

The Policy of Central Borneo Provincial Government on Indigenous Peoples' Land Rights and Its Implications to Indonesia's Positive Laws

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Keywords: Central Borneo Provincial Government, Dayak Indigenous Peoples, Kedamangan, Land Rights, SKTA (Certificate of Customary Land).

Abstract: The Central Borneo provincial government has responded positively to the protection of land occupied by indigenous people by issuing Provincial Regulations and Governor Regulations. This policy encourages "Kedamangan" as the central institution which is fully responsible for sustainable, efficient and development of Dayak Customary Law, customs and positive habits in Indigenous Dayak life in Central Borneo including land rights by issuing SKTA (Certificate of Customary Land). However, the implementation of SKTA has not been able to accommodate by positive law of Indonesia. The purpose of this study is to explore the extent to which the implementation of Kedamangan's policy concerning land rights and its implications on positive law of Indonesia. Normative research is used in this study with the statue approach concerned with the topic. Sources of data obtained from the primary data in the form of regulations and secondary data in the form of literature relating to this study. The results show that, substantively local government policy is very appropriate and in accordance with the constitution. However, SKTA needs to be given legitimacy in its existence so that the element of legal certainty is fulfilled.

1 INTRODUCTION

Customary law is the original law of the Indonesian nation that is not written in the form of the laws of the Republic of Indonesia, which here and there contains elements of religion. Customary law is communal and is a reflection of the life of a nation from time to time or it may also come from an experience by a particular society (Lev, 1990).

One of the people who still maintain customary law as a law that lives in the life of society and state until today is Dayak indigenous people in Central Borneo Province. When talking about the rights of indigenous people, it always involves the rights of indigenous people to the land. Land rights are a fairly intensive and extensive issue that uses indigenous identity and authority (Simarmata, 2015).

Indigenous stakeholder institutions still present in Dayak indigenous communities in Central Borneo Province are called Kedamangan. These are closely related to the local and traditional values that grow and develop in the Dayak tribe community. (Abdurrahman 2002).

Kedamangan is an institution responsible for the sustainable, efficient and development of Dayak Customary Law, customs and positive habits in the life of Dayak indigenous people in Central Borneo. One of the duties and power of Kedamangan is to issue SKTA (Certificate of Customary Land) as written evidence confirming the ownership status of customary land.

2 LITERATURE REVIEW

Indonesia is a country with heterogeneous social and economic character. The presence of Indonesia as a nation state is a unique phenomenon, especially when viewed from the pluralistic side it has (see Geertz, 2000; Benedict, 1983; Lane, 2007). In these situations two challenges are coming soon when the nation of Indonesia stands, that is how to create a country that can seal plurality on one hand and on the other hand, able to accommodate the progress to a harmonious yet dynamic stage (Yuliyanto, 2017).

The customary law according to van Vollenhoven in Fifik Wiryani (2009) is the rules of

conduct applicable to indigenous people and foreign easterners who on the one hand have sanctions (hence the law) and on the other hand is not codified (hence custom). Similar opinion is given by Wignjodipoero (1995) asserted: "So to see whether something custom is already customary law, then we must see the attitude of the ruler of the legal community concerned against the violator of the customs rules in question. If the ruler of the offender handed down the verdict, then the custom was already a customary law."

Three main types of customary law fellowship in the study of custom law are called: (1) Genealogical law alliance (2) Territorial legal partnership. (3) Genealogical-territorial legal partnership which is a merger of two legal partnership above (Wulansari, 2010). The relationship between human or human groups with the land is very closely even can not be separated, the relationship is eternal (Setiady, 2008).

The law will not be possible to live without because the community consists of a collection of individual human beings, and humans as supporters of rights and obligations or in other words humans are legal subjects, so society is also a legal subject. The function of the legal community itself can determine the legal structure, by looking at the nature and characteristics of each customary law in the formation of its legal norms, so that from that the structure or content of the customary law is formed (Rato, 2011).

Van Vollenhoven (1981) stated that the function of the customary law community is as a frame, as well as the function of society towards law in general. Boedi Harsono in Husen Alting (2011) defines customary rights (customary land rights) as a set of authorities and obligations of a customary law community relating to land located within its territory as the main supporter of the livelihood and life of the community concerned in all time.

The conception of land rights according to customary law there are magical communal-religious values that provide opportunities for individual land tenure, as well as private rights, however, ulayat rights are not the rights of individuals. Therefore, it can be said that communal right is communal because it is the right of the members of the customary law community over the land concerned. The magical-religious property refers to the ulayat right as a common property, believed to be something of an unseen nature and is a relic of the ancestors and ancestors of the indigenous peoples as the most important element of their life and livelihoods throughout the lifetime and throughout life (Harsono, 2005).

3 METHODOLOGY

To achieve the purpose of this study, the authors use the type of normative research, which examines the norms, principles, and legal doctrine, with respect to the topic that researchers adopt. In normative research, research on the principle of law is done against rules that are benchmarks behave. This research can be conducted primarily on primary and secondary materials, as long as the materials contain legal rules. Principle is the ideal element of the law. Even the principle of law is the "heart" of legal norms because the principle of law is the broadest foundation for the birth of a rule of law (Rahardjo, 2006).

