

THE ROLE OF REGIONAL GOVERNMENT IN SETTLEMENT OF AGRARIAN CONFLICT

(Case Study of Conflict in Traditional Areas of Indigenous Communities Kutei Lubuk Kembang in the State Forest Area)

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ABSTRACT

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The Kutei Lubuk Kembang indigenous community, Rejang Lebong Regency, is one example of the many conflicts faced by the community as described in the section above in the forestry sector. In 2016, suddenly the Kutei Lubuk Kembang traditional community area with plantation and agricultural functions which had been cultivated for generations by community members covering an area of 125.4 hectares was designated by the Ministry of Environment and Forestry as a state forest area with its function as production forest limited. The main problem of this research is what is the role of local government in resolving agrarian conflicts (Case Study of Conflict in the Traditional Area of the Kutei Lubuk Kembang Indigenous Community in a state forest area). This research is an academic effort that aims to analyze and describe the role of local government in resolving agrarian conflicts, especially in Rejang Lebong Regency, Bengkulu Province. this research uses a sociolegal approach. Sociolegal studies are interdisciplinary studies that are a hybrid of major studies of legal science and legal sciences from a societal perspective that were born previously. The need to explain legal issues in a more theoretically meaningful way fuels this study. Meanwhile, practically, this study is also needed to explain the operation of law in people's lives. This research concludes that, Regional Government has an important role in resolving agrarian conflicts in forest areas, Issuance of Rejang Lebong Regency Regional Regulation No. 5 of 2018 concerning Recognition and Protection of Customary Law Communities in Rejang Lebong Regency and Regent's Decree No. No. 180.65.I of 2020 concerning Recognition and Protection of Kutei Lubuk Kembang as a Customary Law Community Unit in Rejang Lebong Regency, is an effort by the Regional Government of Rejang Lebong Regency to resolve agrarian conflicts, especially in the state forest area in Lubuk Kembang Village.

INTRODUCTION

1.1. Background

History records that the Indonesian nation has inherited the Dutch colonial agrarian structure which originated from the Agrarische Besluit 1870 with the implementation of the domein verklaring principle which ignored the rights of the people. This neglect of people's rights is carried out in areas where it cannot be formally proven on plots of land or plots of land that are considered to be owned by the state. This principle is a fundamental problem in agrarian inequality, especially on land owned by the people which is subject to and rooted in customary law.¹

The verklaring domain principle is a metamorphosis of the terra nullius doctrine, the classical doctrine which states that the areas visited by conquering nations are no-man's land that can be owned, while the humans who previously occupied these areas were not considered humans because they were not yet civilized (uncivilized peoples), based on this doctrine, the conquering nations justified their actions by claiming that they carried a mission to civilize indigenous peoples.²

According to some groups, the verklaring domain statement as regulated in Article 1 of the Agrarische Besluit 1870 negates the recognition and protection of indigenous peoples' rights to their customary territories. With this statement, the customary rights of indigenous peoples become state-owned land because they are not categorized as egiendom and agrarische egiendom. Customary land becomes agrarische egiendom as long as the owner submits an official application, which will be determined as agrarische egiendom by the Court.³

The system of land use and control by customary law communities has changed drastically due to government policy practices related to state control of forests. Looking at the history of forest management in Indonesia, it is strongly impressed that it has not yet moved away from the character inherited from the Domain Verklaring model as described above. The aim of the colonial regime at that time was none other than to obtain cheap land for the country.⁴

Discussing land in Indonesia, it is also necessary to pay attention to the reality that around 125.7 million hectares of Indonesian land have been designated as

¹ Yanis Maladi, Dominasi Negara Sebagai Sumber Konflik Agraria di Indonesia, *Jurnal Masalah-Masalah Hukum*, jilid 41, No. 3, (2012), hlm. 432.

² Teddy Anggoro, Kajian Hukum Masyarakat Hukum Adat dan HAM dalam Lingkup Negara Kesatuan Republik Indonesia, *Jurnal Hukum & Pembangunan*, Vol. 36, No. 4, (2006), hlm. 489.

³ Rikardo Simarmata, *Pengakuan Hukum Terhadap Masyarakat Adat di Indonesia*, (Jakarta: UNDP, 2006), hlm. 40.

