LEGAL PROTECTION FOR INDIGENOUS KUALA MAHATO IN INDIGENOUS LAND UTILIZATION OF PALM OIL PLANTATIONS

Hayatul Ismi¹
Ulfia Hasanah²

ABSTRACT

Purpose: Rokan Hulu is one of the areas in the Province of Riau where the existence of customs is recognized by the community. Based on the explanation above, it is necessary to research the use of communal land for oil palm plantations in the village of North Mahato Tambusai in Rokan Hulu which is related to the legal protection of local indigenous peoples according to land law in Indonesia.

Method/design/approach: The type of research that will be used is sociological legal research, which is an empirical study that serves to find theories about the processes and processes of legal works in society based on applicable laws and regulations relating to the protection of the rights of local indigenous people in the use of customary land for oil palm plantations in Rokan Hulu.

Results and conclusion: With this research, it is expected that there are clear policies or regulations in the protection of the rights of local indigenous people in the use of customary land for oil palm plantations so that the indigenous people get the rights that should be theirs.

Research implications: The community holding ulayat rights is given compensation in the form of construction of public facilities or other forms that are beneficial to the local people following Article 14 of Presidential Regulation No. 36 of 2005 as amended by Presidential Regulation No. 65 of 2006.

Originality/value: The utilization of customary land in the village of Mahato is carried out by the company.

Keywords: Community, Customary Land, Legal Protection, Oil Palm Plantation.

PROTEÇÃO LEGAL PARA OS INDÍGENAS KUALA MAHATO NA UTILIZAÇÃO DE TERRAS INDÍGENAS DE PLANTAÇÕES DE ÓLEO DE DENDÉMIA

RESUMO

Objetivo: é necessário pesquisar o uso de terras comunais para plantações de dendezeiros no vilarejo de North Mahato Tambusai em Rokan Hulu, que está relacionado à proteção legal dos povos indígenas locais de acordo com a lei fundiária da Indonésia..

Referencial teórico: Rokan Hulu é uma das áreas da província de Riau onde a existência de costumes é reconhecida pela comunidade.

Método: O tipo de pesquisa que será utilizado é a pesquisa sociológica jurídica, que é um estudo empírico que serve para encontrar teorias sobre os processos e processos de trabalhos jurídicos na sociedade com base nas leis e regulamentos aplicáveis relacionados à proteção dos direitos dos povos indígenas locais no uso de terras tradicionais para plantações de dendezeiros em Rokan Hulu.

¹ Faculty of Law, University of Riau. Pekanbaru, Riau, Indonesia. E-mail: hayatulismi@yahoo.com
Orcid: https://orcid.org/0000-0002-1336-559X

² Faculty of Law, University of Riau. Pekanbaru, Riau, Indonesia. E-mail: Ulfiazdaky@gmail.com
Orcid: https://orcid.org/0000-0003-2021-6063
Resultados e conclusão: Com esta pesquisa, espera-se que existam políticas ou regulamentos claros na proteção dos direitos dos indígenas locais no uso de terras consuetudinárias para plantações de dendê, para que os indígenas obtenham os direitos que devem ser seus.

Implicações da pesquisa: A comunidade que detém direitos ulayat recebe compensação na forma de construção de instalações públicas ou outras formas que sejam benéficas para a população local, de acordo com o Artigo 14 do Regulamento Presidencial nº 36 de 2005, conforme alterado pelo Regulamento Presidencial nº 65 de 2006, que é usado para o benefício de todos os detentores de direitos consuetudinários sobre a terra.

Originalidade/valor: A utilização da terra consuetudinária na aldeia de Mahato é realizada pela empresa.

Palavras-chave: Comunidade, Terra Consuetudinária, Proteção Legal, Plantação de Dendezeiros.

1 INTRODUCTION

Customary law communities and land have close relations. The legal relationship between customary law communities and their lands creates rights that give communities, as a legal group, the right to use the land for the benefit of the community (Ismi, 2016:78). This is the original and primary right in the customary land law which covers all land within the customary law community, which is also considered as a source of other land rights within the customary community and can be shared by all members of the customary law community (Mahadi, 2003:61). Customary right is a series of authorities and obligations of a customary law community. It relates to land located within the territory of its territory, which, as described above, is a major supporter of the livelihoods and lives of the people concerned throughout time (Suranta, 2012:56).

