

Recognition And Protection of Indigenous Peoples in Seluma Regency

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ABSTRACT

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Regions become an important arena in recognizing the rights of indigenous peoples. The authority of regions to recognize indigenous peoples has strengthened along with the decentralization that was rolled out after the New Order regime through Law Number 22 of 1999 concerning Regional Government. The spirit of regional autonomy is in line with the hopes of indigenous peoples throughout the archipelago to once again voice the importance of recognizing the rights of indigenous peoples who for a long time have experienced various denials of their identity as part of the Unitary State of the Republic of Indonesia. In such an atmosphere, the government responded to the demands of indigenous legal communities by giving authority to regional governments to determine the existence and rights of indigenous peoples. The research method used in this journal is a literature review method and uses a normative juridical and qualitative approach. This literature research method is used to examine the political protection of the formation of laws and regulations for Indigenous People's by exploring concepts, regulations and implementation through relevant materials. A normative juridical approach is used to analyze legal aspect, while a qualitative approach is used to analyze the views and perceptions regarding the recognition and protection of indigenous people's rights in Seluma Regency. Post-reform, the recognition and protection of indigenous peoples has undergone political and legal changes, both in terms of laws and constitutional court decisions. These changes delegate authority to local governments to recognize and protect indigenous peoples. In line with these political and legal changes, the Seluma Regency Government has issued Regional Regulation Number 3 of 2022 concerning Procedures for Recognition and Protection of Indigenous Peoples in Seluma Regency and in September 2024 based on recommendations from the Indigenous Peoples Committee, the Regent of Seluma Regency has issued a Decree concerning the Determination of Recognition and Protection of the Indigenous Communities of Serawai Pasar Seluma, Arang Sapat, Napal Jungur, Lubuk Lagan, and Semidang Sakti Pering Baru.

INTRODUCTION

Indigenous people are a general term used in Indonesia to refer to the indigenous peoples within the country of Indonesia. In legal theory and in the Legislation, indigenous peoples are formally referred to as customary law communities. The term customary law community should be understood as the equivalent of “*Adat Rechtsgemeenschap*”. “*Rechtsgemeenschap*” is translated as legal community or legal association. So, the basis for the formation of the term customary law community is “*Legal Community*” and “*Custom*”, not “*Society*” and “*Customary Law*”.¹

Indigenous peoples are organized groups of people who behave as a unit, live in a certain area, have rulers, have their own customary laws and have their own wealth in the form of tangible or intangible objects and control natural resources within their reach.² Indigenous peoples are also defined as groups of people who are bound by their customary legal order as citizens together with an association because of the same area of residence or descent.

The definition of indigenous peoples does not actually refer to a closed definition but rather to criteria. In theory, an indigenous people is given the opportunity and independence to identify themselves (Self Identification) in order to be recognized as an indigenous peoples unit. Due to the various complexities in determining the indigenous people’s unit in each region in Indonesia, an effort is needed from the government to conduct an in-depth investigation and be stated in a legal policy to provide a sense of justice for indigenous peoples who have continued to experience various acts of discrimination in the name of development.

Het Adatrecht van Nederlansch Indie is a work by Cornelis van Vallenhoven,³ published in 1925. In the research published in the book, Cornelis van Vallenhoven initially analyzed the special characteristics that apply in each customary law environment. These characteristics were then tested against the customary law systems found in communities in areas that were originally identified as places, which were hypothetically named customary law environments. Customary law systems that did not have these characteristics were then removed and given their own classification, which then became separate customary law environments. This method then produced 19 customary law environments in Indonesia,⁴ the results of the research conducted by Cornelis van Vallenhoven have been able to prove that long before the

¹ Noer Fauzi and Mia Siscawati, *Masyarakat Hukum Adat, Adalah Penyandang Hak, Subyek Hukum, dan Pemilik Wilayah Adatnya: Memahami Secara Kontekstual Putusan Mahkamah Konstitusi Republik Indonesia atas Perkara Nomor 35/PUU-X/2012*, (Yogyakarta: INSISTPress, 2014), p. 6.