⁴ Nancy Lee Peluso, *Hutan Kaya Rakyat Melarat: Penguasaan Sumber Daya dan Perlawanan di Jawa*, (Jakarta: Konphalindo, 2006), hlm. 7.

forest areas.⁵ Thus, what is called customary territory, land of customary law communities with communal, collective and individual rights, can be found in forest areas or outside them. In practice, the provisions in Law no. 41 of 1999 concerning Forestry and its implementing regulations. Meanwhile, for land outside forest areas, the provisions in Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles.

Understanding forest areas does not always refer to an ecological phenomenon. Ecology is a branch of science that is interdisciplinary, which means that to understand the relationship between organisms (animals, humans and plants) and their environment, several definitions must be drawn from many related fields. The term ecology was basically first used around the mid-1860s, which was first introduced by Haeckel, a biological scientist. The term ecology comes from the Greek, namely *eikos* which means house and *logos* which means science. Literally, ecology means the science of living things in their homes or can also be interpreted as the science of studying living things in their homes.⁶

Article 1 number 3 Law no. 41 of 1999 concerning Forestry, states that forest areas are "certain areas designated and/or stipulated by the Government to maintain their existence as permanent forests". This definition differentiates it from the definition of "forest" which is defined by the same law, in Article 1 number 2 it is stated that a forest is an ecosystem unit in the form of an expanse of land containing biological natural resources dominated by trees in a natural environment, one with another. can not be separated.

Past experience shows that forest areas, especially outside Java, are designated based on an agreement between several government agencies. This process is known as Agreement on Forest Use Management (TGHK).⁷ Many distortions arise as a result of this kind of designation process, which is why Peluso and Vandegest refer to the forest area as (political forest). This means an area that emerged as a result of political consensus among government institutions. Meanwhile, Myrna A. Safitri calls it a political-administrative forest based on the fact that the political consensus was ratified through a government administrative decision, in this case the decision of the Minister of Forestry.⁸

There is nothing technically wrong with the term forest area, basically what is

⁵ Materi Refleksi Akhir Tahun 2021 Kementerian Lingkungan Hidup dan Kehutanan, <https://linktr.ee/REFLEKSIAKHIRTAHUNKLHK>, accessed August 5, 2023.

⁶ Moh. Fadli, Mukhlis, dan Mustafa Luthfi, *Hukum dan Kebijakan Lingkungan*, (Malang: UB Press, 2016), hlm. 5-6.

⁷ Myrna A. Safitri, *Legalisasi Hak-Hak Masyarakat atas Tanah dan Kekayaan Alam dalam Peraturan Perundang-undangan Nasional Indonesia: Model, Masalah, dan Rekomendasi*, Paper presented in Dialog Kebijakan Masa Depan Hak-Hak Komunal Atas Tanah: Beberapa Gagasan untuk Pengakuan Hukum, hosted by Universitas Laiden dan BAPENAS, Jakarta, Desember 2010, hlm. 19.

⁸ *Ibid.*, hlm. 20.

called a forest is called an area. However, the forest area here is wrongly interpreted as authority, not as having technical implications for forest plantations, so that for land matters the authority of the National Land Agency (BPN) is only 30%. Forest matters no longer depend on the function of the forest but rather on its authority. And the next process will follow this line of thinking. This is a consequence of the mistakes of legal experts who do not understand history. So basically, National Land Agency (BPN-*Badan Pertanahan Nasional*) doesn't have any authority, even though in the past it was understood that the Ministry of Forestry only managed the plants. So, the forest should be managed, but with the emergence of the term forest area it is interpreted as authority, meaning that there is a background of (political) interests behind it.⁹

State control of forests continues to this day through territorialization of forest control. Territorialization is understood as a process created by the state to control people and their activities by drawing lines around geographic space, preventing certain people from entering that space, and allowing or prohibiting activities within the boundaries of that space.¹⁰ Meanwhile, territorialization of forest control is a way in which the state controls forest areas within the boundaries of forest areas determined politically (by the state). State power over forest areas applies to control people using resources within the boundaries of those forest areas.¹¹

The process of state control over forests takes place through at least three stages of territorialization.¹² First, the state claims all land that is considered "no one's land" as state property. At this stage, the state aims to obtain income from the extraction of natural resources. Second, the state determines the boundaries of land declared as state property to emphasize territorial control by the state over forests. Once the boundaries of an area are defined, the area is closed and the state prohibits anyone from accessing the area and the forest resources within it, unless the state permits or grants concessions. Third, the state launched a program to divide forests into various functions based on scientific criteria, such as slope and soil type. The main result of this program is the zoning of an area to regulate the types of activities permitted in each zoning.

