Constitutional and Jurisdictional Review of Natural Resource

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Abstract.
The constitution mandates that natural resources should be used as much as possible to improve the welfare and prosperity of the people, but in practice they are over-exploited and their utilization is controlled in part by national and foreign investors/investors for business purposes. This research was conducted to determine the constitutional basis and juridical basis of natural resource management. This research is a normative research. The type of normative legal 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. The constitutional basis for managing the environment and natural resources of Indonesia is the Preamble to Paragraph IV of the 1945 Constitution of the Republic of Indonesia.

Keywords: *Constitutional Foundation, Juridical Foundation, Natural Resources*

I. INTRODUCTION

The constitution mandates that natural resources should be used as much as possible to improve the welfare and prosperity of the people, but in practice they are over-exploited and their utilization is controlled in part by national and foreign investors/investors for business purposes. The ideology of control and utilization of natural resources is like the noble mandate of the 1945 Constitution of the Republic of Indonesia, especially in: Preamble to Paragraph IV which states: "Then from that, to form an Indonesian state government that protects the entire nation and all of Indonesia's bloodshed. and promote public welfare, educate the nation's life and contribute to creating world order based on freedom, eternal peace, and social justice, then ... etc."; and the provisions of Article 33 paragraph (3) which states: "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.The rise of cases caused by the management of natural resources initially stems from a misunderstanding of regional interpretations in looking at Law No. 32 of 2004 concerning Regional Government Article 17 paragraph (2) mentions the relationship in the field of utilization of natural resources and other resources.Between regional governments as referred to in Article 2 paragraph (4) and paragraph (5) which includes: a. implementation of the utilization of natural resources and other resources which are the authority of the region; b. cooperation and profit sharing on the utilization of natural resources and other resources between regional

governments; and c. management of joint licensing in the utilization of natural resources and other resources.

Then Article 18 paragraph (1) states that Regions that have marine areas are given the authority to manage resources in marine areas; Paragraph (2) Regions get profit sharing on the management of natural resources under the bottom and/or on the seabed in accordance with the laws and regulations. Paragraph (3) The regional authority to manage resources in the marine area as referred to in paragraph (1) includes: a. exploration, exploitation, conservation, and management of marine wealth; b. administrative arrangements; c. spatial arrangement; d. law enforcement of regulations issued by the regions or those delegated by the government; e. participate in security maintenance; and f. participate in the defense of the sovereignty of the State.Whereas the implementation of regional government in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia states that regional governments regulate and manage government affairs themselves according to the principle of autonomy and assistance tasks directed at accelerating the realization of community welfare through improvement, service, empowerment, and community participation. as well as increasing regional competitiveness by taking into account the principles of democracy, equity, justice, privilege and specificity of a region in the system of the Unitary State of the Republic of Indonesia.

II. METHODS

This research is a normative research. The type of normative legal 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.

III. RESULT AND DISCUSSION

The constitutional basis for managing the environment and natural resources of Indonesia is the Preamble to Paragraph IV of the 1945 Constitution of the Republic of Indonesia which states: "protect the entire nation and the entire homeland of Indonesia and promote public welfare, educate the nation's life, and participate in creating world order. based on freedom, eternal peace, and……etc.” Furthermore, the ideology reflected in the Preamble to Paragraph IV above is explicitly described in the provisions of Article 33 paragraph (3) which states: "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people".In order to realize the management of natural resources for the greatest prosperity of the people, more specifically the principles of the national economy are stated in the provisions of Article 33 paragraph (4) and the Decree of the People's Consultative Assembly Number IX/MPR/2001 concerning Agrarian Reform and Natural Resource Management. . The preamble to the MPRI Decree above explicitly states that so far there has been degradation of environmental quality and damage to natural resources, imbalances in the structure of control, ownership, use and

utilization as well as causing various conflicts in the management of natural resources, due to laws and regulations in the field of resource management. natural resources that overlap and contradict each other.