² Taqwaddin, *Penguasaan atas Pengelolaan Hutan Adat oleh Masyarakat Hukum Adat Mukmin di Provinsi Aceh*, (Sumatera Utara: Disertasi Doktor Ilmu Hukum Universitas Sumatera Utara, 2010), p. 3.

³ Cornelis van Vallenhoven was a Professor at Leiden University in the Netherlands, most of his life was focused on studying Indonesian customary law and then campaigning for its preservation. His writings are generally related to customary law, such as *Het Ontdekking van Adatrecht, Orientatie in het Adatrecht van Nederlandsch Indie* (1913). His masterpiece is a collection of writings in several volumes, *Het Adatrecht van Nederlandsch Indie*, which contains studies and collections of customary law from 19 customary environments in Indonesia that are different from the customary traditions of immigrants.

⁴ Cornelis van Vallenhoven, *Het Adatrecht van Nederlandsch Indie*. Quoted in Soerjono Soekanto, *Hukum Adat Indonesia*, Cetakan Pertama, (Jakarta: Raja Grafindo Persada, 1981), p. 18.

Indonesian state was formed, customary communities had lived and developed with customary law as a guideline for regulating their customary areas.

Society and law are two inseparable entities. Even in legal science, there is a famous adage that was first conveyed by Cicero, a Roman philosopher. The adage reads "Ubi Sociates ibi Ius".⁵ This means that in every formation of a social structure called society, a material that acts as a "glue" for the various components of the formation of that society will always be needed, and the function of the "glue" is law.⁶ If the concept of "Ubi Sociates ibi Ius" is connected to the discovery of the customary legal environment carried out by Cornelis van Vallenhoven, then in the final conclusion it can be concluded that the Serawai customary legal environment is one factual example of a customary legal environment that has lived and developed for a long time until now the customary legal community in Seluma Regency continues to maintain its existence to implement customary laws in every aspect of its life.

Regions become an important arena in recognizing the rights of indigenous peoples. The authority of regions to recognize indigenous peoples has strengthened along with the decentralization that was rolled out after the New Order regime through Law Number 22 of 1999 concerning Regional Government.⁷ The spirit of regional autonomy is in line with the hopes of indigenous peoples throughout the archipelago to once again voice the importance of recognizing the rights of indigenous peoples who for a long time have experienced various denials of their identity as part of the Unitary State of the Republic of Indonesia. In such an atmosphere, the government responded to the demands of indigenous legal communities by giving authority to regional governments to determine the existence and rights of indigenous peoples.⁸

Seluma Regency is one of the regional governments as regulated in Article 18 of the 1945 Constitution and Law Number 23 of 2014 concerning Regional Government, therefore basically Seluma Regency also bears responsibility for state obligations in implementing recognition and protection for Indigenous Legal Communities in Seluma Regency which are adjusted to the development of legal politics for the recognition of indigenous peoples in Indonesia today. Therefore, encouraging the recognition of indigenous peoples as legal subjects is important to ensure that indigenous peoples in Seluma Regency are rights holders protected by law.

METHOD

The research method used in this journal is a literature review method (desktop

⁵ Ubi Sociates ibi Ius which means "Where there is Society, there is Law". Cicero's theory is supported by Van Apeldoorn who said that "Law exists throughout the world, wherever there is human society". Bachsan Mustafa, *Sistem Hukum Terpadu*, (Bandung: PT. Citra Aditya Bakti, 2003), p. 12.

⁶ Joeni Arianto, *Manusia dan Hukum: Sebuah Pengantar Kajian Filsafat tentang Hukum*, Paper presented at LKMM Tingkat Menengah FTK ITS, Surabaya, 09 Mei 2008, p. 1.

⁷ The Regional Government Law has undergone several amendments, most recently through Law No. 23 of 2014 concerning Regional Government in conjunction with Law No. 9 of 2015 concerning the Second Amendment to Law No. 23 of 2014 concerning Regional Government.

