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LEGAL PROTECTION OF INDIGENOUS PEOPLES IN NATURAL RESOURCE MANAGEMENT IN INDONESIA

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ABSTRACT : This study discusses the legal protection of indigenous peoples in natural resource management in Indonesia. As a group that has a close attachment to the environment, indigenous peoples play an important role in maintaining the balance of the ecosystem through the application of local wisdom and customary law. This study uses a normative juridical method with a literature approach to analyze positive legal norms that govern the rights of indigenous peoples. The results of the study show that although there is a strong legal basis in the 1945 Constitution and various sectoral laws, its implementation still faces obstacles in the form of legal uncertainty, overlapping regulations, and weak recognition of customary rights. Therefore, it is necessary to harmonize national law with customary law in order to create fair, sustainable, and participatory natural resource governance.

Keywords - Legal Protection, Customary Law, Environmental Law, Natural Resources

I. INTRODUCTION

Indonesia, as a country with abundant natural resources, faces great challenges in efforts to preserve nature and its natural resources.[1] The preservation of environmental functions is a series of efforts made to preserve the ability of the environment to support human life and other living things.[2] The physical environment refers to natural ecosystems that have minimally undergone anthropogenic modifications. This ecosystem includes abiotic components such as the lithosphere, hydrosphere, atmosphere, and all the biotic elements contained in it. Meanwhile, the built environment is the result of spatial transformation through human activities that aim to optimize the quality and function of the habitat according to the socio-economic needs of the community.

It is important to note that sustainable natural resource management is not only the responsibility of governments or policymakers, but also involves the role of communities, the private sector, and international institutions.[3] The main challenge in natural resource management in Indonesia is the conflict between economic interests and environmental conservation. Infrastructure development, mining expansion, and land conversion often ignore environmental impacts. Legal policy must balance the two with clear regulations, effective supervision, and strict sanctions.[4] Empirically, local wisdom has succeeded in preventing damage to environmental functions. However, local wisdom is now starting to fade.[5]

Humans have a dual role in the context of the environment, on the one hand as destructive actors, and on the other hand as potential agents for environmental restoration and preservation. Human activities, such as urbanization, deforestation, industrialization, and agriculture intensely, has resulted in significant environmental degradation. In various regions, phenomena such as water and air pollution, loss of biodiversity, and climate change are phenomena such as water and air pollution, loss of biodiversity, and climate change are clear evidence of the negative impact of human activities on the environment.[6]

Often natural resource conflicts occur between communities and ruling elites who seek to profit from these natural resources. The root cause of agrarian conflicts in Indonesia does not only occur between the community and the government but also often occurs between the private sector or capital owners and the community as people living in the area.[7] Article 18B of the law provides for the protection of the rights of indigenous peoples, but its implementation on the ground often faces obstacles due to ambiguity in legal interpretation and strong economic and political intervention at the local level. This creates legal uncertainty that often harms indigenous peoples in their efforts to defend their customary lands.[8]

Indonesia as a country of law adopts three legal systems that apply simultaneously, namely positive law, Islamic law, and customary law. The simultaneous application of these three legal systems is a challenge for Indonesia as a country of law. However, the success in integrating the three is also an advantage because it can create harmony and provide a more equitable sense of justice for the Indonesian people.[9]

Thus, it is important to emphasize that legal protection of indigenous peoples in natural resource management is not just a form of recognition of traditional rights, but also a strategic step in realizing social justice, environmental conservation, and the sustainability of national development. Therefore, an in-depth study is needed on how the legal system in Indonesia can ensure the certainty, justice, and effectiveness of the protection of indigenous peoples' rights to natural resources that are an integral part of their identity and survival.

II. RESEARCH METHODS

The researcher uses a type of normative juridical research, which is a legal research method that focuses on the assessment of applicable positive legal norms. This research is carried out through a library research approach, by examining various secondary legal materials such as laws and regulations, legal literature, doctrines of experts, and court decisions that are relevant to the problem being studied.[10] The data analysis in this study was carried out qualitatively, with an emphasis on legal interpretation and the relationship between regulations to find principles, concepts, and legal principles that can answer the formulation of research problems. Thus, the normative juridical approach allows researchers to understand, interpret, and evaluate the applicability of a legal norm in the context of the applicable national legal system