Therefore, in order to realize a just, democratic, and sustainable natural resource management, natural resource management must be carried out in an integrated and coordinated manner, able to accommodate dynamics and aspirations and involve the community and be able to resolve conflicts.MPR Decree Number IX/MPR/2001 also mandates that the House of Representatives of the Republic of Indonesia (DPR RI) together with the President make a policy to carry out a review of laws and regulations by referring to the principles of agrarian reform and natural resource management for policies to reform laws and regulations. -Invitations that are not in line with this MPR RI Decree.This TAP contains orders for the Government to review various laws and regulations related to natural resources, resolve agrarian conflicts and natural resources. Some of the principles of agrarian reform and natural resource management in the TAP MPR in Article 4 related to the protection of customary law communities include:

a. Maintain and maintain the integrity of the Unitary Republic of Indonesia;
b. Respect the rule of law by accommodating diversity in legal unification
c. Recognizing, respecting, and protecting the rights of indigenous peoples and the nation's cultural diversity to agrarian resources/natural resources

In addition to the TAP MPR, recognition of customary law communities is also seen in several laws and regulations including: Law Number 5 of 1960 concerning Agrarian Principles in Article 5 of Law Number 5 of 1960 states: Agrarian law that applies to the earth , water and space are customary laws, as long as they do not conflict with national and state interests, which are based on national unity, with Indonesian socialism and with the regulations contained in this law and with other laws and regulations, everything with due regard to elements of - elements that rely on religious law. Then in the explanation of Article 5 it is stated that the affirmation of customary law is used as the basis of the new agrarian law. This explanation of Article 5 also refers to General Elucidation III regarding the grounds for establishing legal unity and simplicity, number 1 which states that the current agrarian law has a "dualism" character and makes a distinction between land rights according to customary law and customary rights. land rights according to western law, which are based on the provisions in Book II of the Indonesian Civil Code.

The Basic Agrarian Law intends to eliminate this dualism and consciously wants to establish a legal unity, in accordance with the wishes of the people as a single nation and in accordance with the interests of the economy. Based on the provisions of Article 5 of Law Number 5 of 1960, the state is responsible for giving recognition to land rights (ulayat rights) owned by customary law communities as long as they do not conflict with national and state interests. Thus, the Government and Regional Governments may not arbitrarily seize these customary rights without the consent of

the customary law community.Article 6 of Law Number 5 of 1960 also states: "all land rights have a social function". From these provisions it can be concluded that any land rights that exist in a person cannot be justified, that his land will be used (or not used) solely for his personal interests, especially if it causes harm to the community. The use of land must be adapted to its conditions and the nature of its rights, so that it is beneficial both for the welfare and happiness of those who own it and for the community and the state.

However, this provision does not mean that individual interests will be totally suppressed by the public interest (community) because the Basic Agrarian Law also takes into account individual interests, including the interests of using land rights owned by indigenous peoples.Then Law Number 5 of 1994 concerning Ratification of the International Convention on Biological Diversity (United Nation Convention on Biological Diversity) in Article 8 relating to conservation in letter j states: “respect, protect and maintain knowledge, innovations and community practices indigenous and local communities that reflect lifestyles of traditional characteristics, compatible with the conservation and sustainable use of biological diversity and promote their wider application with the consent and involvement of the owners, such knowledge, innovations and practices and encourage the equitable sharing just the benefits that result from leveraging such knowledge, innovations and practices.” Furthermore, in Article 15 point 4 of Law Number 5 of 1994 it is stated that if access to biological resources is granted, it must be on the basis of mutual consent (especially the owner of the resource).

Then in Law Number 39 of 1999 concerning Human Rights in Article 6 states that:

(1) In the context of enforcing human rights, the differences and needs in customary law communities must be considered and protected by law, society and the government.

(2) The cultural identity of the customary law community, including the rights to customary land is protected, in line with the times.

While the explanation of Article 6 states:

Paragraph (1) : Customary rights which are actually still valid and upheld within the customary law community must be respected and protected in the context of protecting and enforcing human rights in the community concerned with due observance of the laws and regulations.

Paragraph (2) : In the context of upholding human rights, the national cultural identity of indigenous peoples, customary rights which are still strictly adhered to by local customary law communities, are still respected and protected as long as they do not conflict with the principles of the rule of law which have the core justice and welfare of the people.

