Democracy: Indigenous People as Victims of Development

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Abstract

Indonesia is an Asian country with the owner of the most indigenous people. Where according to the CONSTITUTION 1945 article 18B paragraph (2) as one of the constitutional foundations of indigenous peoples declared that the State recognizes and respects the existence and rights of indigenous peoples. The change from indigenous land function as an oil palm plantation becomes a major threat to indigenous peoples, where the actual land function for them is following the number 15 SDGs. The establishment of palm plantation is also happening in the indigenous areas of the Talang Mamak tribe or called the child in the region of Riau province. We are here using the Qualitative Research method, we do this research to introduce the rights of indigenous peoples.

Keywords: Indigenous people, participants observation methods, Human Right and Democracy.

1. Introduction

Indonesia is a complete composition in defining a country's wealth. As a country, Indonesia is very fortunate because it was awarded many islands that lie on it. In addition to wealth in the form of thousands of islands. Indonesia also has a rich natural and cultural richness ranging from the tip of Sabang to the tip of the Merauke. The cultural diversity that exists in it is certainly produced from a variety of different tribes and customs. Various kinds of ethnic and traditions that exist are the result of the association of individuals called the community. The community itself is divided into several types of people namely urban society, rural communities and customary law communities. Where among the several types of society, the customary law communities is less well known in depth. Traditional law communities themselves are tribes that have historical ties with people who lived before the presence of the invaders, and considered themselves to be different from other communities that existed and lived in their territory. Customary law communities can also be called traditional communities, in everyday life these indigenous law communities are commonly known as indigenous peoples (Samosir, 2013).

Indigenous peoples are administratively located in remote rural areas and away from the hustle and bustle of the crowd. Indigenous peoples themselves are people who live in groups that have the same goals, and have a unique system of values, views, social, economic and political. The uniqueness of indigenous peoples and distinguishing them from other communities is related to the preservation and belief in the values of ancestral traditions in their lives. Seeing from the description of indigenous peoples, it is not surprising that most indigenous peoples in Indonesia inhabit inland forest areas. Regulations regarding the existence and privilege of indigenous peoples in Indonesia to manage their territories in accordance with their wishes have been recognized in the UUD 1945 pasal 18B ayat (2).

UUD 1945 has regulated the existence of customary law communities with different legal views from the law in general. This can be seen when the enactment of the 1945 Constitution of the first period which in the explanation section discussed the "common law community" which existed before the proclamation of independence. In the UUD 1945 it is explained that:


After the amendment to UUD 1945, the explanation section of the UUD 1945 is erased. Then the legal basis related to the existence of indigenous peoples is placed on the body of the UUD 1945 which includes Pasal 18B ayat (2), Pasal 281 ayat (3) dan pasal 32 ayat (1) dan (2). In addition to the three provisions, the customary law community also has constitutional rights like other Indonesian citizens, including the right to a decent living and other legal rights in common.

The rights of indigenous peoples have been regulated in statutory regulations. In the laws and regulations concerning indigenous peoples include three parts, namely the right to regulate and take care of themselves
in regulating governance, then the customary rights to land and natural resources contained therein, and the individual rights of indigenous peoples to the land.

The right to regulate and take care of oneself has been legally recognized, this is a tribute to, the customary law community for having had customary government before the state formed the government. The unity that exists in the Indonesian State today is actually a reflection of the set of unity that exists in indigenous and the customary law community. Legal recognition of the rights of indigenous peoples to regulate and manage themselves is found in UUD 1945 before being amended. Pasal 18 UUD 1945.

Customary rights which are rights to land and natural resources are contained. Recognition of customary rights is based on UUD 1945 Pasal 33 ayat (3). Pasal yang berada bagian Bab IV concerning the National Economy and Social Welfare, which is in recognition of the economic sovereignty of indigenous and tribal peoples over their land and natural resources. The purpose of the regulation is certainly to create prosperity for all customary law communities. Pasal 33 ayat (3) UUD 1945 contains the following:

“Bumi dan air dan kekayaan alam yang terkandung di dalamnya dikuasai oleh negara dan dipergunakan untuk sebesar-besarnya kemakmuran rakyat.”