Mahato village, located in North Tambusai Subdistrict, Rokan Hulu, Riau, Indonesia, still adheres to thick traditional law. Indigenous people in the town of Mahato are known as the people of the Tambusai Kuala Mahato Malay tribe, which consists of four tribes who are members of the Ampu Tribe, the Mais Tribe, the Kopuh Kandang Tribe, and the Kuti Tribe. At the head of each tribe are the traditional elders who represent the children of the nephews of the tribe in traditional processions and rituals.

Tambusai's Malay tribal garden in Kuala Mahato is a communal land located in Mahato Village, Tambusai Subdistrict, which has been inhabited by the Malay indigenous community of Tambusai Kuala Mahato since 1987. The indigenous peoples use land in the name of Ninik Mamak in the Kuala Mahato Malay Tribe to fulfill their daily needs. In its basic form, this customary right is a right from the alliance of inhabited land. At the same time, its implementation is carried out or by the alliance itself or by the head of the alliance on behalf of the alliance. Between these fellowship rights (communal rights) and the rights of their respective citizens (individual rights), reciprocal relationships complement each other. It means more intensive relations between individuals, community members, and the land concerned.

The right of the Malay indigenous people in Tambusai Kuala Mahato to the communal land was given traditionally in accordance with the collective agreement in the regional alliance. Over time, the Datuk and traditional elders had the authority to make policy on the traditional land of the Malay tribe of Tambusai Kuala Mahato to be used as plantation business land.

As interviewed by researchers with Anasri (Pucuk Suku Kuti) it was stated that with plantation land in the name of Ninik Mamak Kuala Mahato Malay Tribe, which covers an area of approximately 2,480 Ha, the government acknowledged at that time in letter number 525 /
EK / 2647 issued by the Governor of Riau Provincial Level I on October 31, 1998. So, on this basis, the Ninik Mamak and indigenous peoples are looking for partners to work together for their survival. Initially, the agreement caused polemics, but in the end, found an agreement that is going smoothly to this day. In this study, the problem that will be raised is the legal protection of the Kuala Mahato community in the use of customary land for oil palm plantations.

The purpose of this study is to find out how the legal protection of the Kuala Mahato community in the use of customary land for oil palm plantations is; the focus of this research is to see the legal protection of the indigenous people of Kuala Mahato in the use of oil palm plantation land. The author's interest in doing this research is because Kuala Mahato is one of the areas in Kab, Rokan Hulu Riau Province, which has customary land with written recognition by the government. The polemic that occurred was resolved with the involvement of the top tribal leaders and ninik Mamak of the Kuala Mahato community.

2 LITERATURE REVIEW

2.1 The Existence of Customary Law amid the Implementation of State Laws Regarding the Protection of Natural Resources in Indonesia

In Indonesia, the recognition of the existence of customary law communities is founded in Article 18 B of the 1945 Constitution, which states that the State recognizes and respects customary law community units and their traditional rights if they are still alive and by the development of the nation, society, and principles of the Unitary State of the Republic of Indonesia as regulated by law. Respect and acknowledgment of the existence of Ulayat rights as human rights are also implicitly regulated in Article 28I paragraph (3) of the 1945 Constitution (the result of the second amendment to the 1945 Constitution, which was stipulated on August 18, 2000), that cultural identity and the rights of traditional communities are respected in line with the development of the times and civilization. Furthermore, on the results of the fourth amendment to the 1945 Constitution, in Article 32 paragraph (1), the State advances Indonesian national culture during world civilization by guaranteeing freedom to the community in maintaining and developing cultural values (Ismi, 2012).

According to research from Macêdo et al. (2021), to understand the level of environmental responsibility and awareness, it is necessary to consider the performance of two social actors: the city government and the local community. The research results show that many residents are still unaware of the need to protect the environment, with some of the conveniences and difficulties in this process. As for the public sector, the role of city management and its performance is explained by emphasizing several things that need to be improved. It was concluded that environmental responsibility should be shared between the two social actors to ensure that the environment is maintained for present and future generations. The results of this study have the potential to contribute to the formulation of public environmental policies.

Based on a study conducted by an institution engaged in the issue of natural resource management called Scale-Up, data were obtained that the plantation sector dominated conflict compared to the forestry or mining sectors. About customary land, the Basic Agrarian Law regulated in Article 3 says that by remembering with provisions in Article 1 and Article 2, namely the implementation of traditional rights and such rights of customary law communities, as long as it is, in reality, there must be such a way so that it is following the national and state interests that, based on national unity, must not conflict with higher laws and regulations (Ismi, 2012).

