Enviromental Protection and Management Policy for Customary Law Community in The Perspective of Human Rights

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Abstract

The existence of customary law community is influenced by policies that come in direct contact with their survival including environmental protection and management efforts. The purpose of this study is to analyze the conditions of indigenous peoples related to the existence of environmental protection and management in terms of aspects of policy and human rights. This research method uses a qualitative approach with descriptive research types. Data collection is done through interviews, observation, and documentation then analysis activities through data reduction, data presentation, and drawing conclusions. The results of the study indicate that respect for the rights of customary law community can have a positive impact on environmental conservation. Customary Law Society has a variety of wisdom (local values) in managing the environment so that it has an important role in efforts to preserve the environment. In customary communities around the forest and in coastal areas affected by changes in policy but referring to the current conditions of customary law community can participate in forest and coastal management customary law communities have a greater opportunity to use coastal areas and forests based on local wisdom. Meanwhile this management and Environmental Protection policy is more focused on Responsibilities and Authority related to Recognition of customary law communities to protect the environment and natural resource management. In addition, this study recommends the need for compensation arrangements related to legal community rights that have been taken over by other parties.

Keywords: Environmental Management, Customary Law Community, Human Rights.

1. Introduction

Enforcement of rules about the environment arises from the attention of the global community and the awareness of the Indonesian government towards the importance of protecting the environment as a support for the development of a country. Humans use what is available around their environment to meet their needs because humans try to create a balance and order of nature in people's lives (Rusdina, 2015). Natural resource management can be done through a legal framework to create legal certainty and benefits for all communities both nationally and locally (Percival et al., 2017).

Indigenous peoples with owned local wisdom can be accommodated in state policy must be positioned as an integral part of the development process. The social and cultural life of the people rooted in customary law is used in efforts to manage natural, mountain, forest and sea resources in order to fulfill their daily needs as well as an effort to preserve biological resources and their ecosystems (McCay & Acheson, 1990).

Customary law communities are community units that have the means to be able to stand alone, namely having legal unity, unity of rulers and environmental unity based on joint rights to land and water for all its members. The customary law community is constitutionally recognized and respected as a person with rights and also has an obligation (Syamsudin, 2008). This customary law community is a legal subject. As a legal subject in a society, customary law communities must receive attention as other legal subjects when the law wants to regulate, especially in the context of allocating natural resources and social life.

The Constitution of the Republic of Indonesia 1945 recognizes the constitutional rights of customary law communities, namely the recognition that the customary law community unit is a semi-autonomous unit in the control, management and utilization of natural resources. Article 18B paragraph (2) can be seen as a reflection of the recognition of customary law communities. This article states that the State recognizes and respects customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law. From the concept of environmental management towards Protection and Management of the Environment there are various new things in the regulation of Indonesian environmental law that need to be understood together in order to support sustainable development. In addition, the decision of the Constitutional Court Number 35 / PUU-X / 2012 states that indigenous and tribal peoples
are legal subjects. This ruling then Indonesian law concerning three forms of legal subjects, namely individuals, legal entities and customary law communities. As a legal subject, the customary law community is a person with rights and obligations.

The active participation of customary law community must be responded positively by the government. Indigenous peoples are given the freedom to create according to their potential so that there is a balance between nature and people's lives that continues (Smith, 2013). Development policies must be integrated based on indigenous peoples who have customary law as part of a national legal system that deserves recognition its existence (Basiago, 1995). Through social control systems in the form of norms & customary law which are products of the community itself.

Understanding the rights of indigenous peoples as human rights has the consequence that not only must the rights of indigenous peoples be respected and protected but must also be fulfilled. Human rights basically show the power or authority a person has that is fundamental. Because human rights are fundamental and fundamental, their fulfillment is imperative (Zein & Nurvianti, 2017).

In the international world the rights of indigenous peoples have also gained recognition. The 2007 United Nations Declaration on the Rights of Indigenous Peoples states that the recognition of the rights of indigenous peoples will be beneficial in increasing harmony and cooperative relations between the state and indigenous peoples, which are based on the principles of justice, democracy, respect against human rights, without discrimination and can be trusted. The thing that became the basis of this research was the policy of protection and Environmental Management of the Customary Law Community carried out in the life of the community in order to guarantee the human rights of the indigenous people in Indonesia.