The passage of time and the harshness of modernization that has resulted in the number of customary land or what we often refer to as customary land is getting smaller and even threatened its existence. Things like this happen because in the existence of a customary law territory is still in the form of conditional recognition, yang mana hal ini berdasarkan Pasal 3 Peraturan Pemerintah ART/BPN Nomor 5 Tahun 1999 include: a) the community is still in the form of a community; b) there is an institution in the customary authorities; c) there is a clear customary law area; d) there are institutions and legal instruments that are still obeyed. In addition there are also other conditions contained in UUD 1945 Pasal 18B ayat (2) like, (i) as long as it's alive; (ii) in accordance with the development of society and the principles of the Republic of Indonesia; (iii) regulated in law.

The existence of conditional recognition is what ultimately makes the existence of indigenous peoples increasingly threatened. This is because in proving the existence of indigenous peoples charged to the customary law community itself. Such is the case when the customary law community must prove related to the customary community association that it truly is a customary law community in front of the Constitutional Court which is in accordance with Pasal 51 ayat (i) huruf b UU Constitutional Court, which includes 5 constitutional impairment requirements. The complexity of the legal bureaucracy for the customary law community, until now no one has submitted an application as a customary law community in which there is a legal standing (legal standing) in testing the law, because there is no clear mention and specification related to who is categorized as a customary law community (Rahman et al., 2011).

Similar problems occur in the indigenous Talang Mamak ethnic who are trying to fight for the recognition of its existence. Talang Mamak ethnic is an indigenous community spread across Riau Province and part of Jambi Province. Talang Mamak tribe community is a type of people from the Proto-Malay race. In the historical record, this type of race is one of the groups that has the oldest (still sustainable) culture and lives in the Riau Province and Jambi Province. Talang Mamak ethnic in a simple bureaucracy that has twenty nine tribes or better known as kebatinan. Twenty-nine kebatinan spread in tributaries, which are spread in three tributaries namely tributaries of the Ekok River, tributaries of the Tenaku River which are now called the Cenaku River and the tributary of the Gangsal River.

Talang Mamak ethnic’s struggle to get an acknowledgment from the state based on the decision of the chiefs of kebatinan or commonly called the Pathi, which of the twenty nine kebatinan there are only fifteen kebatinan which agree to the territorial customary territorial mapping. This struggle is very important for the indigenous people of Talang Mamak because in their daily lives it depends on the existence of the forest starting from looking for food, and as a livelihood.

The aim of this paper is to find out the struggle of indigenous people to get recognition from the government about the existence of their customary land and the indigenous culture of Talang Mamak. In addition to knowing the process of struggle, here the author will also explain about the problems faced and the solutions provided so that indigenous peoples are not threatened by their existence. In this study the authors used a descriptive qualitative research method using the Talang Mamak ethnic as the object of study. This paper also applies descriptive presentation, where the results of the study are displayed in the form of a detailed description. Description is also a way to facilitate the understanding of the reader, as well as to facilitate researchers in focusing content. In this study using data collection techniques from books resources and sumber primer, legal basic news covers UUD 1945 and undang-undang. The purpose of using various sources of books and primary sources is to find the validity of the theme to be examined.
2. Discussion

2.1 Communal Rights of Customary Law Communities

In pasal 1 number 1 Permen ATR Nomor 9 Tahun 2015, provide a definition of communal rights to land as a form of ownership rights to customary community land with different communities in forest and plantation areas. The definition of communal rights to land in Permen ATR considered unusual because it brings together two groups that have different characteristics, which are the subject of communal rights to land are customary law communities and communities that exist in certain areas (referred to here are forest or plantation areas) where the community is not classified as a group customary law community. The difference in characteristics between the two groups can be seen in pasal 3 ayat (1) dan (2) Permen ATR Nomor 9 Tahun 2015 which regulates the requirements for customary law communities and people who are in certain areas which certainly are in certain areas that are regulated in Pasal 3 ayat (2) Permen ATR Nomor 9 Tahun 2015, there is one criterion that needs to be criticized, namely when a different community in a certain area can get communal rights to land if it is physically controlled for at least ten years. The time limit of mastery that is here does not have a clear common thread, because when it is associated with the expiration of mastery over a material that is not moving and regulated in kitab Undang-Undang Hukum Perdata (KUHP Perdata) Pasal 1963 tersebut regulates that a person who controls an object that has been entitled for twenty years without having a claim from another party then becomes his full ownership. Whereas if a person controls an immovable object which does not yet have the basis of his rights in good faith for 30 years in a row, the right to the object belongs to him. The period of time granted to communal rights over land to communities in certain areas is arguably incorrect, because this will only trigger new conflicts and give rise to the thought that the government is half-heartedly paying attention to indigenous and customary law community.

