

Legal Protection Of Traditional Rights Togutil Tribal Community In Halmahera Forest Inside

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Abstract.

The protection of the rights of the Customary Law Community (MHA) at the conceptual level has been guaranteed by the constitution. The existence of articles 18 B paragraphs (2) and 28I (3) of the 1945 Constitution as well as sectoral laws (Law Number 5 of 1960 concerning Agrarian Principles. empirical normative research, the Togutil tribal people still live nomadic in the forest and there are who have settled in a settlement around the forest, that the traditional rights of the indigenous peoples of the Togutil tribe are defined as a group of people who have something in common, to live in a certain area, either because of blood relations or kinship (geneological), clans and clans, and/or regional (geological) relations, have various customary law regulations.

Keywords: Protection of Traditional Rights

I. INTRODUCTION

The protection of the rights of the Customary Law Community (MHA) at the conceptual level has been guaranteed by the constitution. The existence of Article 18 B paragraphs (2) and 28I (3) of the 1945 Constitution as well as sectoral laws (UU Number 5 of 1960 concerning Agrarian Principles. The central government has guaranteed juridically in implementing a system of government for the welfare of the people, namely by fighting for the fulfillment of rights -constitutional rights and traditional rights. Constitutional rights in question are basic rights and basic freedoms of every [1] Related to education, employment, equality before the law, socio-economic rights, freedom of opinion, rights to live and to reside guaranteed by the Constitution. While traditional rights are special or special rights that are inherent and owned by a community over and similar origins (geneological), territorial similarities, and other customary objects, rights to ulayat land, rivers, forests and are practiced in the community.

Law Number 4 of 2009 concerning Mining, Mineral and Coal; Law Number 7 of 2004 concerning Water Resources; and other related laws) have attempted to provide recognition and respect for the Unity of customary law communities on a *das sollen* basis. However, the constitutional juridical obligations related to the recognition and respect for MHA carried out by the central and regional governments still encounter various obstacles [2]. State policies related to public services increasingly show evidence of their existence as a minority group being discriminated against. Togutil is a term for an inland tribe who lives in the forest area of Halmahera Island, North Maluku. Some of the Togutil people still live nomadic in the forest and some have settled in a settlement around the forest [3]. The livelihoods of the Togutil people are hunting and swidden cultivation, while the Togutil people who are already settled are gardening (copra farmers), some of whom have side businesses such as selling river stones.

II. METHODS

This research is a type of empirical normative research, meaning that it examines the law in statutory regulations as well as the law that lives in the community and is related to field application. As well as statutory provisions in the agrarian sector related to the traditional rights of the togutil community in the interior of the Halmaherah forest. Primary legal materials include: written documents in the form of Law No. 5 of 1960 concerning Agrarian Principles, Law No. 5 of 1990 concerning Conservation of Biological Natural Resources and Their Ecosystems, Law No. 24 of 1992 concerning Spatial Planning, Law No. - Law No. 39 of 1999 concerning Human Rights, Law No. 41 of 1999 concerning Forestry, Law No. 32 of 2009 concerning Environmental Protection and Management.

III. RESULT AND DISCUSSION

Customary law communities are citizens who have a common ancestor (geneological), live in a place (geographically), have the same purpose in life to maintain and with values and norms, enforce a customary law system that is obeyed and binding, led by customary heads, the availability of a place where the administration of power can be coordinated, there are institutions for dispute resolution, both between fellow legal communities and different ethnic groups. Customary Law community, a group of people who depend on their customary law order as citizens together with a legal unit for the comfort of their place of residence or on descent [4].

Indigenous peoples as legal subjects, legal objects and the authority of indigenous peoples are as follows: Customary law communities in Indonesia are communities based on territorial (territorial), geneological (descendant), and geneological (territorial) similarities, so that there are [5]. The diversity of forms of indigenous peoples from one place to another, the rights of customary law communities, authority over the territory of customary law communities, and property rights to land originating from customary rights are proven through: (a) in writing, land certificates, inheritance certificates, maps, historical reports, handover documents, (b) oral evidence (community recognition of authority over certain customary areas, customary heads, (c) physical evidence (ancestral graves, ex-farming terraces, former housing estates, orchards) fruits, cultivated plants, world historical relics, pottery and inscriptions.