2. Metodology

The research approach used in this study is a qualitative approach. Qualitative research is research that uses natural conditions as direct data sources, and researchers are key instruments. Data collection techniques used in this study are observations by making observations directly in the field in accordance with the object under study and interviewing informants directly by using interview guidelines. Informant this research comes from cultural leaders, indigenous peoples in Indonesia and also related literature studies. Data analysis refers to the steps used by Miles and Huberman (2007), which consist of three activity lines simultaneously, including data collection, data reduction, display and conclusion.

3. Results and Discussion

The perspective of indigenous peoples' rights as human rights (HAM), has the consequence that the rights of indigenous peoples are not merely respected and protected but must be fulfilled. Through the policy of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management, it reflects the recognition of the existence of customary law communities, local wisdom, and the rights of indigenous and tribal peoples related to environmental protection and management. The policy is traced by looking at the role of customary law communities on the coast and in the forest.

4. Coastal customary law community

The customary law community so far in Indonesia has received very strong recognition through the 1945 Constitution Article 18 B Chapter IV Second Amendment. The State recognizes and respects the customary law community unit along with the traditional rights they have as long as they are alive and in accordance with the development of the community and the principles of the Unitary State of the Republic of Indonesia. The principle of protection of indigenous peoples is also embodied in Indonesia's current vision and mission, namely to build Indonesia from the periphery by strengthening regions and villages within the framework of the unitary state of Indonesia.

Indigenous peoples in coastal areas and outermost small islands have an important role in the sustainability of aquatic and coastal ecosystems in Indonesia. The presence of the community can help to better and beneficial management for the community and also coastal ecology that is rich in marine biodiversity.

Indigenous peoples are believed to have a significant impact in safeguarding the territorial waters in coastal areas and small islands in the archipelago. marine and fisheries resource management is directed at efforts to realize state
sovereignty and maintain sustainable natural resources, as well as contribute to the welfare of the community including indigenous people who play a role in protecting the environment.

The coastal area inhabited by indigenous peoples is a blessing for the region. Customary law communities always maintain the bond of origin and their closeness to the region and its natural resources such as in Aceh, there are traditional leaders with the title Panglima Laot. Panglima Laot is a traditional institution in Aceh that regulates the procedures for fishing in the sea. The Commander of the Sea has a big contribution in the preservation of nature and the environment of the coastal area. Indonesia also has the same local wisdom in other regions, such as Sasi, awig-awig, malombo, seke, pele-karang, romping, kelong and lamba.

5. Customary Law Society in the Forest

Customary Law Society with a culture that prioritizes local wisdom plays an important role in preserving the environment. Customary Law Society has various wisdoms in managing the environment, so that it has an important role in efforts to preserve the environment. Looking at the important role of the Customary Law Society, it is deemed necessary to carry out an inventory and verification of the field, then to recognize the existence of their rights. The Ministry of Environment (KLH) in 2012 conducted an inventory of the Kajang Customary Law community in Bulukumba Regency and the Karampuang Customary Law community in Sinjai District, South Sulawesi. The Ministry of Environment provides assistance to recognize its existence.

The two Indigenous Law Societies show that this existence has for generations sought to preserve the environment by preserving customary forests and the surrounding areas and not cutting down trees carelessly. Based on the results of interviews with customary law communities in Kajang in Bulukumba Regency and the Karampuang Customary Law community in Sinjai District, they maintain cultural values to continue to exist in their environment, as well as interact with their surrounding communities.

6. Recognition and protection of Customary Law Societies

Forms of recognition and protection of customary law communities applied in fisheries management activities, namely in carrying out fishing or fish cultivation, must consider traditional law and local wisdom and also pay attention to community participation.

Law Number 23 of 2014 concerning Regional Government and also in the Minister of Home Affairs Regulation No.52/2014 concerning Guidelines for Recognition and Protection of Customary Law Societies. Demonstrating the need for a shared obligation to recognize and protect customary law communities, especially in coastal areas and small islands, it is also necessary to establish and map areas of customary law community management including institutions into zoning plans for coastal areas and small islands.

Legal communities have a strategic role in managing coastal and marine resources. He said, sustainable management of natural resources is always reflected in their philosophy of life by maintaining the balance of human and natural relations. The practice of management based on indigenous peoples, in tribal cultures in Indonesia known as sea commanders who guard the sea is maintained naturally. This local wisdom is rooted in customary law maintained until now but also begins to fade.

Coastal areas and small islands do require complex management. To do so, it is necessary for many parties involved to collaborate involving the customary law community actively in order to manage the territorial waters and indigenous peoples need to collect accurate data on islands in the coastal areas and small islands. The government needs to improve capacity in terms of data collection of indigenous people in customary law areas.