The territorialization of forest control by the state with zoning divisions as described above also occurs in traditional community areas in Rejang Lebong Regency, which covers the entire Rejang Lebong Regency area. The geographical condition of Rejang Lebong Regency is surrounded by state forest areas with various functions and the rest is residential, agricultural, swamp, river and other

⁹ Ismatul Hakim dan Lukas R. Wibowo, *Hutan untuk Rakyat: Jalan Terjal Reforma Agraria di Sektor Kehutanan*, (Yogyakarta: LKiS, 2014), hlm. 24.

¹⁰ Vandergeest, *Mapping Nature: Territorialization of Forest Right in Thailand*, Society & Natural Resources, (1996), hlm 159. Quoted in Mia Siscawati, *Wacana: Masyarakat Adat dan Perebutan Penguasaan Hutan*, *Jurnal Transformasi Sosial*, No. 33, (2014), hlm. 7.

¹¹ *Ibid.*, hlm. 385.

¹² *Ibid.*

areas. Indigenous communities in Rejang Lebong Regency basically understand that the traditional territory is where they live together with members of their community and form their identity as indigenous communities. For indigenous peoples in Rejang Lebong Regency, the importance of maintaining the integrity of their traditional territory is not only a matter of their livelihood but what is most essential is a matter of their identity as indigenous peoples.¹³ Most customary territory concepts are characterized by a balance between individual rights and collective (communal) rights. Rights to customary territories and natural resources, including forests, can be owned communally for the benefit of all community members and also individually to meet certain needs of their families. The exact pattern depends on each customary law community.¹⁴

Long before the government designated customary areas as forest areas with a zoning pattern, indigenous communities in Rejang Lebong Regency actually had a very close relationship with the land and natural resources in their customary areas, further defined through customary rules and laws that divided customary areas and detailing the function and management of each based on the spatial layout of the customary area. For example, religious, environmental, economic and social functions are fulfilled by special areas such as sacred forests (forbidden forests), protected forests, production forests, gardens, fields and rice fields as well as residential areas. Traditional areas with spiritual and conservation functions are collectively owned land because of its benefits for all members of the community, while production land and residential areas can be owned communally or individually.¹⁵

For indigenous communities whose customary territories include forests and other lands managed by combining forest management and forest agricultural cultivation (agroforestry), their land use and tenure systems contain rules for how women and men from various social groups use land, various types of land. agroforestry (orchards, wood gardens, old gardens, etc.), various forest lands (limited cleared forests, protected forests, etc.), various plants on these lands, as well as woody trees and natural resources. other forest resources (water, forest vegetables, medicinal plants, honey, rattan, etc).

From the description above, it can be illustrated that long before the state divided forests into various functions and zoning, indigenous peoples in Rejang Lebong Regency had already regulated their customary territories, including their customary forests, with their own spatial planning based on meanings and rules and regulations. customary law. The forestry policy implemented by the

¹³ Fahmi Arisandi, *Politik Hukum Pemerintahan Daerah Terhadap Perlindungan Hukum Masyarakat Hukum Adat di Kabupaten Lebong*, (Disertasi: Program Studi Ilmu Hukum Program Doktor Fakultas Hukum Universitas Islam Indonesia Yogyakarta, 2023), hlm. 209.

¹⁴ Emilianus Ola Kleden, *et. al.*, *Hutan untuk Masa Depan: Pengelolaan Hutan Adat di Tengah Arus Perubahan Dunia*, (Jakarta: AMAN & Dwon to Earth, 2009), hlm. 9.

¹⁵ Fahmi Arisandi, *Politik Hukum Pemerintahan Daerah Terhadap Perlindungan Hukum Masyarakat Hukum Adat di Kabupaten Lebong*, *op. cit.*, hlm. 210.

government is to designate the traditional areas of indigenous communities in Rejang Lebong Regency as forest areas through Law no. 41 of 1999 and its implementing regulations are the main source of conflict faced by indigenous communities in Rejang Lebong Regency.

The Kutei Lubuk Kembang indigenous community, Rejang Lebong Regency, is one example of the many conflicts faced by the community as described in the section above in the forestry sector. In 2016, suddenly the Kutei Lubuk Kembang traditional community area with plantation and agricultural functions which had been cultivated for generations by community members covering an area of 125.4 hectares was designated by the Ministry of Environment and Forestry as a state forest area with its function as production forest limited.