In this regard, it is also seen in Law Number 7 of 2004 concerning Water Resources. In Article 6 paragraph (2) of Law Number 7 of 2004 it is stated that the

control of water resources is carried out by the Government and/or regional governments while still recognizing the right to water resources. ulayat of local customary law communities and similar rights [1] as long as they do not conflict with national interests and laws and regulations. Furthermore, in Article 6 paragraph (3) of Law No. 7 of 2004, it is stated that the customary rights of customary law communities to water resources as referred to in paragraph (2) are still recognized as long as in fact they still exist and have been confirmed by local regulations. In his explanation it is stated that "Recognition of the existence of customary rights of customary law communities including rights similar to that, it should be understood that what is meant by customary law communities is a group of people who are bound by their customary law order as joint citizens of an alliance of customary law based on the same place of residence or on the basis of heredity.

The ulayat rights of indigenous peoples are considered to still exist if they fulfill three elements, namely:

a. Elements of customary law communities, namely there are a group of people who still feel bound by their customary law order as joint citizens of a certain legal alliance, who recognize and apply the provisions of the alliance in their daily lives;
b. The element of territory, namely there is a certain ulayat land which is the living environment of the members of the legal alliance and the place where they take their daily needs; and
c. The element of the relationship between the community and its territory is that there is an order of customary law regarding the management, control, and use of their ulayat land which is still valid and obeyed by the citizens of the legal alliance.

In Article 9 of Law Number 7 of 2004 it is stated that the right to use water can be granted to an individual or a business entity with a permit from the Government or regional government. The holder of the right to use water can drain water over other people's land based on the approval of the holder of the right to the land concerned. The agreement can be in the form of a compensation agreement [2] or compensation. The amount of compensation is determined based on the agreement of the parties Furthermore, regarding the obligation of the applicant who submits an application for rights to a certain area, to first conduct consultations with the customary law community who holds customary rights over an area and the citizens holding rights to the land concerned, it is also explicitly regulated in Law Number 39 of 2014 Regarding Plantation in Article 12 paragraph (1) which states that: "In the event that the Land required for a Plantation Business is the Land of the Customary Rights of the Customary Law Community, the Plantation Business Actors must hold consultations with the Indigenous Law Community holding the Ulayat Rights to obtain approval regarding the transfer of Land and in return."Deliberations with customary law communities holding ulayat rights and citizens holding land rights are not always followed by the granting of land rights.

This provision positions the interests of indigenous peoples over an area not as a right that must be strengthened, but as a right that must be released with compensation. Thus, the rights of indigenous peoples over their areas of life are not the main thing, because the interests of plantations are prioritized. However, the rights of the customary law community are given a number of compensations if the area is made into a plantation area.In the general explanation, it is also stated that the granting of land rights for plantation business must still take into account the customary rights of customary law communities, as long as in reality they still exist and do not conflict with higher laws and national interests. Furthermore, the meaning or definition of customary forest, state forest, and private forest is also regulated in Law no. 19 of 2004 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2004 concerning Amendments to Law Number 41 of 1999 concerning Forestry to become Law Number 41 of 1999 concerning Forestry.Several definitions whose material relates to customary law communities such as customary forests, state forests, and private forests are also elaborated as in Article 1 point 4 which states: "State forest is a forest located on land that is not encumbered with land rights.

" Article 1 number 5 states: "Hutan rights are forests located on land that is encumbered with land rights." Meanwhile, Article 1 point 6 states that customary forest is a state forest located in the territory of customary law communities.The inclusion of forests controlled by customary law communities in the Forestry Law is a consequence of the right to control and manage by the State as an organization of power for all the people in the principle of the Unitary State of the Republic of Indonesia. Thus, as long as the customary law community still exists and its existence is recognized, it can carry out forest management activities and the collection of forest products.In addition, the provisions of Law No. 41/1999 stipulates that customary law is regulated in CHAPTER IX of Indigenous Law Communities, Article 67 paragraph (1). The article states that customary law communities as long as in reality they still exist and are recognized for their existence have the right to collect forest products to fulfill the daily needs of the customary law community concerned, carry out forest management activities based on applicable customary law and do not conflict with the law. , and get empowerment in order to improve their welfare. Where in his explanation that the existence of customary law communities is recognized, if according to reality it meets the elements, among others:

1. The community is still in the form of an association (rechtsgemeenschap);
2. There are institutions in the form of traditional rulers;
3. There is a clear customary law area;
4. There are legal institutions and instruments, particularly customary courts, which are still being adhered to; and
5. Still collecting forest products in the surrounding forest area to fulfill daily needs.

