and coral reefs in Indonesia's marine areas. Indonesia's marine fisheries potential ranges from 6.4 million metric tons [3]. Indonesia has 3.9 million hectares of coral reefs, with 70 genera and 590 species of hard corals, which are the largest form of coral diversity in the world [4]. Likewise, the wealth of oil and gas as well as mining mineral resources contained in the bowels of the Indonesian earth, such as gold, copper, coal, silver, nickel, tin, bauxite, and others constitute the natural wealth of the archipelago [5]. The conditions that have occurred in the last 4 (four) decades show that foreign domination in the management of natural resources for the mining and mineral sector, especially in the upstream sector, has reached 80%. This fact clearly shows that there are gaps and injustices in the management of natural resources that cause people to be displaced from access and control over natural resources for their survival.

This happens because Indonesia's natural wealth is used by the government as the main capital in the implementation of national development. Therefore, in the name of national development that is oriented towards pursuing economic growth targets, natural resources tend to be exploited to increase the country's income and foreign exchange. The consequences that arise later are slowly but surely damage and degradation of the quantity and quality of Indonesia's natural resources which include: The rate of forest destruction reaches 1 million hectares per year in the period 2000-2012 [6], and a number of tropical forest species are threatened with extinction due to resource exploitation. uncontrolled forest; Nearly 95% of Indonesia's coral reefs are threatened by human activities, with more than 35% experiencing high or very high threat. Nearly 64% of the 8.6 million hectares, in addition to the area of mangrove forests (5.5 million hectares) suffered serious damage in the period 1999-2005 [7]. as a result of illegal logging for firewood and conversion to large aquaculture areas; Of the 3.1 million hectares of mangrove forest that were still good in 2005, about 1.8 million hectares were damaged [8]; Open-pit mining activities carried out on a large scale have changed the landscape, which in addition to destroying the soil also eliminates the vegetation on it. The ex-mining lands form giant puddles, so that the expanse of land becomes arid and acidic due to tailings waste and waste rock produced from these mining activities [9]. The State explicitly recognizes and respects customary law community units 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, which is affirmed in Article 18B of the 1945 Constitution of the Republic of Indonesia.

The state also respects the cultural identity and rights of traditional communities in line with the development of the times and civilization as regulated in

Article 28I paragraph (3). Especially after the issuance of the Constitutional Court's Decision No. 35/PUU-X/2012, which emphasizes the recognition of the existence of indigenous peoples who must continue to obtain convenience in achieving prosperity, guaranteeing fair legal certainty for both legal subjects and objects, and if necessary obtaining special treatment (affirmative action) and recognition the customary forest (which is also called clan forest, private forest, or other names) is within the scope of customary rights because it is in one territorial unit (singular area) of the customary law community, and the Constitutional Court Decision No. 55/PUU-VIII/2010, among others, that in order to resolve disputes over plantation land ownership related to state customary rights, it should be consistent with the explanation of Article 9 paragraph (2) of the Law on Plantations, that the existence of customary law communities fulfills five requirements, namely (a) the community is still in the form of an association (*rechtsgemeinschaft*) (b) there are institutions in the form of customary rulers (c) there is a clear customary law area (d) there are legal institutions and instruments, especially customary courts that are still being adhered to and (e) there are inauguration with local regulations.

II. METHODS

This research includes normative research. Normative research is a series of activities carried out with the aim of getting a reference to a problem taken by using legal materials as an indicator. In this study, the research method used is a literature study technique in the form of document studies and other supporting techniques, namely examining existing documents, namely by collecting data and information from books, scientific articles, laws and regulations and other written materials related to this research, namely by how to find, study and record and interpret things related to the object of research.

III. RESULT AND DISCUSSION

3.1. Local Wisdom and Natural Resource Management

Based on the description above, in the management of natural resources, customary law communities can be carried out as groups of people who have traditionally lived in certain geographic areas, even though the arrangement is still in the context of a draft law (RUU). As for the rights of Indigenous Peoples are the Rights to Customary Territories, in this section the emphasis is on the rights of Indigenous Peoples to customary territories. Indigenous peoples who have been determined based on the provisions of the Law are entitled to the Customary Territories that they have owned, occupied, and managed for generations based on the provisions of this Law. Customary territories in the form of land are given land rights. Land rights are granted in the form of communal rights. Communal rights are obtained through an application to the Regent/Mayor which is carried out in accordance with the provisions of the legislation.

