Turnitin 17. Policy Implementation of Recognition

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Policy Implementation of Recognition and Protection of Ulaya Rights in Indigenous communities in the West Papua Region

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Authors' contributions

This work was carried out in collaboration among all authors. All authors read and approved the final manuscript.

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ABSTRACT

Ulayat rights are rights attached to indigenous peoples in West Papua, and are recognized and protected by national and international law. This right refers to the traditional rights held by indigenous peoples to the land, territories and natural resources in the areas they inhabit and manage for generations. This study focuses on identifying the government's recognition and protection of customary rights as the rights of indigenous peoples in West Papua. The research method used is qualitative with a qualitative descriptive approach, aiming to reveal events or facts, circumstances, phenomena, variables and circumstances that occur during the research by presenting what actually happened. Data collection techniques were carried out through

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observation, interviews and document and literature studies. At the data analysis stage, the inductive reasoning model was carried out. The results of the study show that the government's policy of recognizing and protecting ulayat rights as the rights of indigenous peoples in West Papua is due to the low knowledge, low public awareness, community culture, facilities and facilities that are still limited, so that the carrying capacity of the government's recognition and protection for the community is not yet optimal. The policy of recognizing and protecting customary rights in indigenous communities in the West Papua region requires a collaborative, participatory and sensitive approach to cultural diversity and the aspirations of indigenous peoples.

Keywords: Policy implementation; customary rights; papuan indigenous peoples.

1. INTRODUCTION

"In human life, land cannot be separated from all human activities, because land is a place for humans to live and continue their lives. The relationship between humans and land can be interpreted as an essential relationship. This means that this relationship will be established continuously until one day the human returns to the Creator with the place of his last journey also through the ground" [1]. "Soil for human life, contains a multidimensional meaning. First, from an economic standpoint, land is a means of production that can bring prosperity. Second, politically and can determine a person's position in community decision-making. Third, as a cultural capita it can determine the level of social status of the owner. Fourth, land has a sacred meaning because at the end of life everyone will return to the land. Because of this multidimensional meaning, there is a tendency that people who own land will defend their land in any way if their rights are violated" [2].

"The existence of Indigenous Peoples is guaranteed based on Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia where the state has the right to protect and maintain the existence of Indigenous Law Communities. Customary law communities in relation to natural resources have an orientation and character to preserve existing natural resources through certain methods and mechanisms which are commonly referred to as customary rights" [3]. With regard to the customary rights of the Customary Law Community, Article 3 of Law no. 5 of 1960 concerning the Basic Agrarian Regulations (hereinafter referred to as UUPA) also emphasized that Customary Law Communities have ulayat rights and similar rights that need to be guaranteed protection and recognition by the state [4].

"In the Indonesian context, the existence of indigenous peoples is currently very concerning, especially with regard to their rights to land rights. This opinion, when expanded, does not only concern land rights, but rights over natural resources, including forest resources. The government's recognition and protection of indigenous peoples is constitutionally regulated in Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia" [5].

The government's demand for land in rural and urban areas is very urgent and pressing. For example, in the construction and widening of roads, new settlements on the outskirts of cities, construction of airport projects, and other public infrastructure such as schools, terminals, hospitals, markets, and others [6]. With this in mind, the way that can be done to meet these infrastructure needs is land acquisition. In carrying out the development of land procurement for the public interest, the government has the obligation to provide land used for development, land also has different types of status, namely: a). State Land, this land belongs to the state so that it is controlled and recognized by the state; b). Right Land, is land owned by a person or legal entity; c). Ulayat Land, is land that is jointly owned or controlled by the local customary law community [7].

West Papua province, based on its socio-cultural conditions, actually has one national unit with the province of Papua. Indonesia's Papua region is not the same as Papua New Guinea (PNG). Regardless of the philosophy in recognition of the community, these two provinces are often referred to simultaneously as Tanah Papua, as stated in the "two for one and one for two" agreement. The sentence shows that the Special Autonomy Law applies to Papua Province and West Papua Province. According to this sentence, a province with the same culture and background actually has one goal of development.