2.2 Constraints on the Recognition and Determination of the Customary Land of the Talang Mamak Community

Putusan Mahkamah Konstitusi No. 45/PUU-IX/2011 dan Putusan No. 35/PUU-X/2012 (selanjutnya disebut Putusan MK 45 dan Putusan MK 35) change the perspective of forestry law regarding the legality of forest areas and land tenure in forest areas. According to the Putusan MK 45, the legality of the forest area is fulfilled when the entire process of forest area gazettement which includes the designation, boundary arrangement, mapping to determination has been completed. This means that what is called a forest area is legally defined by the government, not just a designated area. In another side, Putusan MK 35 it concerns two constitutional issues, first about customary forests and second about conditional recognition of the existence of indigenous peoples. The decision granted the request relating to the customary forest, but refused the request to abolish the conditions for recognizing the existence of indigenous peoples. Related to customary forests, keputusan MK ini kemudian responded by stipulating several customary forests issued by the Minister of KLHK by Decree of the Minister of KLHK. Among these are customary forests determined based on proposals from indigenous peoples together with AMAN (Aliansi Masyarakat Adat Nusantara): Marga Serampas-Jambi customary forest, Ammatoa Kajang-South Sulawesi customary forest, Kasepuan Karang-Banten customary forest. The total has been determined by the Minister of KLHK there are 9 customary forests included in the social forest scheme. The designation of these customary forests is not intended to be excluded from forest areas, it means that giving to indigenous peoples is expressly stated to be managed as customary forests. All The decree granted is locked by the stipulation of one of the articles which confirms that “Pemangku Hutan Adat wajib mempertahankan fungsinya sebagai hutan”. In Riau Province, in reality, land is still recognized within the customary law community, whose management, control and use is based on local customary law provisions and is recognized by the members of the relevant customary community as their customary land. Recognition of the existence of indigenous and tribal peoples in Riau Province at least there are five local regulations, that is:

1) Peraturan Daerah Provinsi Riau Nomor 10 Tahun 2015 tentang Tanah Ulayat dan Pemanfaatannya
The purpose of regulating customary land and its use is to continue to protect the existence of customary land according to customary law in Riau Province and to provide legal protection, ensure preservation, and use of customary land. With the benefits of communal land socially, it becomes a social infrastructure / facility for the benefit of ethnic members; economic benefits become the main capital in the economic activities of tribes, regions and countries; culture, as a means of developing traditional culture of customary law communities; ecological benefits, as a nature preservation and environment.

Peraturan Daerah Provinsi Riau Nomor 10 Tahun 2015 regulate the type and ownership of ulayat land, the position and function of ulayat land, registration and subject of ulayat land law, criteria for the existence and object of ulayat land, procedures for the use of ulayat land, obligations of holders of ulayat land rights, settlement of customary land disputes, extension and termination of land rights, ulayat, prohibition and supervision, investigation and sanctions if there is a crime.

2) Peraturan Daerah Kabupaten Siak Nomor 2 Tahun 2015 tentang Penetapan Kampung Adat di Kabupaten Siak
Dengan Peraturan Daerah in 61 (sixty one) villages were determined and 89 (eighty nine) ethnic villages were determined. Arrangement and Organization of Village Government in accordance with the provisions of the laws and regulations concerning the village. Whereas the arrangement and administration of customary village government is carried out in accordance with the original rights and applicable customary law and in accordance with community development and does not conflict with the principle of the administration of customary village governance in the principles of the Unitary State of the Republic of Indonesia. Peraturan Daerah Kabupaten Rokan Hulu Nomor 1 Tahun 2015 regulating customary village and village governance, customary village and village regulations, customary village and village authority, customary village rights.