Communal rights cannot be transferred to other parties. Utilization of communal rights by other parties can only be carried out through a joint decision-making mechanism for Indigenous Peoples based on Customary Law. Customary areas in the form of forests are given the right to manage and use them. The right to manage and utilize is granted through the designation of customary forest. The determination of customary forest is obtained through an application to the competent authority in accordance with the provisions of the legislation. Customary areas in the form of coastal waters are given the right to use space and resources of coastal waters. The right to use the space and resources of coastal waters is granted through a stipulation by the competent authority in accordance with the provisions of the legislation. Indigenous Peoples have the right to participate in determining the planning, development, and sustainable use of their Customary Territory in accordance with local wisdom.

3.2. Indigenous Peoples' Rights

Regarding the rights to natural resources, the emphasis is on the rights of indigenous peoples to manage and utilize natural resources in the Customary Territory in accordance with local wisdom. In the event that in the Customary Territory there are natural resources that have an important role in meeting the needs of the people, the state can manage them. For the management carried out by the State, Indigenous Peoples are entitled to compensation. In addition to the compensation referred to, Indigenous Peoples are entitled to receive major benefits in the implementation of corporate social responsibility. Then the right to development for indigenous peoples is important first to emphasize the existence of arrangements that indigenous peoples are entitled to benefits as a result of the implementation of national development, namely, among others, in the form of providing and facilitating education, health, population, economic, social, cultural, legal, and social services. and politics of the Government and Local Government.

This emphasis is important as an affirmation for indigenous peoples because as citizens so far there are still many who have not enjoyed the results of development so that their rights need to be strengthened. In addition, it is necessary to regulate the rights of indigenous peoples to be able to participate in the Government's development program in their customary territories from the planning, implementation, to monitoring stages. It is intended that indigenous peoples living in customary areas know and can contribute to determining the appropriate and necessary development for them. For this reason, it is also necessary to stipulate that indigenous peoples have the right to obtain information regarding development plans to be implemented by the government and/or other parties in their customary territories, which will have an impact on territorial integrity, preservation of natural resources, culture, and customary governance systems. Indigenous peoples also have the right to reject or submit proposals for changes to the development plan to be implemented in their customary territory and have the right to propose other developments that are in accordance with

their aspirations and needs in their customary territory based on a mutual agreement with the Government.

Then there is the right to the spirituality and culture of indigenous peoples' lives which are very closely related to their spirituality and culture. Therefore, it is necessary to stipulate in this law which states that indigenous peoples have the right to adhere to and practice belief systems, spiritual ceremonies, and rituals inherited from their ancestors. In addition to these rights, to customs, culture, traditions and arts, indigenous peoples must also be given the right to maintain, develop, and teach them to their heirs and at the same time be given the right to protect and develop their traditional knowledge and intellectual property. The regulation of these rights is important to maintain the values, traditions, and local wisdom of indigenous peoples which are part of the nation's national identity so that they are not lost due to being eroded by changing times. Right to the environment where Indigenous Peoples are entitled to a good and healthy environment. The right to the environment is manifested in the form of:

- a. Submission of proposals and/or objections to business plans and/or activities that may have an impact on the environment;
- b. Complaints due to allegations of environmental pollution and/or destruction; and
- c. Beneficiaries of knowledge utilization

Traditional is related to environmental management which has economic value.

Furthermore, the obligations of indigenous peoples are as follows:

- a. Maintain the integrity of the Customary Territory within the framework of the Unitary State of the Republic of Indonesia.
- b. Develop and preserve its culture as part of Indonesian culture.
- c. Tolerance between Indigenous Peoples and with other communities.
- d. Maintaining the preservation of environmental functions and controlling pollution and/or environmental damage in the Customary Territory is carried out by, among others, preserving the forest and not damaging the environment and the surrounding ecosystem, and preserving the customary area.
- e. Manage and utilize natural resources in indigenous territories in a sustainable manner.
- f. Maintaining the sustainability of national development programs and results; and
- g. Comply with the provisions of laws and regulations.

3.3 Natural Resources and Changes in Local Wisdom

If at first the community had extraordinary wisdom towards the surrounding environment, now that wisdom is fading due to various factors resulting in disturbance and damage to the sea, causing loss or disruption of the function of natural resources for the sustainability of generations of all living things in the present and in the future. Damage is not only borne by humans but also by other creatures. In particular, humans and their culture have high ecological flexibility, but other living things are threatened with extinction due to habitat destruction. Even though local people have

very good wisdom, the changes that occur in the area where they live have an unfavorable impact on the existence of a modern fishing system that promises a better level of income. The high demand for natural resource products has encouraged them to utilize the results of natural resources as much as possible so that sometimes they have violated their local wisdom system. In addition, the increasing number of people pushes humans towards greater dependence on natural resources and their results. Community pressure and intervention are increasing due to the rapid development of fishing technology. Communities began to use fishing gear with high productivity, and it was possible for overfishing to occur. The community also perceives that there has been injustice in the implementation of their natural resource and environmental management policies which they consider to have robbed the community of customary rights and restricted their area of economic activity.