Resources and the community are considered to have a hereditary and spiritual relationship between Indigenous Peoples and their related areas. The condition of West Papua is still synonymous with habits that are still often used in the daily lives of local people to this day. However, people living in big cities such as Sorong and Jayapura are slowly starting to adopt a modern life and abandon the customs that are characteristic of West Papua. Communities who currently live in the forest interior of West Papua or the Native Papuan Tribe, as well as traditional communities living in interior villages or local settlements still uphold these customs.

"Law Number 21 of 2001 concerning Special Autonomy for Papua, Perdasus of Papua Province Number 20 of 2008 concerning Customary Courts, Perdasus of Papua Province Number 22 of 2008 concerning Protection and Management of Natural Resources for Indigenous Peoples, and Perdasus of Papua Province Number 23 of 2008 concerning Rights Community Ulayat" [8]. However, there are still obstacles that hinder the implementation of these laws and regulations. This is because the indigenous people of West Papua face common problems that are still difficult to address, such as inadequate human resources and inadequate infrastructure. In addition, these laws and regulations are becoming more difficult to implement because the local government, the Papuan People's Council (MRP), and the Papuan People's Representative Council (DPRP) pay less attention to their implementation. In addition, due to the utilization of customary land and the different perceptions between the parties concerned, this challenge still exists.

In addition, the fact that Papua's special autonomy is centered at the provincial level rather than decentralization is another factor that makes desires, principles and efforts to protect Papuan customary lands ineffective. This causes conflicts of interest to occur frequently between the Provincial Government and the Indigenous Peoples of Papua. So, even though many laws and regulations have been made, efforts to create a prosperous society are still being carried out in Papua.

This condition can be considered as one of the factors that differentiates the indigenous Papuan cultural communities in the other five regions. To understand the living conditions of the Papuan people (the cultural customs of Doberai and Bomberai Papua), it would be more logical to look at it from the point of view of the oldest institutions that regulate the lives of local people. Kinship systems, language kinship, marriage typologies, and other norms or customs, such as aspects of traditional politics to the control of land rights are included in it. So it is necessary to identify a government policy for recognition and protection of customary rights as the rights of indigenous peoples in West Papua.

2. METHOD, KEY ACTORS AND DATA ANALYSIS

Normative legal research is legal research that places law as a building system of norms. According to Soerjono and Mamudji [9], normative legal research is: "Legal research is done by examining literature or secondary data alone". "The research method used is a qualitative method, namely research on research that is descriptive in nature and tends to use analysis. Process and meaning are highlighted in qualitative research. The theoretical basis is used as a guide so that the research focus is in accordance with the facts in the field. In qualitative research, process and meaning are emphasized which are descriptive in nature and tend to use analysis" [10].

The method used in this writing is normative juridical, because the writing is carried out, among others: (a) Legal interpretations (normative and authentic interpretations) of statutory articles relating to the material of Agrarian Law, Customary Law, and State Administrative Law. (b) Looking for and finding theories from Legal Philosophy related to utilitarianism and development Law teachings. (c) Legal construction through analogy to legislation related to this writing. Methods of data collection using observation, in-depth interviews, Focus Group Discussion (FGD) and examination of documents and literature. At this stage, data analysis was carried out using an inductive reasoning model with a description stage and an orientation stage, a reduction stage and a selection stage. The results and discussion of the research put more emphasis on what the data collected means.