3) Peraturan Daerah Provinsi Riau Nomor 1 Tahun 2012 tentang Lembaga Adat Melayu Riau
The purpose of establishing a traditional village is to revive the role of traditional leaders in the administration of government, development, and services to the community. This is caused by the increasingly complex life arrangements in the community as the effect of urbanization of the population from other regions and provides roles and functions to the Traditional Village Head and traditional leaders to be able to protect the life of the community more optimally including: a) enhance the participation of traditional village government, community institutions and traditional leaders oriented to local customs and customs in the administration of traditional village governance; b) enhance the role of traditional leaders associated with social and cultural activities in community life; c) enhance the role of traditional leaders appointed as elders to play an active role in reviving customs in traditional villages; and d) preserving almost lost customs caused by urbanization from other regions, so that local customs can be revived and developed. This regional regulation establishing eight traditional villages dan Perdaini is also regulates governance, territorial boundaries, social and customary institutions, sources of income, status change mechanisms, guidance and supervision.

4) Peraturan Daerah Kabupaten Kampar Nomor 12 Tahun 1999 tentang Hak Tanah Ulayat
For the facilitation, fostering, preservation, and development of Malay customs and socio-cultural values in the community, a Riau LAM can be established in the province, district / city, districts, village called by another name. For regency / city areas that do not yet have a Riau LAM can form a Riau LAM after obtaining approval from the Riau Province LAM. LAM Riau aims to (1) fostering, preserving, maintaining, and developing customary values and socio-cultural values as a basis for strengthening and strengthening the identity of the Malay community; (2) protect and defend the traditional and constitutional rights of indigenous peoples and socio-cultural values in the interests of enhancing the outward and inner welfare of the Riau Malay community; (3) realizing indigenous peoples and socio-cultural values that are developed, just and prosperous in the civil society order.

Peraturan Daerah Provinsi Riau Nomor 1 Tahun 2012 is also regulates the formation of Riau Malay customary institutions, the organizational structure of Riau Malay customary institutions, philosophy and principles, goals, forms and functions, main tasks, fostering and developing customs, the participation of Riau Malay traditional institutions in the preservation of regional
culture, cooperative relations, faithful customary mandate, power and membership, funding, symbols, signs of greatness, honors and customary holidays, dissolution.

5) Peraturan Daerah Kabupaten Kampar Nomor 12 Tahun 1999 tentang Customary Land Rights

The function of the Customary Land Rights is to improve the welfare of the members of the community and the community that are social and economic. Customary holders holding or controlling customary land cannot transfer or relinquish their rights to other parties unless they have been determined together based on customary community consultations according to local customs. Peraturan daerah ini regulates customary land rights, procedures for the use and ownership of customary land which regulates customary density, customary land ownership, prohibitions, supervision, duties, authority, and functions of tribal leaders.

Of the five differences above does not regulate forest areas as requested by the Talang Mamak customary law community. According to Myrna A. Safitri, existence perda-perda hasn't significantly give a change. There are three factors that cause this to first happen, the nature of perda is lagerly the perda that regulates customary community's right or territor. Second, very rarely found Perda containing the confirmation or establishment of the existence of indigenous and tribal peoples with a clear map. Third, institutional implementing regulations in the regions are not institutions that have relevant duties and functions.

The provinces that issued the most regional legal products regarding indigenous peoples were Aceh with 12, then Papua 4, West Sumatra 3, and Central Kalimantan and Maluku each issued 2 legal products. As for the district / city level, it is spread in 44 regencies / cities, with the regencies / cities that issue the most regional legal products regarding indigenous peoples are the Kerinci Regency (8), Bungo Regency (5), Merangin Regency (5), Sarolangun Regency (5), Bulungan Regency (5). In terms of the content of content of regional legal products, there are five classifications. First, customary institutions, customary justice, dan customary law; second, territory, land, customary forests and other natural resources; third, the existence of indigenous and customary law community; fourth, ethnic villages; fifth, the institutional implementation of regional legal products concerning indigenous.