Observing this, on the one hand, there is an acknowledgment of the existence of customary law that applies as a norm that is born and grows from society while simultaneously
fulfilling the development of modernization of society. Currently, green enterprise companies prioritize environmental protection by minimizing the negative impact of existing products, services, or processes to contribute to the transformation of society (Rajkamal et al., 2022). But on the other hand, there are restrictions by land law because they represent the interests of rulers and entrepreneurs. Thus, the People's Consultative Assembly considers it necessary to review natural resource management based on the principles of decentralization and respect for the rights of indigenous peoples.

Furthermore, RPJMN (National Middle-term Development Plan 2004-2009 through Presidential Regulation No.7 the Year 2005 jo. Presidential Regulation No.39 of 2005 concerning the Government Work Plan (RKP) year 2006 establishes the direction of development policy in the field of system development and Indonesian legal politics by respecting and strengthening local wisdom and customary law to enrich the national legal system.

3 METHOD AND THEORY

The position of Customary Law in the UUPA is essentially intended to create legal unity in the land sector. If in the past, there was a dualism of land law, namely the Law of Customary Land and West Land Law, then the adoption of Customary Law as the basis of Land Law in Indonesia automatically created a unification of land law in Indonesia (Ismi, 2011). The selection of Customary Law as the basis of the UUPA is based on the idea that Customary Law is a law that is in accordance with the personality of the Indonesian nation and is a genuine Indonesian people's law. Because most Indonesians are subject to Customary Law, the UUPA is based also on the provisions of Customary Law as original laws that are refined and adapted to the interests of the people in a modern country and relation to the international community, including adjustments to Indonesian socialism.

The rights of indigenous and tribal peoples are individual rights and communal rights. One of the communal rights contained in the UUPA is communal rights (territory) to show the land which is the area of the legal community concerned. Principles (‘UUPA’) regulating that the exercising rights of the aforementioned State can be authorized to the Swatantra areas and customary law communities, which are only needed and do not conflict with national interests, according to provisions of Government Regulations. This arrangement is the basis for regulating communal land.

We can find the definition of Customary land in Article 1 of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 15 of 2018 concerning Guidelines for Resolving Customary Rights Issues of Customary Law Communities (‘Permeneg Agrarian No. 15 of 2018’), which states that Customary Land is a plot of land on which there are customary rights from a particular customary law community. Meanwhile, customary law communities are a group of people who are bound by their customary law as citizens together with a legal alliance because of the similarity of their residence or based on their descent

The customary rights contain the authority of:
Managing and organizing land use (for settlements, farming), supplies (making new settlements/rice fields), and land maintenance.
Regulating and determining the legal relationship between people and land (giving certain rights to certain objects).
Determining legal relations between people with legal actions relating to the land (buying and selling, inheritance).

In this context, we used sociological legal research with a descriptive research method that aimed to raise awareness about situations or events. This sociological legal research
emphasizes society and law as more than mere manifestations. The purpose of this study was to find detailed information that holds these symptoms. The research location is in Mahato Village, North Tambusai Sub-District in Rokan Hulu District. The scope of this research was related to the legal protection of the Kuala Mahato community in the use of customary land on oil palm plantations. The data were obtained from the survey and interview methods. A total of 2048 Ha were planted by the indigenous Malay people of Tambusai, Kuala Mahato since 1980. This research took approximately six months from January to June 2021.

4 RESULTS

The rights of indigenous and tribal peoples are individual rights and communal rights. One of the communal rights contained in the UUPA is communal rights (territory) to show the land which is the area of the legal community concerned.

According to van Vollenhoven, regional rights are a very old right that covers all of Indonesia, whose origins are religious. This right is owned by a tribe (stam) or by a combination of Ibid on it, then the right to Pertuanan will appear in full.

According to Purbacaraka and Halim, the rights to customary land found in various tribes in Indonesia can be divided into two forms, namely (Purbacaraka and Halim, 1993:65):

(1) Territorial rights

Regional rights are the right to gather or collect forest products and hunt. In these communal land rights, in essence, there are also individual rights to temporarily control part of the object of ownership of the rights of the area; one has the right to process and control a piece of land by taking the results, but that does not mean that the customary land rights of the land are removed. Traditional rights continue to overlay or overcome these personal or individual rights. The customary land rights have only been restored if the person concerned has waived his right to control the customary land.