1.2. Formulation of the Problem

Based on the description that has been put forward in the background section of the problem above, the focus of this research problem is, what is the role of local government in resolving agrarian conflicts (Case Study of Conflict in the Traditional Area of the Kutei Lubuk Kembang Indigenous Community in a state forest area)?

1.3. Objective

This research is an academic effort that aims to analyze and describe the role of local government in resolving agrarian conflicts, especially in Rejang Lebong Regency, Bengkulu Province.

1.4. Research Method

This research is legal research to find out in depth the role of local governments in resolving agrarian conflicts, to answer problems and achieve the research objectives that have been outlined. This research also uses a comprehensive approach because it starts from the assumption that agrarian conflicts that often occur in several places are not only influenced by legal factors alone but also involving political, economic, historical and sociological aspects.

Based on the assumptions above, this research uses a sociolegal approach. Sociolegal studies are interdisciplinary studies that are a hybrid of major studies of legal science and legal sciences from a societal perspective that were born previously.¹⁶ The need to explain legal issues in a more theoretically meaningful way fuels this study. Meanwhile, practically, this study is also needed to explain the operation of law in people's lives.¹⁷

¹⁶ Sulistyowati Irianto, *Memperkenalkan Studi Sosiolegal dan Implikasi Metodologisnya*. Quoted in Sulistyowati Irianto and Sidharta (ed), *Metode Penelitian Hukum: Konstelasi dan Refleksi*, (Jakarta: Yayasan Pustaka Obor Indonesia, 2017), hlm. 173.

¹⁷ *Ibid.*

DISCUSSION

2.1. Traditional Territory Conflict in State Forest Area

The Rejang tribe is a tribe that is quite large in quantity and influence in the spread of culture in the Bengkulu Province to South Sumatra Province. When analyzing existing historical records, the Rejang tribe originates from 4 (four) Petulai.¹⁸ And each Petulai is led by a leader called Ajai.¹⁹ The four Ajai who once led the Rejang Tribe are as follows:²⁰

1. Ajai Bitang, who leads in the Pelabai area;
2. Ajai Begelam Mato, who leads in the Kutei Bolek Tebo area;
3. Ajai Siang, who leads the Siang Lakat area; and
4. Ajai Tiei Keteko, who leads in the Bandar Agung area.

It was during Ajai's time that 4 (four) monks came from the Majapahit Kingdom to Renah Sekelawi. They are Biku Panjang Jiwo, Biku Bembo, Biku Bejenggo, and Biku Bermanno.²¹ The four Biku were well received by the Ajai and the community because of the wisdom and supernatural powers of the Biku. Then the Monks were appointed by the four Ajai with the consent of the people to replace the Ajai to lead them. Biku panjang Jiwo replaces Ajai Bitang and is based in Pelabai, Biku Bembo replaces Ajai Siang who is based in Suka negeri near Tapus at this time, while Biku Bejenggo replaces Ajai Begelam mato who is based in Batu Lebar Lebar near Anggung Rejang in Kesambe at this time, while Biku Bermanno replaces Ajai Tiei Keteko which is currently based in Kutai Rukam near Lake Tes.

In subsequent developments, each Biku was given the name Petulai which was passed down from generation to generation patrilineally. The names of the Petulai are:

1. Petulai Biku Sepanjang Jiwo was given the name Tubei;
2. Petulai Biku Bembo was given the name Jurukalang;
3. Petulai Biku Bejenggo was given the name Selupuei;
4. Petulai Biku Bermanno was given the name Bermanni.

In the period after each Petulai was given to the four Biku, the community members in each Petulai were grouped based on blood relations and were led

¹⁸ Petulai is a family unit that arises from a unilateral system (one party), with a patrilineal lineage system (father's line) with an exogamous marriage method, even though they are scattered everywhere. Abdullah Sidik, *Hukum Adat Rejang*, (Jakarta: Balai Pustaka, 1980), hlm. 102.

¹⁹ Ajai comes from the word Majai, which means leader of a group of people. *Ibid*, hlm. 32.

²⁰ Pemerintah Daerah Kabupaten Rejang Lebong, *Naskah Akademik Rancangan Peraturan Daerah Kabupaten Rejang Lebong tentang Pengakuan Masyarakat Hukum Adat di Kabupaten Rejang Lebong*, (Curup: Pemerintah Daerah Kabupaten Rejang Lebong, 2017), hlm. 28.