At the end of 2016, President Joko Widodo submitted decree (SK) recognition of customary forests to nine indigenous and tribal peoples. The total area surrendered by the president to nine customary law communities covers 13,122.3 hectares. The following is a list of customary forests given by SK to nine indigenous peoples:

1) Ammatoa Kajang Customary Forest, Tanah Towa Village, Pattiroang Village, Mallelen Village and Bonto Baji Village, Bulukumba Regency, South Sulawesi Province, covering an area of approximately 313.99 Ha
2) Marga Serampas Customary Forests, Rantau Kermas Village, Merangin Regency, Jambi Province, area of approximately 130.00 Ha
3) Wana Posangke Customary Forest, Taronggo Village, North Morowali Regency, covering an area of approximately 6,212 Ha
4) Kasapuhlan Karang Customary Forests, Jagaraksa Village, Lebak Regency, area of approximately 486 Ha
5) Bukit Sembahyang Customary Forests and Padun Gelanggang, Airfalls Village, Kerinci Regency, Jambi Province, covering an area of approximately 39.04 Ha
6) Bukit Tingga Customary Forest, Sungai Deras Village, Kerinci Regency, Jambi Province, covering an area of approximately 41.27 Ha
7) Tigo Luhah Permenti Customary Forest in the Sixes, Pungut Madik Village, Kerinci Regency, Jambi Province, covering an area of approximately 41.27 Ha
8) Tigo Luhah Kemantan Customary Forest, Kemantan Kabalai Village, Kemantan Tinggi Village, Kemantan Darat Village, Kemantan Madik Village, Kemantan Raya Village, Kemantan Agung Village, Kerinci Regency, Jambi Province, covering an area of approximately 452 Ha
9) Haminjon Tombak Adat Forest (Kemenyan) Padumaan Sipituhuta Village, Humbang Hasundutan Regency, covering an area of approximately 5172 Ha.

Likewise, experienced by the indigenous community of Talang Mamak in seeking recognition officially handed over maps of indigenous territories to the Regional Government of Indragiri Hulu Regency and the Ministry of Environment and Forestry. The map of customary territories surrendered to 15 of 29 Kebatian of Talang Mamak Tribe with a total area of around 195,861 hectares. Submission of this map aims to present indigenous peoples with all their rights to land,
2.3 The Struggle to "Seek" Talang Mamak Customary Land

There are a number of problems that occur within the Talang Mamak indigenous community, particularly in understanding the concept of customary land and indigenous territories. As far as the writer's findings in the field, some inwardly consider the customary territory as well as the land rights on it. This understanding is a bit problematic because claims for mapped land are areas that have been attached to many rights (ownership rights, HGU, HTI). The author's confirmation to several resource persons in the field shows an understanding of this fact. At the very least, a demand to return their land that was previously considered to be the Talang Mamak customary area arose in the field. If so, his understanding, as explained above, will cause many problems. Of course many parties cannot accept because these lands are no longer forests, but residents' settlements and plantations and other rights, including corporate-owned HGUs and HTI.

This reality is strengthened because of the understanding of some communities, the area was once their customary territory, taken by them without our permission as the people who have been inhabiting it. In fact, over time these lands have been transferred from one hand to another with various transactions. But is it true that this view is dominant in understanding what is happening on the ground? The author has done a lot of communication with the Talang Mamak indigenous people to confirm the above view. It turns out that the majority of them, the struggle and prosecution of customary land and rights are not directly proportional to their land rights. They fight for recognition of territorial rights, not land rights. This confirmation confirms that the Talang Mamak indigenous people are well aware of the position and existing land that has been fuzzed over. Therefore, what is most logically fought for is that the state recognizes that the Talang Mamak Indigenous people exist and their territories are clearly based on their respective mental records. Claims for recognition by the state (Indragiri Hulu Regional Government) as an effort that the state respects ad

Based on this reality, the writer is of the view that the demands of the Talang Mamak indigenous people are somewhat problematic. If seeing as a right forest such as other areas that have been issued by SK Ministry of Forestry by the Ministry of Environment and Forestry such as Amotoa-Sulsel, Marga Serampang-Jambi, Sipituha-Sumut, Kasepuhan-Banten, etc., it is very difficult because many things are not fulfilled, except specifically the regions- an area that is still native to the indigenous people of Talang Mamak. The aforementioned areas still exist, even though they are close to and even overlap with corporate forest areas. If that is what is desired, it can be struggled with relative because concession permits granted to corporations in the form of HPH, HGU or HTI can be partially released. Much more difficult if it has become a settlement and the region lives various communities. Of course it will be a problem between one citizen and another.