This encourages people to try to get out of the confines of the norms formulated by their ancestors and not pay attention to environmental sustainability. The shift in local wisdom of the community is caused by various factors, including low mastery of technology, population growth, population migration, limited operating areas, policies that castrate customary rights and freedom from theft of natural products. According to Mac Kinnon, changing the behavior of traditional people towards conservation can be done and is not as difficult as imagined. Environmental damage can occur if the environmental image owned by the community is different from reality, the community is late in making adjustments to obtain a new environmental image, humans do not treat their environment rationally and there is a potential for greed, greed and greed for every human being to take the maximum benefit from it. availability of natural resources. Local wisdom can be understood as a human effort by using his mind to act and behave towards something, object, or event that occurs in a certain space. Local wisdom is knowledge that arises from a long period of evolution with the community and its environment in a local system that has been experienced together. The evolutionary process that is so long and inherent in society can make local wisdom a potential energy source of the community's collective knowledge system to live together dynamically and peacefully.

3.4 Local Wisdom in Utilizing Natural Resources

According to several experts who observe the relationship between local communities and natural resources, especially the surrounding forest, that local wisdom is identical to traditional knowledge which is cultural knowledge possessed by a particular community which includes a number of cultural knowledge relating to natural resource management models. sustainably. That the current condition of traditional wisdom and local cultural values cannot be separated from the condition of the owners and main users, namely indigenous peoples. Indigenous peoples are communities that play an important role in ensuring the sustainability of environmental development in Indonesia regarding how to manage existing natural resources. The

way of managing natural resources and the environment by indigenous peoples has been proven to enrich natural resource diversity and sustainability.

Indigenous peoples are the largest element in Indonesia's state structure and play a very important role in sustainable development. Indigenous peoples with all their local wisdom will of course experience changes like culture. This is considering that local wisdom is one form of community culture. Culture will change influenced by various factors. Where culture will change influenced by population growth, movement or entry of other residents in a particular community, entry of new equipment as a product of modernization, and ease of access to enter or leave a community. Relationships between individuals or groups that will also affect the culture. The criteria for customary law communities are based on the definition in Law Number 32 of 2009 concerning Environmental Protection and Management, the criteria for customary law communities related to environmental protection and management consists of several components, including:

- a. Community groups who have lived in certain geographic areas for generations;
- b. The existence of ties to ancestral origins;
- c. There is a strong relationship with the environment;
- d. The existence of a value system that determines economic, political, social and customary law institutions.

Forests and forest functions cannot be separated from human influence in manipulating the use and utilization of forest resources for the benefit of life and the environment. With the acceptance of the position of the community as the main actor in the development of forest resources in all forest functions (production, protection and conservation), the enthusiasm and awareness of the community can be encouraged to build, maintain, and utilize forest resources in a sustainable manner. The dependence between the forest and the community can be seen from the community's dependence on the production of forest product services.

Forests as natural resources also need communities to manage them. Many studies show that indigenous peoples in Indonesia have traditionally managed to maintain and enrich biodiversity. It is a reality that most indigenous peoples still have customary wisdom in natural resource management. These community rules or traditions are inherited from generation to generation which is also known as customary law and applies to coastal communities. In fact, the values of local wisdom and customary law are quite effective in managing marine and fishery natural resources, and maintaining the preservation of marine ecosystems from various destructive and destructive activities.

IV. CONCLUSION

The existence of recognition and respect from the State for customary law communities in the management of natural resources as outlined in the 1945 Constitution was not followed by an arrangement that provides protection for

customary law communities, including traditional communities. Recognition and respect for customary law communities and traditional communities can be realized in the form of protection and empowerment in accordance with their characteristics. This can be seen in the still scattered and scattered regulations regarding indigenous peoples in natural resource management which are sectoral in nature so that they have not accommodated the legal needs of indigenous peoples. This has resulted in the absence of legal certainty for indigenous peoples in obtaining recognition, protection and empowerment. Therefore, it is necessary to regulate the recognition, protection and empowerment of indigenous peoples in a comprehensive manner in a law which is currently still under discussion in the DPR through the Draft Law on Customary Law Community since the SBY administration in 2014 until the current government.

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