(2) Right of Use

The right to use land means that a person can use a piece of land for his interests, usually on rice fields that have been cleared and worked continuously for a long time. Generally, the land that is the object of use rights in the customary law community is in the form of fields.

4.1 Customary Land Use in Mahato Village, North Tambusai District, Rokan Hulu Regency

Customary land is the land with the residents of the customary law community concerned. Tenure rights over customary community land are known as customary land. Customary rights are a series of authorities and obligations of a customary law community, which relates to land located within the territory of its territory. Constitution No. 5 of 1960, or the Basic Agrarian Law (UUPA), recognizes customary rights. Recognition is accompanied by two conditions regarding its existence and implementation. Based on Article 3 of the UUPA, traditional rights are recognized ‘as long as in reality there still exist’ (Harsono, 2008:181). LKA Luhak’s position is the customs territory of the former kingdom in Rokan Hulu Regency, which cannot be added and reduced, consisting of LKA Luhak Rambah, LKA Luhak Tambusai, LKA Luhak Kepenuh, LKA Luhak Rokan IV Koto, LKA Luhak Kunto Darussalam and oversees LKA District and LKA Village in the former Luhak area.

An interview by the author with Amiruddin (Pucuk Mais Village), said that Bhawa Mahato Village, including Luhak Tambusai located in North Tambusai Subdistrict, still adheres to thick traditional law. The indigenous people in Mahato village are known as the Tambusai Kuala Mahato Malay tribe community, consisting of four tribe, which are members of the Ampu
Tribe, Mais Tribe, Kandang Kopuh Tribe, and Kuti Tribe. At the head of each tribe is an indigenous elder representing the nephews in traditional processions and rituals.

The Malay tribe community of Tambusai Kuala Mahato owns communal land, namely land in the name of Tambusai Kuala Mahato of Ninik Mamak in the Malay Tribe, which they have inherited from generation to generation since 1987. The land is used by indigenous peoples for oil palm plantations so that they can fulfill their daily needs. The greater costs that must be incurred in utilizing plantations with an area of approximately 2,048 hectares make indigenous people think of looking for partners so they can cooperate.

The use of customary land of indigenous peoples in the village of Mahato is used to fulfill their economic needs. This objective is by the customary rights of indigenous peoples in general. Plantation companies can be given land rights for plantation businesses under the provisions of the legislation. Suppose the land needed for plantation business is the customary land of the customary law community. In that case, the plantation business actor must conduct a consultation with the customary law community of the customary rights holder to obtain an agreement regarding the surrender of land and compensation.

Collaboration in the form of partners was carried out by the Head of the Malay Customs Association, Tambusai Kuala Mahato, with the Company with a 60% profit-sharing system for indigenous peoples and 40% for companies (Harsono, 2008:181). Customary land itself has been used for the benefit of the community. But the facts in the field are that indigenous people feel the results obtained from the use of communal land are different from what was agreed with the company. Thus, causing unrest among indigenous people.

From the study results, the customary land in the village of Mahato has been used by indigenous peoples to fulfill their daily needs. But, in this case, the company, as the party that manages the land, does not provide fully to the indigenous people, so there is a shift in customary land use. Based on the data obtained, at this time, the traditional land of the Mahato village whose land use was used by the company.

5 DISCUSSION

5.1 Protection of the Rights of the People of Mahato Village to the Land Used for Oil Palm

The definition of legal protection for the people, according to Philipus M Hadjon, in the Dutch language formula, reads *rechtsbescherming van de burgers Tegen de overhead* and in the English formula, 'legal protection of the individual concerning acts of administrative authorities. This means that legal protection for the people has to do with an act of the Government that can carry out arbitrary actions or exceed its authority. Legal protection for the people who hold customary land rights is inseparable from the conception of Article 18 paragraph (2) of the 1945 Constitution, by which the State expressly recognizes and gives respect to the unity of indigenous peoples and their traditional rights (Soekanto, 1983:91).