²¹ *Ibid.*, hlm 29.

by their respective Petulai. Historical records note that this is the background to changing the name of Renah Sekelawi to Lebong as a gathering place for the four Biku. From Lebong, the Rejang tribe spread along the Ketahun river to the coast and along the Musi River to the Rawas and Lahat parts of South Sumatra Province.²² The Rejang tribe who inhabited onderafdeeling during the Dutch era, was named Rejang Lebong, who inhabited onderafdeeling Rejang, was named Rejang Musi and the Rejang Lembak, who inhabited onderafdeeling Tebing Tinggi and Rawas were named Rejang Empat Lawang and Rejang Rawas.²³

From the periodization arrangement of historical records mentioned above, it can be seen that in the Ajai period there were groups of people who lived together and had the same interests and goals, in this group of people there was also order, in this situation This group of people can be called a society, but cannot yet be said to be a customary law society. During Biku time, the group of people who formed this society was regulated by the enactment of laws that regulated human life within the community. So, a customary law community emerged which they called Kutei.²⁴ and their rulers are called Ketua Kutei, who enforce these laws for them.

Historically, the selection of Ketua Kutei has been carried out from generation to generation, namely down to male children. According to the customary law of Rejang Tiang Empat or Rejang Empat Petulai, to be elected as Ketua Kutei, the main requirement is that he is a person of origin, namely a descendant of the person who first founded Kutei, in addition to other conditions. With this person's position, he is respected by members of his community, an absolute requirement for every leader to have authority.²⁵ Other conditions are that he must be sensible, meaning someone who is wise, so that he is not influenced by other people's thoughts. A knowledgeable person, so he doesn't just follow what people say. People have wealth, so they are not greedy. People who are patient, have a good character, are not rude and are not vengeful in order to prevent injustice or mistreatment of their subordinates.²⁶

Kutei as a customary legal community unit in its journey has experienced ups and downs and even tends to be marginalized. This was due to the introduction of the Marga system to Bengkulu in 1861, which was implemented by the Dutch Assistant Resident J. Walland who was transferred from Palembang and

²² Abdul Sidik, *op. cit.*, hlm. 31.

²³ Onderafdeeling was an administrative area of the Dutch Colonial Government at the level below Afdeeling. The Head of Onderafdeeling has the rank of Controleur (Kontrolir). Dedi Irwanto M. Santun, *Iliran dan Uluan: Dinamika dan Dikotomi Sejarah Kultural Palembang*, (Yogyakarta: Eja Publisher, 2010), hlm. xx.

²⁴ The term Kutei comes from the Hindu term "Kuta" which means in Malay an independent village. M. Youstra, *Minangkabau: Overzicht van Land Geschiedenis en Volk*, (Gravenhage: Martinus Nijhoff, 1923), hlm. 97.

²⁵ Hazairin, *De Redjang*, (Bandung: MCN XXXVI, 1932), hlm. 20.

²⁶ *Ibid.*

implemented the Simbur Cahaya Law.²⁷ In this period, the existence of Kutei was changed to Marga. A territorial customary law community, Marga is formed from several Kutei who are united under a leader called Pasirah.²⁸ Before the arrival of J. Walland, the terms Marga and Pasirah were unknown to the Rejang tribe and this is proven by the fact that until 1859, both the British and Dutch colonial governments never mentioned the terms Marga and Pasirah.²⁹

The background to the formation of the new customary law community formed by the Dutch with the term Marga, was based on the fact that the large number of independent Kutei Rejang tribes made it very difficult for the Dutch government to control its colonies. Therefore, the Dutch began to carry out the division of the Rejang Tribe Marga. For the first time it was divided into 5 (five) Marga, namely:

1. Marga Jurukalang;
2. Marga Bermani;
3. Marga Selupu;
4. Marga Semelako; dan
5. Marga Aman.

From the description of the historical records described above, a conclusion can be drawn that the Kutei are a native traditional law community of the Rejang Tribe with an independent and familial government under a leader called the Ketua Kutei. The concept of the original customary legal community of the Rejang Tribe has undergone changes since the introduction of the Marga system brought by the Dutch. This change made the original concept of Kutei, which was familial (genealogical), become territorial under the authority of a Marga head who had the title Pasirah.