1. Constitutional Rights of Indigenous Peoples

The constitutional rights of the Indigenous Peoples should be prioritized over the rights of ordinary citizens. Because the Customary Law Community is a citizen who has traditional special rights. Theoretically, being recognized as a citizen of the Republic of Indonesia needs to get protection, guarantee and legal certainty, but in reality, fate and status socio-economically marginalized. To strengthen the protection on them there is a special need for "affirmative action." That's why constitutional rights more aimed at efforts to fight for the legality of basic rights for the Indigenous Law Community in Article 18 B of the 1945 Constitution, although in its realization many are negated by the secular law. In general, the constitutional rights of the Indigenous Peoples are the same as the constitutional rights in other communities. Among them, as stated in Article 27 paragraph 1, 2, and 3 of the 1945 Constitution, namely the right to equal status in law and government and the obligation to uphold the law and government without exception, the right to work and a decent living for humanity, and the right and obligation to participate in defense efforts. Country.

Then in Article 28 it is stated that the right to freedom of association and assembly, to express thoughts verbally and in writing and so on is stipulated by law, as well as in Article 29 paragraph (2) the right to embrace their respective religions and to worship according to their religion and beliefs. Community rights according to the Commission on Human Rights and the 1986 International Labor Organization (ILO) Convention include the right to self-determination, the right to participate in government, the right to food, health, habitat and economic security, the right to education, the right to work, children's rights, workers' rights, the rights of minorities and indigenous peoples, the right to land, the right to equality, the right to protection environment, right to administration good governance, the right to a fair rule of law [6]. Meanwhile, in particular, the Customary Law Community has constitutional rights of a traditional nature or called the traditional rights of the Indigenous Law Community. Based on Article 18B paragraph (2) of the 1945 Constitution, recognition and respect for the unity of the Indigenous Law Community and its traditional rights.

a) Agisch Religius Togutil tribal community

Magisch Religius togutil tribe as a mindset based on belief togutil society about the existence of something sacred. This religious magical style is also that society does not recognize the separation between the external world and the unseen world, both of which run in a balanced way. People believe that every action in all its forms will be rewarded and punished by God and the will of nature. The style of people's thinking before knowing religion was to believe in beliefs in supernatural objects that inhabit objects such as stone trees or ancestral spirits.

b) The Togetherness of the Indigenous Peoples of the Togutil Tribe

The customary law community of the Togutil tribe assumes that every member of the community is an integral part of the customary law community as a whole. The principle of togetherness in the customary law community of the Togutil tribe requires that members of the customary law community through the order of the tribal chief to maintain the principles of harmony, kinship and mutual cooperation and do not emphasize personal interests, but prefer to live together.

c) Habits of the Indigenous People of the Togutil Tribe

Forest area of Halmahera Island, North Maluku. Some of the Togutil people still live nomadic in the forest and some have settled in a settlement around the forest. Their lifestyles are different. Some have been laid off by the government and some are still living with nomadic traditions. This pattern is influenced by the availability of food in one place. The Togutil Tribe's dependence on the forest is quite high, even the forest in their cosmology is a home, so they forbid logging. They take advantage of the natural resources available in the forest to survive, either by gathering sago, and hunting various types of animals. This subsystem activity is still maintained today [7]

Togutil tribal customs are very diverse in the marriage of the Togutil tribal people who have finished marriage and are immediately considered independent. However, they still like to group places of residence, it's up to them to join the group of origin of their husbands or join the wife's group. An important tribe in Togutil society is the head of a group they call the dimono. He is a senior or older man and is strong and experienced as well as wise, more importantly he has to master customary law and the welfare of his community, the most severe prohibition and the most disliked by the Togutil tribal people are cutting down forests illegally and poisoning fish or shrimp in the river. , is considered to be evicted from their place of residence. The original beliefs of the Togutil people which are centered on respecting and worshiping ancestors are depicted in various spirits which in the Togutil people's view occupy the entire surrounding environment, both in the form of natural objects (nature) and objects created by humans (culture) which are believed to have that affect the success and failure of businesses or activities in daily life [8]