III. DISCUSSION

3.1 Legal Protection of Indigenous Peoples

Legal protection is providing protection to human rights that are harmed by others and such protection is provided to the community so that they can enjoy all the rights granted by the law or in other words, legal protection is various legal remedies that must be provided by law enforcement officials to provide a sense of security, both mentally and physically from disturbances and various threats from any party. Soerjono Dirjosisworo said that there are various protection efforts for the community in general, including:

1. Protection of individuals from interference by others or groups in life that due to various factors cause harm
2. The protection of individual suspects over the defendant in a criminal case against the 'possibility of arbitrary actions by law enforcement officials.0020
3. Protection of the community on the possibility of doing or not doing from the community.[11]

Phillipus M. Hadjon in his theory states that legal protection for the people is a preventive and repressive government action. Preventive legal protection aims to prevent the occurrence of disputes, which directs the government's actions to be prudent in making decisions based on discretion, and repressive protection aims to resolve disputes, including the handling of the judicial institutions.[12] Furthermore, repressive efforts are actions or measures taken by the government or authorities with the aim of suppressing or controlling a group, individual, or action that is considered to threaten security or order.[13]

The definition of customary law as a regulation that does not originate from power or that is not written in laws and regulations explains that customary law is a regulation that is not a state law or formal law (official law).[14] Customary law is a law that grows from public awareness, which is a reflection of the taste and cultural intellect of the nation. In the development and development of the field of law, statements often arise, whether in its formation will use customary law materials, which are its own laws, or even use laws from outside (foreign).[15] The definition of Customary Law, based on Article 1 Paragraph (3) of the Regulation of the Minister of Home Affairs Number 52 of 2014 states that "Customary Law is a set of norms or rules, both written and unwritten, that live and apply to regulate human behavior that originates from the cultural values of the Indonesian nation, which are inherited from generation to generation, which are always obeyed and respected for the justice and order of society, and have legal consequences or sanctions.[16]

The state of law is a translation of the Concept of Rechstaat or Rule of Law which originated from the experience of constitutional democracy in 19th and 20th century Europe. Mustafa Kamal Pasha: 2003 stated the State of Law, namely "A state that exercises its governmental power based on the law in which the government and other institutions in carrying out any action must be based on the law and can be held legally accountable.[17] The legal system is built by developing the legal apparatus itself as a functional and equitable system, developed by arranging the supra structure and infrastructural of political, economic and social institutions that are orderly and orderly, and fostered by building a culture and awareness of rational and impersonal laws in the life of society, nation and state.Afrizal Mukti Wibowo, Fuqoha Fuqoha, and Suci Utami, Introduction to Indonesian Law: Theory, Practice, and Transformation, 2025.

3.2 Legal Basis for the Protection of Indigenous Peoples

In the international view, many terms are used to refer to indigenous peoples such as the term first people among anthropologists and human rights defenders, the Firsf nation in the United States and Canada.[19] Legal effectiveness is the ability of the law to create a situation that is desired or expected by the law. Customary law has become the root of regulations for indigenous peoples, by continuing to maintain it, indigenous peoples can protect their culture and the territory they live in.[20] Legal protection of indigenous peoples is also regulated in Law Number 18 of 2004 concerning Plantations (Plantation Law). In Article 9 paragraph (2) of the Plantation Law, it is emphasized that if the application for the right to plantation business is on customary land which in reality still exists, the right applicant is obliged to conduct deliberation with the indigenous people concerned to obtain an agreement on the handover of the land and its compensation (compensation).Helza Nova Lita and Fatmie Utarie Nasution, "Legal Protection of Indigenous Peoples in Mining Areas," Lex Jurnalica 10 (2013): 206.

From a constitutional perspective, the 1945 Constitution has provided a strong foundation for the rights of indigenous peoples through Article 18B paragraph (2), Article 28I, and Article 33. On the other hand, international principles such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), ILO Convention No. 169, and Article 8(j) of the Convention on Biological Diversity (CBD 1992) also affirm the collective rights of indigenous peoples to land and natural resources, including the right to territorial recognition, participation, and sustainability-based economic benefits.[22]

Through Law Number 6 of 2014 concerning Villages, the government provides a legal basis for the regulation and recognition of the existence of Villages and Customary Villages. In this law, it is possible to change administrative status, such as changing the village to a customary village, a village to a village, a village to a customary village, or vice versa Adat becomes Neighborhoods. In addition, Traditional Villages or Villages can also undergo changes in status, mergers, or deletions based on community initiatives. All of these changes must be determined through local regulations (both at the provincial and district/city levels) and accompanied by a regional map as the basis for administrative determination.[23]

Based on Law Number 41 of 1999 concerning Forestry, the explanation of Article 67 paragraph (1) emphasizes that the existence of customary law communities is legally recognized if they meet certain elements. These elements include: the community is still in the form of a community (rechsgemeenschap), has institutions in the form of customary rulers, has a clear customary legal territory, and has legal institutions and tools, especially customary courts that are still obeyed by their citizens. In addition, the indigenous people are also still collecting forest products in the surrounding area to meet their daily needs. This provision shows that the recognition of customary law communities in forestry is highly dependent on the sustainability of their traditional social, legal and activity structures.