Weni said that the history of the formation of Kutei Lubuk Kembang came from their ancestor named Muning Alus who lived around Bio Musei which is currently in the Dusun Sawah Village area. Muning Alus is said to have lived long before the 8th century and had 4 children who were given territory to each of them, namely:³⁰

1. Rajo Depatei was given territory in Batu Panco;
2. Kak Tuo was given territory in Dusun Sawah;
3. Buruk Cindei was given territory in Perbo;
4. Mat Alei was given the highest area in the hills which was later named Lubuk Kembang.

²⁷ ²⁷ Dhanurseto Hadiprashada, et. al., *Etnografi Masyarakat Adat Rejang*, (Bengkulu: Aliansi Masyarakat Adat Nusantara Wilayah Bengkulu, 2017), hlm. 19.

²⁸ *Ibid.*

²⁹ Abdullah Sidik, *op. cit.*, hlm. 121.

³⁰ Interview with Mrs. Weni, Juli 23 2023 at Mrs. Weni house in Lubuk Kembang Village.

The origin of the name "*Lubuk Kembang*" is due to the existence of a large pool of water or "*Lubuk*" in the hilly area or in the Rejang language it is called "*Kembang*". Since then, Mat Alei descendants have lived by planting rice, tapping sugar palm and hunting. In settlements, ditches or so-called "*Pigei*" are made by digging the ground and filling them with traps in the form of sharpened bamboo and so on to prevent wild animals and ward off other enemies. Mat Alei descendants' number 3 people, namely:³¹

1. Setenang (Pelimo Tukak);
2. Menang (Pelimo Kuep); dan
3. Tawakkin (Pelimo Tuweak).

The three brothers then developed into a large family that lives in Lubuk Kembang Village to this day. The Kutei Lubuk Kembang Customary Law Community is currently administratively located in Lubuk Kembang Village, North Curup District, Rejang Lebong Regency, based on the results of participatory mapping, the Kutei Lubuk Kembang traditional area has an area of 1,005 hectares, with the geographical conditions of the customary area being dominated by hills and plains.

The agrarian conflict experienced by the Kutei Lubuk Kembang customary law community began when in 2012, the Minister of Environment and Forestry issued Decree No. 784/MENHUT-II/2012 concerning Amendments to the Decree of the Minister of Forestry and Plantation No. 420/KPTS-II/1999 concerning Designation of Forest Areas in the Bengkulu Province Region. The letter states that the forest area in Bengkulu Province is 924,631 hectares. The letter also states that Lubuk Kembang Village is an HPT (Limited Production Forest), namely Bukit Basa Reg. 74 covering an area of 125.4 hectares.

Based on this letter, in 2016, a team from BPKH – *Balai Pemantapan Kawasan Hutan* (Forest Area Stabilization Center) Region XX Bandar Lampung, came to Lubuk Kembang village to measure and install signposts for state forest areas and at that time there was resistance from the Kutei customary law community. Lubuk Kembang. Determination of HPT – *Hutan Produksi Terbatas* (Limited Production Forest) namely Bukit Basa Reg. 74 covering an area of 125.4 hectares in Lubuk Kembang Village is considered by residents to be a policy that has no basis because there has never been any socialization related to this determination, besides that the area designated as limited production forest is a plantation area and has been cultivated by the community for generations based on regulations. customary territorial space that they agreed to.

"In the HPT area they are referring to, there is not a single type of tree that can be called a forest, there are only stretches of coffee plants that are hundreds of years old and that we have cultivated for generations to pay for the children's kitchen

³¹ *Ibid.*

and school needs."³²

A total of 122 heads of families of the Kutei Lubuk Kembang customary law community depend on coffee gardening for their livelihood in the Limited Production Forest area designated by the Minister of Forestry and Environment and 36 have even had certificates issued from 1985 to 2016. BPN (National Land Agency). Since 2016, people can no longer apply for land certificates at BPN on the grounds that the area has been designated as HPT (Limited Production Forest).