2. Socio-Cultural Life of the Togutil Tribe

Social interaction is a relationship with more than one person, such as an individual with an individual, an individual with a group, and a group with a group. The social interactions that occur in the Togutil tribal community members state that interaction between humans and other humans is a must to meet their daily needs.[9] However, in social interactions, the Togutil tribal people living in the interior of the Halmahera forest must use the local language, namely the Tobelo language which can be used in the local language. understand the togutil tribal community, if it is not understood then they do not want to accept to interact. The social life of the Togutil tribal people is very dependent on the nature around them, even their authenticity is always maintained. However, over time the clearing of land and forests for the benefit of timber companies, mining, and coastal community activities that penetrate their territory, makes this group increasingly squeezed and excluded from living space. them. Their food sources are increasingly difficult to obtain. Several incidents experienced by the Akejira group, one of the names of the Togutil Tribe group, show that this fact actually happened. As many as 11 members of the Akejira group were forced to leave the forest due to lack of food sources to survive. Meanwhile, 2 years ago, the Woesopen group (the name of the Togutil ethnic group) was forced to leave asking for rice assistance from a timber company for the same reason. Even if the national park enforces strict laws, it is certain that this group will lose access to the living space and natural resources in the area.

Culture is an experience that is maintained and considered important which is the result of work born of human thoughts and maintained from generation to generation. Some of the culture of the Togutil tribe is still maintained and preserved. These cultures are original symbols from the Togutil tribal community. The culture that is still maintained by the Togutil tribe, such as language, knowledge system, technology system, and livelihood system. Tugutil people think it's rude to mention their parents-in-law's name when communicating with friends or in front of many people. If someone is caught mentioning the name of his in-laws, he will be given a sanction or pay a fine (bobangu) in the form of money according to the decision of the customary head. This culture has been ingrained in their lives so that in their daily greetings they do not

mention names for in-laws but use meme greetings for greeting daughter-in-laws and baba for greeting sons-in-law.

a) **The Rights of the Traditional Togutil Tribe**

The wisdom of the Togutil people in utilizing various spice and medicinal plants to fulfill their daily needs, including as traditional medicine, cooking spices, refreshments, flavorings or to increase their income sources. The role of the community in the preservation of germplasm is usually seen in the activities of their socio-cultural life, namely by combining the obligations to fulfill needs and conserve natural resources and the environment wisely through customary or cultural rules [10]. Land rights controlled by traditional Togutil tribal communities with the presence of ancestral graves in the customs or traditions of the Togutil tribal community that where they live and plant sago trees that are considered to be their land. Togutil has a kinship system that is closely related to good etiquette in dealing with people. parents, siblings or relatives.

The concept of the Togutil people's view of life that plants as well as humans are believed to have a soul in the sense that plants also have the right to live. For this reason, humans must be able to pay attention or use wisely because like other resources such as land and water, plants are a source of life for humans. Children and grandchildren (ngofa-ngofaka) or can also be called humans who are still alive should not master it excessively, but are obliged to use it wisely for their lives. This means that no damage is allowed in areas or areas that are shared property. The obligation to maintain natural resources including plants is closely related to the indigenous beliefs of this tribe which are still inherent in the life of the Togutil people.

IV. **CONCLUSION**

Based on the analysis and discussion in the previous chapter, in this paper several conclusions can be drawn. Whereas the traditional rights of the customary law community of the Togutil tribe are interpreted as a group of people who have something in common, to live in a certain area, either because of their blood or kinship (geneological), clan and clan, and/or regional (geological) relationship. have various customary law regulations, both of which stipulate rights and authorities as well as obligations for control, ownership, use, of traditional rights and nature as a source of life for them.

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