Furthermore, in Article 67 paragraph (2) it is stated: "The confirmation of the existence and elimination of customary law communities as referred to in paragraph

(1) shall be stipulated by a Regional Regulation." Elucidation of paragraph (2) states that Regional Regulations are prepared by taking into account the results of research by customary law experts, aspirations of the local community, and customary law community leaders in the area concerned, as well as other relevant agencies or parties.

The acknowledgment of the existence of indigenous peoples is also contained in Law Number 23 of 2006 concerning Population Administration, which in Article 25 regulates the data collection of vulnerable population in population administration, including remote indigenous communities. Remote communities are socio-cultural groups that are local and dispersed and are less or not involved in networks and services, both social, economic and political, with the following characteristics [5]:

a. In the form of a small, closed and homogeneous community;
b. Social institutions are based on kinship relations;
c. Generally remote geographically and relatively difficult to reach;
d. Simple technological equipment; and
e. Limited access to social, economic and political services

This situation was further exacerbated by the issuance of Law No. 32 of 2004 concerning Regional Government. The law which was born with the initial aim of realizing real, dynamic and responsible regional autonomy has even added new problems. Real autonomy means that the granting of autonomy to regions is based on factors, calculations and actions or policies that truly guarantee the regions concerned to take care of the household in their regions. Dynamic autonomy means granting autonomy to regions based on development situations, conditions and developments, while responsible autonomy means that the granting of regional autonomy is truly in line with its objectives, namely to facilitate and equalize development in all corners of the country without any conflict between policies provided by the regional government as well as the operational implementation carried out by the regions receiving autonomy, so that regional development is a complete and comprehensive series of national development. Its implementation is often misunderstood as a way for the Regional Government to obtain the right to manage Natural Resources as widely as possible in order to obtain the maximum benefit for the region itself. In fact, not infrequently carried out in ways that violate the law such as corruption. This was confirmed by former chairman of the Corruption Eradication Commission Agus Rahardjo at Gakkum Fest on July 23, 2019 that Corruption in the Natural Resources sector occurred massively with losses reaching trillions of rupiah [6]. For example, the granting of a mining business permit which brought the Regent of Kotawaringin Timur Supian Hadi as a suspect with a state loss of 5.8 Trillion Rupiah[7]

With regard to Indigenous Law Communities, Article 1 number 33 of Law Number 1 of 2014 states that Indigenous Law Communities are a group of people who have lived for generations in certain geographical areas in the Unitary State of the Republic of Indonesia because of ties to ancestral origins, a strong relationship with land, territory, natural resources, have customary government institutions, and

customary law order in their customary territory in accordance with the provisions of the legislation. This Law also formulates the authority of the Indigenous Law Community in the utilization of space and resources of Coastal Waters and Waters of small islands in the territory of the Indigenous Law Community. Furthermore, in Article 60 paragraph (1), the community has the right to propose the territory of the Customary Law Community into the RZWP-3-K in terms of the Management of Coastal Areas and Small Islands. Minor is based on applicable customary law and does not conflict with the provisions of the legislation. In terms of determining the recognition of Indigenous Law Communities, Law Number 1 of 2014 adjusts to the provisions of the legislation.

In accordance with the mandate of the 1945 Constitution of the Republic of Indonesia, Regional Governments have the authority to regulate and manage their own government affairs according to the principles of autonomy and co-administration. The granting of broad autonomy to regions is directed at accelerating the realization of community welfare through service improvement, empowerment, and community participation. In addition, through broad autonomy, regions are expected to be able to increase competitiveness by taking into account the principles of democracy, equity, justice, privilege, and specificity as well as regional potential and diversity in the system of the Unitary State of the Republic of Indonesia.The principle of regional autonomy uses the principle of autonomy as widely as possible in the sense that regions are given the authority to manage and regulate all government affairs outside those of the Government. Regions have the authority to make regional policies to provide services, increase participation, initiatives, and community empowerment aimed at improving people's welfare.