If you look at the results of participatory mapping conducted by the Talang Mamak indigenous people, what is claimed as customary territory, most of it belongs to the village area, even the urban area (capital of the sub-district). In short, what has been said by the Talang Mamak indigenous people so far has not been one word, whether the claim claimed is purely the recognition of territory without rights (customary forests) or at the same time with its lands. Most of our speakers in the field are well aware of the problem, and this has caused some of them not to agree. The indigenous elites and youth are aware that the recognition of the region as a form of respect in the inner regions is considered the most reasonable, because it will still maintain the harmony that has been created.

2.4 Talang Mamak Customary Land Conflict

The existence of the Talang Mamak customary community is believed to feel marginalized by the HPH, the placement of transmigration, deforestation by the rest, and the rest is controlled by immigrants. Now most of their natural forests are left over oil palm which belongs to other parties. The following case shows a conflict in the Talang Mamak indigenous area with several companies that have operated in the Talang Mamak area who claim to have received approval from the Talang Mamak indigenous community.

First, in 2003, PT. Bukit Batabuh Sei Indah (PT. BBSI) carries out forest management by entering into an agreement with Patih Laman, the contents of the agreement are as follows: (i) 468 Ha by partner pattern, (ii) Wood taken from the land, chip wood is Rp.1500 per tons while log Rp.5000 per cubic, (iii) Based on community agreement, the wood fee is used to build community gardens. Until now this agreement was not realized by PT. BBSI. Instead the community plantations were evicted. And according to the community, PT. BBSI is a subsidiary of PT. Riau Andalan Pulp and Paper (PT. RAPP).
Second, in 2008, PT. Kharisma Riau Sentosa Prima manages the traditional community land of Talang Perigi, Talang Durian Cacar, Talang Gedabu, and Talang Sungai Limau. The area managed is 7000 Ha. This management did not receive approval from indigenous peoples at all and the community demanded that the company's permit be revoked. The end of this rejection was a clash which resulted in the beating of a resident named SUPIR who was a member of the Talang Sungai Limau indigenous community who was then put in prison for three days. Until now the beating problem has not been resolved. After the forest and forest products are gone, PT. Kharisma Riau Sentosa Prima was lost and replaced with PT. Mega. With a new style approach, PT. Mega also succeeded in seducing a portion of the community with a partner pattern of 40/60, a managed forest of 600 hectares.

Three PT. SAL entered into an agreement with three village heads namely the Village Head of Talang Durian Cacar, the Village Head of Selantai, and the Village Head of Talang Perigi. Based on this agreement, PT. SAL has a location permit from the Indragiri Hulu Regency Land Office with letter number 12.A./IL-DPT/II/2007. The area to be managed reaches 1000 hectares. After being agreed, PT. SAL said that the pattern of cooperation was village development. Thus the community refused because it was not in accordance with the initial agreement with the community.

### 3. Conclusion

The long history of the struggle of the Talang Mamak indigenous people to find their land to this day has not shown results. Even though the Constitutional Court has decided on the recognition of ringht forest, it is not as easy as that for indigenous peoples to make claims on lands that are considered indigenous land. Historically, the existence of indigenous Talang Mamak people can be easily proven, because oral traditions among indigenous people are still well preserved. Likewise, their traditional organizational structure is still going well, including their traditional culture.

Related to efforts to recover land and traditional lands that had been lost, both lost were taken by state to be given to corporations or lost and turned into new settlements due to the many transmigration and immigrants. This reality puts the Talang Mamak Indigenous community slowly pushed further to the edge in the forest area. The problem is, now they can no longer move as their traditional system which previously moved due to farming and farming systems. This migratory pattern which became a tradition then slowly becomes settled. The situation has been going on for a long time since the forest in the area have been into oil palm and other plantation concessions.

After the Constitutional Court’s decision No.35, history has changed, where the possibility of the Talang Mamak indigenous people returning to get their forest is very possible. But the problem is that forest no longer exist and lands have turned into residential areas. What are some of the existence of the Talang Mamak turned community is believed to feel marginalized by HPH, the placement of transmigration, deforestation by the rest, and the rest is controlled by immigrants. Now most of their natural forests are left over oil palm which belongs to other parties. The following case shows the conflict in the Talang Mamak indigenous area with several companies that have operated in the Talang Mamak area who claim to have received the approval of the Talang Mamak indigenous community.

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