In the customary law community around the forest it is also affected by changes in policy affecting the management of the Forest. Now indigenous people can participate in forest management and they have a greater chance to use forest based on local wisdom. Prohibition based on Customary Law such as burning, cutting, and sawing timber in the forest freely. The rules of indigenous peoples do not allow unsustainable forest exploitation in the territory of customary law communities. Forests provide a sustainable life in the minds of indigenous people even though there are also permissible ones such as hunting in the forest and using wood to make long boats or build houses.

The customary law community as a unit with the land it occupies has a very close relationship. The relationship comes from a religiously magical view. The consequences of violations of customary law get social sanctions due to actions
that damage the environment the positive side of this law is to provide a deterrent effect for other communities not to commit violations. In addition, it is also to maintain the dignity of indigenous peoples in the community itself.

The Role of Indigenous Peoples in policies and human rights. The philosophy of local wisdom can be a reference to a policy and program regulation to keep Indonesia's human nature sustainable and provide life for the surrounding community. Indonesia also has local wisdom which is an asset of resource management and protection of the marine environment as well as sustainable forestry and harmony, realized from the initiative to maintain the balance of local wisdom that has been grown for generations. Customary law communities are positioned as one of the main subjects that protect the environment. Therefore, efforts to safeguard the origins of ties and the proximity of customary law communities to territories and natural resources should be escorted by the government so as not to interfere with certain interests.

Judging from the policy aspects of the Customary Law Society, there is room for participation in the Republic of Indonesia Law Number 32 of 2009 concerning Environmental Protection and Management reflecting the recognition of the existence of customary law communities, local wisdom, and the rights of indigenous peoples related to environmental protection and management besides There is also a role in Presidential Regulation No. 83 of 2018 concerning Waste Management in the Sea, the role of indigenous peoples, including one of the important elements in achieving the National Action Plan for Marine Waste Management, the existence of indigenous peoples is certainly very important as the main element supporting the policy.

Customary Law Society protects and develops culture, behavior, values and ownership of land. The regulation of indigenous peoples is quite complicated because of the existence of customary land ownership, the need for public testing and input from a number of experts and leaders of indigenous peoples in preventing conflicts that can arise from other elements such as companies that want to exploit forests and the sea.

In the course of time the patterns of social interaction between members of indigenous communities and patterns of interaction with their physical environment have institutionalized in such a way that they form an independent social entity and have their own division of labor, systems of values and legal rules (Sahide, et al., 2016; Parsons et al., 2017). Certainty of the fulfillment of the rights of indigenous peoples can be realized if there is a mutually agreed commitment between various parties that have an interest in the territory of customary law (Carpenter & Riley, 2014).

The right to manage natural resources for the Customary Law Community gets legal protection regulated in the Law Number Law No. 2 of 2001 concerning Oil and Gas. The Law stipulates the protection of indigenous peoples as stipulated in Cooperation Contracts with certain provisions regarding the development of surrounding communities and guarantees the rights of indigenous peoples in the region.

The rights of customary law communities are not only limited to communal land but also include customary forests, water and mountain natural resources, plants and animals that exist and live on the territory of customary law that can be used by customary law communities to survival of their lives. While in the policy of Law Number 32 of 2009 concerning Environmental Protection, the focus is more on Responsibility and Authority related to the Recognition of Customary Law Communities, especially to protect the environment. What is still a common task between the government and indigenous peoples is a comprehensive arrangement of compensation for the rights of indigenous peoples over the acquisition of land, territories and natural resources which has caused disruption to socio-political relations between those who take over and indigenous peoples.

7. Conclusion

Customary Law Society has a variety of wisdom (local values) in managing the environment so that it has an important role in efforts to preserve the environment. In customary communities around the forest and in coastal areas affected by changes in policy but referring to the current conditions of indigenous peoples can participate in forest and coastal management customary law communities have a greater opportunity to use coastal areas and forests based on local wisdom. Meanwhile this management and Environmental Protection policy is more focused on Responsibilities and Authority related to Recognition of Customary Law Communities specifically to protect the environment and the right to manage natural resources for Customary Law Communities to get legal protection to manage and utilize natural potential and natural conservation in their jurisdiction and the joint task of the government and indigenous peoples is a comprehensive arrangement of compensation for the rights of indigenous peoples over the takeover of natural resources in their territory.
References