To protect citizens who truly have rights to the land, the State regulates it in the Agrarian Basic Law in Article 26 paragraph (1), which states that: ‘Buying and selling, exchanging, granting, giving a will, giving according to custom and other actions intended to transfer ownership rights and supervision are regulated by Government Regulation.’ But what happened was that many lands controlled by indigenous peoples (customary land rights) were taken by the Government employing violence (Wignjodipoero, 1983:199).

The concept of the release of land rights is contained in Presidential Regulation Number 36 of 2005, as amended by Presidential Regulation 65 of 2006, concerning land acquisition for implementing development in the public interest. In addition, regarding the concept of protected forest areas, we need to examine the provisions in Law Number 41 of 1999 concerning Forestry,

The urgency of the release of customary rights in protected forest areas is inseparable from the provisions of Article 33 paragraph (3) of the 1945 Constitution, which states: The earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people. Article 2 of the UUPA is an implementation rule of Article 33 paragraph (3) of the 1945 Constitution, and the authority that derives from the State's right to control, as referred to in article 2 of the UUPA, is used to achieve the greatest prosperity of the people in terms of nationality, welfare, independence in Indonesian law and society independent, sovereign, justice, and prosperity.

The subject of this customary land rights is the customary law community, which is a legal alliance based on the similarity of the residence (territorial) or genealogical, which is known by various names that are typical in the area concerned, for example, subject to customary rights, the person is the chairman or customary elder who obtains delegation of authority from the relevant customary law community according to the provisions of his customary law. He is not the subject of customary rights but is an officer of his customary law community in exercising the authority concerned with customary rights.

Customary land rights are implied as the highest tenure rights over land, which is the territory of a customary law community (Article 3 of the UUPA). The holder of the rights to customary land is the customary law community concerned. At the same time, the executor is the Customary Ruler of the customary law community involved, namely the Customary Chief himself or their respective traditional elders (Samosir, 2013:69).

Whereas if the position of customary land rights in the Forestry Law is examined, it uses the terms ‘customary law community’ and ‘local community.’ The Forestry Law does not define the local community, but it is in the implementing regulations, while five elements are determined to measure the existence of customary communities. However, customary law communities are sometimes considered part of the local community (Article 17, paragraph 2). As stakeholders, the Forestry Law recognizes the reality of forest tenure by indigenous peoples (customary forests, clan forests).

Customary law communities and land have a close relationship with each other. The legal relationship between customary law communities and their land creates rights that give the community as a legal group the right to use the land for the benefit of the community (Gusliana, 2011).

This is the original and primary right in customary land law and includes all land within the customary law community, which is also considered a source of other land rights within the customary law community and can be owned by all members of such community. The location of the ulayat land of the Malay Tambusai Kuala Mahato tribe is next to PT. TorusGanda is a company that manages oil palm plantations in Mahato Village. Because of PT. TorusGanda will expand its land toward the boundaries of the ulayat lands of the Malay tribal gardens. Tambusai Kuala Mahato made the ninik Mamak finally offer to cooperate on the ulayat land. Cooperation in the form of partners was also carried out by the Tambusai Kuala Mahato Malay tribal community with PT. TorusGanda on May 25, 2010, by the agreement outlined in the cooperation agreement with the notary deed. One of the agreement's contents is that PT (Gusliana, 2011). TorusGanda will provide land yield the control of customary land by plantation companies is carried out by relinquishing land tenure rights by the community through ninik Mamak to the local government (Gusliana, 2011).
6 CONCLUSION

The following conclusions are drawn based on the results of the research conducted by the author. First, at present, the utilization of customary land in the village of Mahato is carried out by the company. Second, Article 3 of the Agrarian Law recognizes traditional rights. Recognition of land is something that is indeed protected by what is intended by Article 18 B paragraph (2) of the 1945 Constitution, that the State recognizes and respects community units of customary law and traditional rights as long as they are alive and in accordance with the development of the State principal community unit of the Republic of Indonesia. But the recognition of customary rights is limited; namely, traditional rights that are still in line with the times and civilizations, as in Article 28 I of the 1945 Constitution, and are not registered. The form of legal protection, if needed for the public interest, is as stated in Article 18 of the UUPA. Then the community holding ulayat rights is given compensation in the form of the construction of public facilities or other forms that are beneficial to the local people following Article 14 of Presidential Regulation No. 36 of 2005 as amended by Presidential Regulation No. 65 of 2006, which is used for the benefit of all customary rights holders the land.

REFERENCES