3.3 The Role of Indigenous Peoples in Natural Resources Management

Local Wisdom or commonly called Local Wisdom, which is two English words, namely Local which means local and Wisdom which means wisdom. The definition of local wisdom deepens aspects of the idea of a culture, in the form of human values, togetherness, and exemplary in the cultural environment. So that local wisdom which is part of the culture of society is the result of the interaction between humans and nature in a local environmental condition during a certain period based on the evolution of experimental systems, certain determinations, beauty and intuition.[24]

The active role of the community is closely related to the existence, ability and quality of social organizations and community organizations engaged in the field of the environment as well as the level of knowledge and awareness of the community about the environment.[25] Increasing community participation in environmental management is directed to reach a wider range of society. To achieve this goal, the availability of information is needed Adequate related Conservation of natural resources and the environment. This information needs to be developed and expanded so that it can be accessed by the entire community. Thus, public knowledge and awareness of the importance of protecting and preserving the environment will increase, so that active participation in environmental conservation efforts can be realized optimally.

In Law No. 32 of 2009 concerning the protection of environmental management, that the community has the same rights and opportunities and the widest extent to play an active role in environmental protection and management. Furthermore, in Article 70 paragraph 2, the role of the community in environmental protection and management is:

1. Social surveillance
2. Giving suggestions, opinions, proposals, objections and complaints
3. Furthermore, regarding the delivery of information and/or reports.

In Article 70 paragraph 3 that increasing awareness in environmental protection and management, increasing independence, community empowerment and partnerships, fostering and developing community responsiveness to carry out social supervision, developing and maintaining local culture and wisdom in the context of preserving environmental functions. The role of the community in this case is very important because

it has a full contribution to the protection of natural resource management. In addition, the management of natural resources must be based on local wisdom in order to preserve the function and sustainability of natural resources or the environment.

There are several strong reasons that underlie the important role of indigenous peoples in natural resource management. Indigenous peoples have a greater motivation to protect the environment because their survival is highly dependent on the surrounding natural conditions. They also have in-depth local knowledge on how to sustainably maintain and utilize natural resources. In addition, indigenous peoples have a customary legal system that can be implemented and enforced in regulating behavior and maintaining environmental balance. Their customary institutions function as a social system that regulates harmonious interaction between humans and forest ecosystems. In addition, some indigenous peoples already have organizations and networks that strengthen internal solidarity and are able to mobilize political and technical support from outside parties. Constitutionally, the existence and rights of indigenous peoples are also protected in the 1945 Constitution, which affirms the state's obligation to recognize, respect, and protect the traditional rights of indigenous peoples as part of human rights, as stipulated in Article 28I paragraph (3).

IV. CONCLUSION

Legal protection of indigenous peoples in natural resource management in Indonesia is a fundamental aspect in realizing social justice, environmental conservation, and sustainable development. The state as the holder of the constitutional mandate has the obligation to recognize, respect, and protect the traditional rights of indigenous peoples as stipulated in Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution. Although various laws and regulations, such as Law No. 41 of 1999 concerning Forestry, Law No. 6 of 2014 concerning Villages, and Law No. 32 of 2009 concerning Environmental Protection and Management, have provided a strong juridical basis, their implementation in the field still faces challenges in the form of legal uncertainty, overlapping regulations, and interference in economic and political interests.

Indigenous peoples have a strategic position in maintaining the balance of the ecosystem through local wisdom, customary law systems, and social institutions that have been tested for generations. Therefore, their role in natural resource management should be placed as an equal partner in national development policy, not just a policy object. To realize this, it is necessary to strengthen substantive and structural legal aspects that ensure the recognition, participation, and protection of indigenous peoples as a whole. The integration of customary law with national law, accompanied by consistent and participatory law enforcement, is the key to creating natural resource governance that is fair, sustainable, and in favor of the sustainability of indigenous peoples' lives and environmental sustainability in Indonesia.

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