⁸ JT Pareke and Fahmi Arisandi, Pengakuan Masyarakat Adat dan Perlindungan Wilayah Adat di Kabupaten Rejang Lebong, *Jurnal Bina Hukum Lingkungan*, Vol. 1, No. 2, April 2020, p. 317-318.

study) and uses a normative juridical and qualitative approach. This literature research method is used to examine the political protection of the formation of laws and regulations for Indigenous People's by exploring concepts, regulations and implementation through relevant materials. A normative juridical approach is used to analyze legal aspect, while a qualitative approach is used to analyze the views and perceptions regarding the recognition and protection of indigenous people's rights in Seluma Regency.

RESULT AND DISCUSSION

1. Practices of Implementing Recognition and Protection of Indigenous Peoples

Recognition of the existence of indigenous peoples as part of the State of Indonesia has been stated in various laws and regulations. The recognitions are seen in the phrases that mention "indigenous law communities" in the relevant laws and regulations, along with the forms of their involvement. However, there are two things that need to be noted, namely: first, the recognition is still partial or sectoral, meaning that the recognition is only limited to certain sectors depending on the aspects regulated by the relevant laws and regulations. Second, the recognition contained in the laws and regulations is still abstract and universal, meaning that in order to obtain concrete-individual recognition, it still needs to be determined by more specific norms.

The concrete-individual legal recognition is specifically regulated in two Laws and Regulations, namely Permendagri No. 52 of 2014 concerning Guidelines for the Recognition and Protection of Indigenous Legal Communities and Law No. 41 of 1999 concerning Forestry. In Permendagri No. 52 of 2014, it is stipulated that the Governor and Regent/Mayor shall recognize and protect indigenous communities. Furthermore, in recognizing and protecting indigenous peoples, the regent/mayor shall form a Regency/City Indigenous peoples Committee. The organizational structure of the Indigenous peoples Committee consists of:

1. The district/city regional secretary as chairman;
2. Head of SKPD in charge of community empowerment as secretary;
3. Head of the legal section of the district/city secretariat as a member;
4. Sub-district head or other designation as a member; and
5. Head of related SKPD according to the characteristics of the customary law community as a member.

The stages of recognition include:

1. Identification of indigenous peoples;
2. Verification and validation of indigenous peoples; and
3. Determination of indigenous peoples.

This identification is carried out by observing the existence of several things, namely:

1. History of indigenous peoples;

2. Indigenous territories;
3. Customary law;
4. Customary assets and/or object; and
5. Customary government institutions systems.

After conducting identification and obtaining the results, the next step is verification and validation, the results of which must be announced to the local indigenous community within 1 (one) month. Then the indigenous legal community committee submits a recommendation to the Regent/Mayor, so that the determination of recognition and protection of indigenous legal communities can be made based on the recommendations of the Indigenous Legal Community Committee with a Decree of the Regional Head. Meanwhile, Article 67 of the Forestry Law stipulates that Indigenous communities, as long as they actually still exist, are recognized. Confirmation of the existence and elimination of indigenous peoples as referred to are stipulated in Regional Regulations.

2. Indigenous Peoples in Seluma Regency

When analyzing the existing historical records, the Customary Law Community inhabiting the Seluma Regency area originated from the Serawai Tribe.⁹ The origin of the Serawai Tribe has not been formulated with certainty until now, either in written form or in other forms of publication. This is because the tradition that developed in the Serawai Tribe is an oral tradition, not a written tradition. Of course, oral history like this is very difficult to avoid the inclusion of elements of legend or fairy tales, making it difficult to distinguish it from that which has historical value.

Of the many oral stories that have developed about the origins of Serawai, there is an oral story that has been believed to be true by the majority of the customary law community in Seluma Regency which has been written in the Book of the Seluma Region in the History of the Origins of Growth and Development, namely:¹⁰

- a. Serawai comes from the word "SAWAI" which is the flow of two stems. The stem of Seluma in Bukit Campang and the stem of Talo in Bukit Lesung. Serawai comes from the word Serawai which is the flow of two stems. The stem of Seluma from Bukit Campang with the stem of Talo from Bukit Lesung;
- b. Serawai is like SO-RAWAI, which is a figurative word for the ancestors of the Seluma people who are one group. Serawai means Rawai, which is a fishing rod with one collecting line, but with many hooks.

⁹ Before being designated as a Definitive Regency through Law No. 3 of 2003 concerning the Establishment of Mukomuko Regency, Seluma Regency, and Kaur Regency in Bengkulu Province, Seluma Regency was previously administratively part of South Bengkulu Regency.