In line with this principle, the principle of real and responsible autonomy is also implemented. The principle of real autonomy is a principle that to handle government affairs, it is carried out based on tasks, authorities and obligations that actually already exist and have the potential to grow, live and develop in accordance with the potential and uniqueness of the region. Thus the content and type of autonomy for each region is not always the same as for other regions. As for what is meant by responsible autonomy, autonomy in its implementation must be in line with the objectives and purposes of granting autonomy, which is basically to empower the regions, including improving the welfare of the people, which is the main part of national goals. Along with this principle, the implementation of regional autonomy must always be oriented towards improving the welfare of the community by always paying attention to the interests and aspirations that grow in the community. In addition, the implementation of regional autonomy must also ensure harmonious relations between a region and other regions, meaning that it is able to build cooperation between regions to improve mutual welfare and prevent inequality between regions.

It is no less important that regional autonomy must also be able to guarantee harmonious relations between regions and the Government, meaning that it must be able to maintain and maintain the territorial integrity of the State and the establishment of the Unitary State of the Republic of Indonesia in order to realize the goals of the state.In the General Provisions chapter of Article 1 number 43 of Law Number 23 of 2014 concerning Regional Government, the definition of village is stated as follows: Village is a village and customary village or what is called by another name, hereinafter referred to as Village, is a legal community unit that has authorized territorial boundaries. to regulate and manage Government Affairs, the interests of the local community based on community initiatives, origin rights, and/or traditional rights that are recognized and respected in the system of government of the Unitary State of the Republic of Indonesia. Based on these provisions, the definition of a village has the following elements:

a. Is a legal community unit;
b. Has territorial boundaries that are authorized to regulate and manage government affairs, the interests of the local community;
c. Origin rights, and/or traditional rights that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia.

Law Number 23 of 2014 also regulates a strategy for accelerating regional development which includes priorities for development and management of natural resources at sea, acceleration of economic development, socio-cultural development, human resource development, development of customary law related to marine management, and community participation in the development of the province. Archipelago Characteristics. In the implementation of decentralization, regional arrangements are carried out. One of the objectives of this regional arrangement is to maintain the uniqueness of local customs, traditions and culture. Furthermore, in carrying out regional expansion, it is carried out through the stages of the Provincial Preparatory Region or Regency/City Preparatory Region. At the stage of establishing the Preparatory Area, it must meet the basic requirements and administrative requirements. One of the basic requirements for regional capacity is based on socio-political parameters, customs, and traditions, namely social cohesiveness. Social cohesiveness is measured by the diversity of ethnic groups, religions, and traditional institutions.

People-based economic development is carried out by providing the widest possible opportunities for indigenous peoples and/or local communities. Investors who invest in the Papua Province must recognize and respect the rights of local indigenous peoples. Negotiations conducted between the Provincial, Regency/City Governments, and investors must involve local indigenous peoples. The provision of business opportunities is carried out within the framework of empowering indigenous peoples so that they can play a role in the economy as wide as possible [8]. The Papuan provincial government is obliged to recognize, respect, protect, empower and develop

the rights of indigenous peoples by referring to the provisions of the applicable legal regulations.

IV. CONCLUSION

The rights of customary law communities that are still in effect must be protected and respected by the community and the state. The protection and respect for the rights of indigenous peoples is a concrete manifestation of law enforcement because the rights of indigenous peoples, including customary rights, are part of human rights that are firmly held by local customary law communities as long as they do not conflict with the principles of the rule of law which have the core of justice and people welfare.

The rights of these indigenous peoples include the ulayat rights of the customary law communities and the individual rights of the members of the indigenous peoples concerned. The implementation of ulayat rights, as long as in reality they still exist, is carried out by the adat authorities of the adat law community concerned according to the provisions of local adat law, with respect to the control over the lands of former ulayat rights which are legally obtained by other parties according to procedures and based on statutory regulations

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