3. RESULTS AND DISCUSSION

Identification of the Government's Acknowledgment Policy of Ulayat Rights as the Rights of Indigenous Peoples in West Papua. Acknowledgment terminologically means a

process, method, act of confessing or acknowledging, while the word "acknowledge" means declaring one's rights. According to the context of international law, for example recognition of the existence of a state/government usually leads to the terms de facto and de yure recognition. Real recognition of certain entities to exercise effective power in an area is called de facto recognition. A de facto acknowledgment is a temporary acknowledgment, because this acknowledgment is about the position of the new government, whether it is supported by the people and the government is effective so that the position is stable. If it can be maintained and progressively progressed, de facto recognition will automatically change to become de jure recognition. Recognition is permanent followed by other legal actions. Meanwhile, legal recognition (de jure) is the recognition of a country against another country followed by certain actions, for example opening diplomatic relations and making agreements between the two countries.

Based on this elaboration in relation to the definition of protection and recognition of indigenous peoples over land, the state, or the government recognizes indigenous peoples politically and legally by establishing the rights and obligations of the government to provide respect, opportunities and protection for the growth of indigenous peoples, and maintain customs and their traditional. This acknowledgment shows that the state or government has acknowledged, stated, is legal, or is right that indigenous peoples have the right to natural resources. Recognition also obliges the government to protect these rights from threats or interference from other parties. Indigenous peoples' rights to land and other natural resources are at the heart of this recognition.

Therefore, recognition of indigenous peoples' land rights cannot only be obtained through state law, but because Indonesian society is plural, this recognition can also be obtained through customary law that applies in society. This is in line with Cornelius Van Vollenhoven's Grand Theory, which states that the system of customary enforcement is based on actions deemed proper and binding by the Dutch community and government, not regulations made by the government or other means of power. In addition, residents share the same belief that customary rules must be upheld by the customary head and other officials and have sanctions.

The state makes various policies to reduce, hinder, limit, and or revoke the traditional and historical rights of indigenous peoples. They did this without giving compensation of any kind. Overall, it can be said that any state policy that impedes, reduces, limits, and/or revokes traditional rights as well as the history of indigenous peoples is a form of human rights violation, either intentionally or unintentionally.

One should consider Special Regional Regulation Number 9 of 2019 concerning Guidelines for the Recognition, Protection and Empowerment of Indigenous Peoples and Indigenous Territories in West Papua Province, which includes, among others;

Article 17 Special Regional Regulation Number 9 of 2019 concerning Guidelines for the Recognition, Protection, Empowerment of Indigenous Peoples and Indigenous Territories in West Papua Province.

In this article, it is stated that; (1) The Provincial Government is responsible for protecting Indigenous Peoples in the territory of West Papua Province; (2) the protection of Indigenous Peoples and their territories as referred to in paragraph (a) is carried out through Special Regional Regulations and Provincial Regional Regulations, (b) a census conducted by Regency/City Regional Governments, and (c) special policies specifically designed to protect Culture.

Special Regional Regulation Number 9 of 2019 actually sets guidelines for the recognition, protection and empowerment of indigenous peoples and customary territories in West Papua Province. Article 17 stipulates that the provincial regional government is responsible for protecting indigenous peoples in the territory of West Papua Province. This means that every regional government where indigenous peoples have customary institutions that are formed, recognized and enforced at the tribal, sub-tribe, clan and sub-clan levels in the region. Before the process of identifying, verifying and validating the existence of indigenous peoples and customary territories is carried out, customary institutions also carry out socialization and coordination actions.

Article 20 Special Regional Regulation Number 9 of 2019 concerning Guidelines for the

Recognition, Protection, Empowerment of Indigenous Peoples and Indigenous Territories in West Papua Province.

In the article it is explained that; (1) The Regional Government of the Province is responsible for the following matters: (a) to provide a budget from special revenues for the Province of West Papua for economic empowerment programs, protection of the rights of indigenous peoples, and mapping of customary territories; and (b) to provide a budget in the Provincial APBD, especially from special autonomy funds and other sources given to indigenous peoples in the process of mapping customary territories. (2) to regulate budget management as referred to in paragraph (3) the Provincial Government shall appoint Regional Apparatuses who have duties, authorities and functions relating to the empowerment and protection of indigenous peoples.