¹⁰ Bustan A. Dali, *Daerah Seluma: Dalam Sejarah Asal Usul Pertumbuhan dan Perkembangan*, (Tais: Yayasan Pembangunan Kabupaten Seluma, 2004), p. 27.

From the two opinions above, it is most likely that the word Serawai comes from the word SO-RAWAI which means one group.¹¹

From the oral story, the Serawai Tribe who inhabited the Seluma Regency area for quite a long time, have been found to have a group of people who live together and have the same interests and goals, the establishment of laws that regulate human life including the community environment, in such circumstances a customary law community emerged which they call Jungku¹² from Jughai¹³ which already existed and each Jungku was led by Tuo Jungku, who was a representative to resolve various problems that arose in the customary institutions they knew as Sakonam and/or Jegangau Dusun.¹⁴

Jungku as a customary law community unit in Seluma Regency has experienced ups and downs in its journey and even its condition tends to be marginalized. This is due to the entry of the Marga system into Bengkulu in 1861, implemented by the Dutch Assistant Resident J. Walland who was transferred from Palembang and enacted the Simbur Cahaya Law.

Based on the concept of indigenous peoples that has been described in the previous section, it is necessary to identify the indigenous legal communities in Seluma Regency, there are 5 determining factors, namely:

- a. There is an ordered human unity;
- b. Settling in a certain area;
- c. Having rullers;
- d. Have tangible or intangible wealth, where member of each unit experience life in society as a natural thing according to the nature of nature; and
- e. None of the members had any thoughts or thoughts the tendency to dissolve the bonds that have grown or leaving it in the sense of beraking away from that bond forever.

The first criterion is the existence of an orderly human unity. This criterion is based on the social unit found in the customary law community in Seluma Regency, namely Jungku using the village unit. The composition of indigenous peoples in Seluma Regency consists of:

- a. Genetically structured indigenous communities based on blood ties (Jughai),

¹¹ Ibid.

¹² Jungku is a group of Jughai (descendants) who live in one area and have certain boundaries, Conclusion in the FGD Minutes: Dissemination of Social Data of the Serawai Indigenous Community, 15-16 February 2021.

¹³ Jughai are the grandchildren and great-grandchildren descended from one ancestor, Ibid.

¹⁴ Sakonam and/or Jegangau Dusun are customary institutions where various problems are resolved based on customary law, the number of administrators in a customary institution of each Jungku is not the same, it can be 6 or 9 people depending on the situation and needs with a structural composition of Tuo Jungku (Representative of each Jungku), Cerdik Pandai (Representative of community leaders), Mak Inang (Representative of women's groups), and Tuo Bujang (Representative of youth groups). All decisions taken in the Sakonam and/or Jegangau Dusun deliberations are carried out collectively and collegially, *ibid.*

namely indigenous communities whose structure is based on blood ties. They feel united by a belief that they originate from a bond according to ancestral lineage. In the customary law community in Seluma Regency, only one type of blood relationship is recognized, namely blood ties according to the father's line (patrilineal).

- b. Territorially structured indigenous peoples, namely indigenous peoples whose structure is based on regional ties. They feel united by a belief that they are bound by or come from the same area. Here the principle of territoriality or territoriality applies. Emotional ties to the land are a very strong and determining principle.

3. Regional Legal Policy Regarding Indigenous Peoples in Seluma Regency

The development of national law everywhere takes place in parallel with the development of the power of nation states. This is undoubtedly the case, because what is called national law is essentially a law whose legality of formation and implementation comes from the power and authority of the state. When life develops into wider scales from the circles of local community life to large circles that are translocal in nature at the level of national life that is organized as a political community called a modern nation state, the need for a single and definite legal system.¹⁵ Then the unification movement and legal codification is seen to be rampant here, as if it is an inherent part of the process of nationalization and stateization as well as modernization which is very impressive, there has been a denial of anything that has a local and traditional feel.¹⁶

In Indonesia historically, legal unification itself is actually only a few months old, it's just that recent developments are more directed towards unification in line with the formation of the state. While legal pluralism has existed long before the formation of the state, so when the culture of unification came, legal pluralism was threatened. The existence of other laws that have long existed in Indonesia, such as customary laws that have different applications, are also threatened.