2.2. The Role of Regional Government in Resolving Agrarian Conflict

Uncertainty and inequality in control of forest areas hinder the achievement of effectiveness and fairness in forest management in Indonesia. This problem not only affects traditional communities who live and utilize land and natural resources in forest areas, but also forestry business institutions and the government. Overlapping claims on forest areas occur, among other things, as a result of legislation and policies that are not clearly formulated, uncoordinated licensing, designation of forest areas with various functions, and neglect of recognition of the rights of customary law communities. This is a source of agrarian conflict in forest areas. Some of these conflicts originate from colonial forestry policies and others have escalated in the present.³³

The conflict that occurred was due to the perspectives and benchmarks used by the parties in claiming existing forest areas. At least it can be seen from different perspectives in interpreting "power" which is considered valid and valid among actors in the field.³⁴ The assumption that up to now is that only the state as an institution is considered to have the highest position in the power structure has sometimes become a source of problems in conflicts that occur.³⁵ There is an opinion that the state is the sole basis for forestry power and governance, even though on the other hand there are customary law communities whose existence in this case is constitutionally protected based on Constitutional Court Decision Number 35/PUU-X/2012.

The Constitutional Court's decision clearly reflects that the basis of power does not only rest on an institution called the state. However, more concretely, this power in the context of the field becomes spread in various places and receives

³² Interview with Mr Sohibi, July 24 2023 at Mr Sohibi's house in Lubuk Kembang Village.

³³ Myrna A. Safitri, *et. al.*, *Menuju Kepastian dan Keadilan Tenurial: Pandangan Kelompok Masyarakat Sipil Indonesia tentang Prinsip, Prasyarat, dan Langkah Mereformasi Kebijakan Penguasaan Tanah dan Kawasan Hutan di Indonesia*, (Jakarta: Epistema, HuMa, FKKM, WG Tenure, KPA, KPSHK, AMAN, Pusaka, JKPP, SAINS, Karsa, KKI WARSI, JAVLEC, SCALE UP, SAMDHANA, 2011), hlm. 13.

³⁴ Gamin, *et. al.*, *Konflik Tenurial dalam Pembangunan KPH: Pembelajaran dari Hasil Penilaian Cepat di KPH Berau Barat dan KPH Kapuas Hulu*, (Bogor: Working Group on Forest Land Tenure, 2014), hlm. 69.

³⁵ *Ibid.*

recognition according to the characteristics of the community. In other languages, this can be interpreted as the determination of forest areas carried out by the state and the formal granting of permits in state law to be refuted when the customary law community actually considers the determination or permit to be nothing more than a piece of paper that comes from a state institution and has so far tended to not present when a conflict occurs at the field level.

Apart from that, the decision of the Constitutional Court is a decision which rectifies what is termed the stateization of customary territories, namely that customary territories which contain settlements, plantations, agriculture, grazing pastures, customary forests which contain plants and animals and other natural resources are categorized as by the Government as state land and state forests, then on the basis of authority based on statutory regulations, public officials include part or all of the customary territory as part of the licenses granted by central and regional government bodies to companies carrying out extraction. natural resources, and plantation/forestry/mining production to produce global commodities or also government agencies in managing conservation areas (National Parks, Grand Forest Parks, etc.).³⁶

Issuance of Rejang Lebong Regency Regional Regulation No. 5 of 2018 concerning Recognition and Protection of Customary Law Communities in Rejang Lebong Regency, which bases Constitutional Court Decision 35 of 2012 as a reference basis for its formation can be understood as an effort by the Regional Government of Rejang Lebong Regency to resolve conflicts that occur, including conflicts over forest control. This can be seen by the explicit recognition of Kutei as a social unit of the customary law community in Rejang Lebong Regency along with the recognition of their customary territory.

Rejang Lebong Regency Regional Regulation No. 5 of 2018 has also strictly regulated the rights and obligations of Kutei as a customary law community, namely:

Right:³⁷

1. Right to land, territory and natural resources;
2. Right to development;
3. Right to spiritual and cultural;
4. Right to the environment; and
5. Right to implement customary law and customary court.

³⁶ Ahyar Ari Gayo dan Nevey Varida Ariani, Penegakan Hukum Konflik Agraria yang terkait dengan Hak Masyarakat Adat Pasca Putusan MK No. 35/PUU-X/2012, *Jurnal Penelitian Hukum DE JURE*, Vol. 16, No. 2, (Juni 2016), hlm. 163.

³⁷ Article 8 Rejang Lebong Regency Regional Regulation No. 5 of 2018 concerning Recognition and Protection of Traditional Law Communities in Rejang Lebong Regency.