To achieve this goal, West Papua Province is making efforts to encourage economic growth and protect the rights and identities of people in customary territories. In the end, this is expected to be a harmonious meeting point between indigenous peoples and the government, as well as preventing the bad effects of mapping customary territories. Mapping indigenous territories aims to make spatial mapping of customary territories compatible with various resources. Therefore, it is hoped that consistent implementation of mapping of customary territories will reduce conflicts and increase integration between sectors and customary territories.

Because indigenous peoples existed before the state was founded, their existence and rights were not granted by the state. Therefore, when indigenous peoples and their rights are recognized in the constitution and other regulations, they are declarative. The existence and traditions of indigenous peoples are recognized worldwide, not only in Indonesia. The UN Declaration of September 2007 established the right of indigenous peoples to obtain prompt decisions through fair and mutually agreed procedures to resolve disputes with states and other parties, as well as for effective remedies for violations of individual and collective rights. When making decisions, the customs, rules, and systems of local people must be considered. (Article 40 of the United Nations Declaration on the Rights of Indigenous People).

Article 21 Special Regional Regulation Number 9 of 2019 concerning Guidelines for the Recognition, Protection, Empowerment of Indigenous Peoples and Indigenous Territories in West Papua Province.

This article clearly regulates matters: (1) The Regency/City Regional Government is responsible for protecting the existence of Indigenous Peoples within the territory of the Regency/City regional government; (2) The protection of Indigenous Peoples and their territories as referred to in paragraph (3) is carried out in the form of: a) District/city regional regulations governing the protection, utilization and management of parts of customary territories and their natural resources, b) Census of Indigenous Communities, c) Regional regulations regarding the existence of Indigenous Peoples in the regional government area based on the results of the census, d) District/City Regional Traditional Village Regulations, e) Regional policies for long-term and annual development programs, f) Information on land law provisions, g) Ability to resolve disputes customary territories between indigenous peoples and business entities, h) Training for Indigenous Peoples Related to Management of Indigenous Territories, i) Not giving permission to other parties to utilize part of their customary territories and natural resources if they do not fulfill the terms of a valid agreement.

Through mapping of customary territories, the central and regional governments are responsible for protecting the existence of indigenous peoples by regulating zoning and establishing procedures for mapping customary territories. The government which involves the community in mapping these customary territories, includes planning, utilization and control. Previous experience shows that indigenous peoples always lose in agrarian conflicts. Nonetheless, indigenous peoples have strong powers because they have been recognized in the constitution. Article 18B Paragraph (2) of the 1945 Constitution states that the State recognizes and respects customary community units and their traditional rights as long as they are still alive, in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia which are regulated in the Law.

However, laws and regulations that actually provide protection to indigenous peoples have not followed constitutional guarantees. Law

Number 5 of 1960 concerning Agrarian Principles (UUPA) was the first law that regulated the position of indigenous peoples. After that, many new laws appeared, especially to regulate the position of Indigenous Peoples in terms of natural resources. However, several laws regulate the rights of Indigenous Peoples by sector-wise, without actually taking sides or reducing Indigenous Peoples. Some of the laws are also pro-capital and exploitative, ignoring conservation, on the contrary, are exploitative and pro-capital in character.

This was stated by one of the indigenous peoples "Anton Dombret" that indigenous peoples really want recognition and authority based on the administration of government affairs both at the central and regional levels, as stipulated in the Act and its implementing regulations, and it is hoped that there will be recognition of the authority which refers to authority based on background. The law in question is the Village Law, including one of the laws and regulations that are directly related to the recognition of authority. Furthermore, there is confirmation or establishing existence by making it an authority by determining customary villages as owners of assets such as customary rights, forests and springs belonging to the village.