In the historical records of the denial of the original social structure, customary law and respect for local wisdom with the unification legal policy has been carried out since the old order regime, this can be seen in the provisions of Law No. 18 of 1965 concerning Regional Government and Law No. 19 of 1965 concerning Swapraja Villages. In the Swapraja Law, indigenous peoples are included in the swapraja area. The Swapraja Law does not aim to form new Swapraja villages, it only provides validation and recognition to Swapraja villages that have long existed.

During the New Order government, President Soeharto limited the multicultural facts of villages in Indonesia. Law No. 5 of 1974 concerning Regional Government

¹⁵ Soetandyo Wignjosebroto, *Masalah Pluralisme dalam Pemikiran dan Kebijakan Perkembangan Hukum Nasional: Pengalaman Indonesia*, Paper presented at the National Seminar on Legal Pluralism: Developments in Several Countries, History of Thought in Indonesia and its Struggle in the Legal Reform Movement, (Jakarta: Universitas Al-Azhar, 2006), p. 1.

¹⁶ Ibid.

and Law No. 5 of 1979 concerning Villages were very centralistic, solely aimed at unification while ignoring the multicultural facts in village organizations. As a consequence, villages were in a marginal position and discriminated against by the hegemonic power of the center. Because of this policy, villages were only considered as administrative areas, without any recognition towards indigenous social structures, the role of customary law and respect for local wisdom.¹⁷

The standardization (unification) of the village/sub-district government system as mentioned above has also eliminated the social structure that exists in the customary law community in Seluma Regency. Departing from such facts, the Seluma Regency Regional Government responded by issuing Seluma Regency Regional Regulation No. 4 of 2014 concerning the Enforcement of the Compilation of Customary Law of Seluma Regency. The legal policy taken by the Seluma Regional Government can be understood as an effort to maintain Jungku as an original social structure, customary law, and respect for the local wisdom of the customary community in Seluma Regency.

In addition, in 2022. The Seluma Regency Government has also issued Regional Regulation Number 3 of 22 concerning the Procedures for Recognition and Protection of Indigenous peoples in Seluma Regency. This Regional Regulation was issued as a form of response from the regional government to changes in national legal policy regarding the recognition and protection of indigenous peoples which delegate authority to the regional government to carry out recognition and protection of indigenous peoples.

In line with the mandate in the regional regulation, in 2023 the Regent of Seluma Regency issued Regent's Decree Number 900-691 of 2023 concerning the Establishment of the Seluma Regency Indigenous Community Committee. After one year of working to identify, verify, and validate indigenous communities in Seluma Regency in September 2024, the Regent of Seluma based on the recommendation of the Indigenous Peoples Committee has issued a Regent's Decree concerning the Determination of Recognition and Protection of the Serawai Indigenous Communities of Pasar Seluma, Arang Sapat, Napal Jungur, Lubuk Lagan, and Semidang Sakti Pering Baru.

CONCLUSION

Post-reform, the recognition and protection of indigenous peoples has undergone political and legal changes, both in terms of laws and constitutional court decisions. These changes delegate authority to local governments to recognize and protect indigenous peoples. In line with these political and legal changes, the Seluma Regency Government has issued Regional Regulation Number 3 of 2022 concerning Procedures

¹⁷ Mirzha Satria Buana and H. Wahyuni, *Peraturan Daerah Kabupaten Pulau Pisang tentang Pengakuan dan Perlindungan Hak-Hak Masyarakat Adat di Kabupaten Pulau Pisang*, (Banjarasin: LPPM Universitas Lambung Mangkurat, 2016), p. 41.

for Recognition and Protection of Indigenous Peoples in Seluma Regency and in September 2024 based on recommendations from the Indigenous Peoples Committee, the Regent of Seluma Regency has issued a Decree concerning the Determination of Recognition and Protection of the Indigenous Communities of Serawai Pasar Seluma, Arang Sapat, Napal Jungur, Lubuk Lagan, and Semidang Sakti Pering Baru.

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