Obligation:³⁸

1. Maintain security and order and implement tolerance in social, national and state life;
2. Maintain environmental sustainability and natural resources in a sustainable manner;
3. Preserve and implement customary law and the overall value of its customs;
4. Play an active role in the development process and maintenance of development result; and
5. Cooperate in the identification and verification process of customary law communities.

Apart from controlling customary areas through the recognition of Kutei as a social unit of customary law communities in Rejang Lebong Regency, the Regional Regulation also regulates spatial management of customary areas by stating the obligations of customary law communities to maintain and preserve the environment and natural resources in a sustainable manner. This is done to ensure that control over customary territories, including forests within them, must still be carried out by paying attention to environmental aspects and the carrying capacity of natural resources.

The obligations stipulated above are in accordance with the customary law in force in Rejang Lebong Regency. This can be found in Rejang Lebong Regency Regional Regulation No. 2 of 2007 concerning the Application of Customary Law in the Rejang Lebong Regency Area. The Regional Regulation states various regulations regarding Imbo Larangan (Prohibited Forest) which cannot be opened and used for various functions other than conservation. The prohibition on opening buffer areas for springs and areas prone to landslides as a function of protecting customary areas, apart from the law in the Regional Regulations, is also regulated by customary institutions that enforce the law for various violations known as Jenang Kutei (Village Judges) along with customary justice mechanisms to impose sanctions for various violations.

In 2020, the Rejang Lebong Regent has followed up on orders as mandated in Rejang Lebong Regency Regional Regulation No. 5 of 2018, by establishing 5 (five) customary law community communities in Rejang Lebong Regency through a Regent's Decree, one of the designated communities is the Kutei Lubuk Kembang customary law community through Rejang Lebong Regent's Decree No. 180.65.I of 2020 concerning Recognition and Protection of Kutei Lubuk Kembang as a Customary Law Community Unit in Rejang Lebong Regency. Apart from establishing a customary law community, this Regent's Decree also recognizes and establishes the Kutei Lubuk Kembang traditional area of 1005.2 hectares.

Issuance of Rejang Lebong Regency Regional Regulation No. 5 of 2018

³⁸ Article 15, *ibid.*

concerning Recognition and Protection of Customary Law Communities in Rejang Lebong Regency and Regent's Decree No. No. 180.65.I of 2020 concerning Recognition and Protection of Kutei Lubuk Kembang as a Customary Law Community Unit in Rejang Lebong Regency, is an effort by the Regional Government of Rejang Lebong Regency to resolve agrarian conflicts, especially in the state forest area in Lubuk Kembang Village.

These two regional legal policies follow up on the Rejang Lebong Regent's Letter to the Minister of Environment and Forestry No. 522/2272016 concerning Forest Area Problems in Rejang Lebong Regency, where in the letter it is stated that the Regent proposed changing the Bukit Basa HPT (Limited Production Forest) forest area of 125.4 hectares to APL (Other Use Area) and in 2019 the Governor of Bengkulu has also sent a Letter to the Minister of Environment and Forestry No. 522/011/DLHK/2019 concerning Changes in Designation and Changes in Function of Forest Areas in the Context of Reviewing the Spatial Planning of the Bengkulu Region, where one of the proposals proposed to the Minister of Forestry and Environment for the released area is the Bukit Basa HPT (Limited Production Forest) forest area covering an area 125.4 hectares in Lubuk Kembang Village.

After going through a long process, based on proposals from the Regional Government of Rejang Lebong Regency and the Governor of Bengkulu Province, in 2023, the Ministry of Environment and Forestry has issued Ministerial Decree No. 533/MENLHK/SETJEN/PLA.2/5/2023 concerning Changes in the Designation of Forest Areas to Non-Forest Areas covering an area of 2,340 hectares in Bengkulu Province, of which 125.4 hectares were originally Bukit HPT (Limited Production Forest) forest areas The base is designated as APL (Other Use Area).

CONCLUSION

Regional Government has an important role in resolving agrarian conflicts in forest areas, Issuance of Rejang Lebong Regency Regional Regulation No. 5 of 2018 concerning Recognition and Protection of Customary Law Communities in Rejang Lebong Regency and Regent's Decree No. No. 180.65.I of 2020 concerning Recognition and Protection of Kutei Lubuk Kembang as a Customary Law Community Unit in Rejang Lebong Regency, is an effort by the Regional Government of Rejang Lebong Regency to resolve agrarian conflicts, especially in the state forest area in Lubuk Kembang Village.

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