Almost the majority of Indigenous Peoples want recognition and authority based on the administration of government affairs both at the central and regional levels, as stipulated in the Act and its implementing regulations which are expected to create recognition of authority based on background authority. As for what is included in the Village Law, one of the laws and regulations that are directly related to the recognition of authority and the recognition or determination of existence through authority that has previously been determined by the adat village as the owner of assets such as customary rights which include natural resource wealth. Because, there is no legal umbrella that guarantees indigenous peoples, they are weak in situations of disputes over land, forest or other natural resource claims, and often experience discrimination accompanied by criminalization and violence. This is related to natural resources, which can be shown that indigenous peoples in Indonesia used to control natural resources (traditional common property) have shifted to control by the state (state property) and now (mainly) control by private corporations (private property). One important right of Indigenous Peoples is customary rights.

Ulayat rights in several places include general property rights, namely rights over seas and waters. For the record, Law Number 31 of 2004 concerning Fisheries and Law Number 27 of 2007 concerning Management of Coastal Zone and Small Islands mention indigenous peoples, but do not provide clear rights to them. The relationship between indigenous peoples and the surrounding land is another part of customary rights. By using Ter Haar's notion of "land plus" the notion of land and the environment around its territory includes Indigenous Peoples' rights to land, including its contents, waters, forests, and wildlife which are the source of their livelihood. Therefore, the recognition of indigenous peoples is closely related to legal politics contained in the Amendments to the 1945 Constitution regarding the existence of indigenous peoples and their traditional rights. According to Article 18B paragraph (2) of the 1945 Constitution, the state recognizes and respects customary community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia (NKRI). The state's recognition and respect for the existence of indigenous peoples and their traditional rights as long as they are still alive in accordance with the development of society and in accordance with the principles of the Unitary State of the Republic of Indonesia regulated in the Law are the four requirements in the formulation of the 1945 Constitution.

Identification of Government Policy on the Protection of Ulayat Rights as Indigenous Peoples' Rights in West Papua, and this policy must be carried out by respecting the cultural diversity and aspirations of indigenous peoples, as well as within the framework of good cooperation and collaboration between the government and indigenous peoples.

The 1945 Constitution is the highest legal product in Indonesia, including articles relating to indigenous peoples. Article 18B (2), which states that the state recognizes and respects the unity of indigenous peoples and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia regulated in law, and Article 28I (3), which states that cultural identity and rights of indigenous peoples are respected in line with the times and civilizations.

One should consider Special Regional Regulation Number 9 of 2019 concerning Guidelines for the Recognition, Protection and Empowerment of Indigenous Peoples and Indigenous Territories in West Papua Province, which includes, among others;

Article 1 Special Regional Regulation Number 9 of 2019 concerning Guidelines for the Recognition, Protection, Empowerment of Indigenous Peoples and Indigenous Territories in West Papua Province.

This article stipulates the following district/city regional government responsibilities: (a) to allocate a budget from the district/city APBD for the purpose of mapping customary territories; (b) to determine the standard selling price of land based on NJOP based on land classification; (c) to involve indigenous peoples in decision-making processes about how customary territories are used; (d) to protect sacred places; (e) to determine the rental (f) to contract value of customary land. (g) to provide strategies for the use and management of indigenous peoples' natural resources to MRPB; (h) to establish conditions for customary land lease and utilization agreements; (i) recognize, promote and protect the rights of indigenous peoples in this Special Regional Regulation; (j) to involve Indigenous Peoples in the decision-making process regarding customary land use; (k) to form a team for resolving disputes between Indigenous Peoples nad/or with other parties; and (l) to form a dispute resolution team between Indigenous Peoples and/or with other parties. (m) to provide funds for the mapping of Indigenous Territories from APBD in the amount of at least 15% each fiscal year until the mapping of Customary Territories is completed; (m) the financial support mentioned in letter n may include assistance to mapping facilities, experts, and companion organizations, as well as additional support to speed up the mapping process; and (n) to appoint the OPD responsible for all matters relating to indigenous peoples in accordance with their main tasks and functions.

In Article 6, it is explained that the West Papua People's Assembly, or MRPB, is the cultural representation of indigenous Papuans. It has the duty and obligation to protect the rights of indigenous Papuans by promoting customs and culture, promoting women, and maintaining religious harmony. From a constitutional and human rights perspective, the indigenous Papuan peoples of West Papua Province are protected by Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua. The Papua Province Special Autonomy Policy aims to protect, respect and fulfill the rights of Indigenous Papuans. The rights of Indigenous Peoples are protected in Law Number 21 of 2001.

This is in accordance with Article 43, which regulates the protection of the customary rights of Indigenous Peoples and the individual rights of the Indigenous People concerned. Law Number 5 of 1960 concerning Basic Agrarian Regulations provided protection for Indigenous Peoples' customary rights before the 1945 Constitution of the Republic of Indonesia was amended to recognize indigenous peoples and their traditional rights. The existence of Indigenous Peoples in the implementation of development and state governance is often not recognized, protected, or respected by various parties. They often experience neglect and violation of their rights, as well as inadequate state protection for their existence.

Apart from a constitutional and human rights protection point of view, Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua protects indigenous Papuans in the province of West Papua. The Papua Province Special Autonomy Policy aims to protect, respect and fulfill the rights of Indigenous Papuans. The rights of Indigenous Peoples are protected in Law Number 21 of 2001. This is in accordance with Article 43, which regulates the protection of customary rights of Indigenous Peoples and the individual rights of the Indigenous People concerned. Law Number 5 of 1960 concerning Basic Agrarian Regulations protected the customary rights of Indigenous Peoples prior to the 1945 Constitution of the Republic of Indonesia by recognizing и recognizing the traditional rights of indigenous peoples.

The Indigenous Peoples in West Papua, which consist of the virgin territory, collectively own and control customary rights. However, their existence in the implementation of development and state governance is often not recognized, protected, or respected by various parties when they exercise their customary rights. The state also lacks protection for their existence. Recognition, protection, and empowerment of indigenous peoples' rights to customary land and customary territories as a whole are not sufficient due to guarantees of indigenous peoples' rights in other laws and regulations that are enacted.

to comply with the provisions of Article 43 of Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua, which was later amended by Law Number 35 of 2008 regarding the granting of responsibilities to the Government, Provincial Governments and Regency/City Regional Governments to protect and promoting the customary rights of Indigenous Peoples, as well as Regulation of the Minister of Home Affairs Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Indigenous Peoples' Ulayat Rights.

4. CONCLUSION

The implementation of the recognition of customary rights as the rights of Indigenous Peoples in West Papua is the substantive protection, recognition, and empowerment of natural resources. As part of the living space of the people of West Papua which is linear with the embodiment of relevant human rights values in the third generation of rights. The government's policy of protecting and acknowledging customary rights as Indigenous Peoples' rights in West Papua is due to the low level of knowledge, low public awareness, community culture, limited facilities and infrastructure, so that the carrying capacity of the government's protection and recognition for indigenous peoples in West Papua is not yet optimal.

5. RECOMENDATIONS

The government should be more optimal, aand consistent in providing protection of customary rights for Indigenous Peoples in West Papua. The government needs to form an independent body to verify customary law in order to implement a policy of recognizing and protecting customary rights in indigenous communities in the West Papua region. This independent body consists of academics, indigenous peoples, and non-governmental organization personnel who understand indigenous peoples' issues. It is necessary to push for the passage of the Bill on the Protection and Recognition of the Rights of Indigenous Peoples. A number of implementing regulations concern recognition at the national level, and need to be appreciated for initiating the administration of implementation policies which have been almost absent for more than a decade.

CONSENT

As per international standard or university standard, Participants' written consent has been collected and preserved by the author(s).

ETHICAL APPROVAL

As per international standard or university standard guideline participant consent and ethical approval has been collected and preserved by the authors

COMPETING INTERESTS

Authors have declared that no competing interests exist.

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