In this research, will be disclosed the extent to which the existence of the Regulation on the Bread and the resulting product that SKTA has harmonized with the rules above (Soekanto and Mamudji, 2007).

To solve the problems raised and analyze the things that become the object of research, it is necessary the existence of legal materials. The legal substance used in this research consists of 3 (three) parts of legal materials, namely: *Primary Legal Material* consists of legislation, official records or treatises in legislation (Marzuki, 2009), *Secondary Legal Materials*, consists of the publication of the law, among others, consists of books, scientific journals, scientific papers, seminar materials or other scientific activities.

4 PROCESS AND SUBSTANCE LEGALIZATION OF INDIGENOUS RIGHTS OF DAYAK COMMUNITIES ON LAND

Customary institutions must be able to answer the present challenge and welcome the future. Live now how indigenous peoples and adat institutions "are given the opportunity" to be utilized, empowered and synergize all these potentials into development capital (Waluyo, 2012; Sulang, 2001).

Based on Governor Regulation No. 13 Year 2009 Jo No. 4 Year 2012, to clarify the ownership of customary land owned by private property, and the rights to land above are as follows:

Table 1: The Difference between Land of Customs Together, Individual Customs Land, and Customary Rights on Land.

LAND OF CUSTOMS TOGETHER	INDIVIDUAL CUSTOMS LAND	CUSTOMARY RIGHTS ON LAND
State land is not free (former fields)	State land is not free (former fields)	Free country land (virgin forest).
Ancestral heritage land or Parents are still not yet shared	The former or own fields from grants, inheritance, selling buy / exchange.	Form: animals game, fruits, sap, honey, ingredients medicine, place religious-magical and (right gathering).
Can be forest back or garden.	Can be forest back or garden.	Not the land but only objects above / in in the ground
Can be a place stay (in the village), grave / shrine / religious magic	Can be a place stay (in the village), grave, sacred / religious magical	The area and the boundaries are not certain
Area and boundary following the breadth and borders former fields	Area and boundary following the breadth and borders former fields	If "disturbed" the other party, the owner entitled to get
Transfer of rights through buying and selling, etc.	Transfer of rights through buying and selling, etc	

4.1 Dilemma SKTA Issued by Kedamangan in Indonesia Land Registration System

The absence of regulation regarding the existence of SKTA in the Government Regulation No. 24 Year 1997 concerning Land Registration becomes its own problem. This is actually a major problem in the registration of indigenous peoples' lands. The available regulations have not fully recognized and protected the existence of indigenous peoples' lands. In such a situation, the SKTA introduced through the Regional Regulations and Governor Regulations in Central Borneo is an innovation to complement the lack of national legislation in regulating the registration of customary lands.

During this time, one of the legalization of community land to be able to manage land certificate to the land office is SKT (Land

Certificate), then changed into Letter of Land Statement or briefly become Statement Letter. The difference is that SKT is issued by Camat (District Head), while SKTA is issued by Damang. In addition, SKT is a statement made by the applicant known by the Village Head and Camat. While SKTA petitioned by the applicant for issued a letter by Damang. So if there is a land dispute in court, then Damang can be a witness in court.

4.2 SKTA as Partnership Transaction Tool

Although the Government regulates that SKTA can be used as a condition of partnership, the efficacy of SKTA as a means of transactions that have value as a guarantor is still not very real because SKTA can not be used as collateral to apply for credit in banks or other credit institutions. (Waluyo, 2012).

4.3 Doubt f Legality and Legal Strength of SKTA

The doubts about the validity of SKTA ultimately spread on points regarding the legal power of SKTA, especially when compared with the SPT. Here are the constraints on the existence of SKTA (Simarmata, 2015):

Table 2: The constraints on the existence of SKTA (Certificate of Customary Land)

Constraints	Description	Explanation
Contestation of authority	- Unclear division between SPT objects with SKTA - Opportunity to lose income	The contestation resulted in almost no coordination between the damang and the village head and the sub-district head in providing SKTA. The situation ultimately leads to peace not being a partner to government but a self-governing government.
Doubt of Legality and Legal Strength of SKTA	- Doubt of validity - Doubt of the legal force - Doubt about the value and potential	- Doubts of validity for not being signed by village heads and/or sub-district heads - Doubt on the power of the law because: (i) it can

	for conflict	not be proof of the right to make notarial deed and land certificate; (ii) can not be used as collateral; and (iii) is non-transferable - Doubt over the value (price) of land due to: (i) location; (ii) not planted; (iii) potential conflict.
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From the researcher's observation of the prevailing norm, the presence of Governor Regulation provides legal certainty and also protects the rights of customary land. However, if customary land can be converted to function or move its rights, then certainly no more customary land.

Clearly we can assume that customary land may be transferred or dispossessed of common ownership if there is mutual agreement through deliberation. However, the researcher found that there is a deficiency in the regulation that is not regulated sanction if this joint land is converted enable in other words sold to other parties without mutual agreement.

5 CONCLUSIONS

Normatively it can be seen that SKTA both technically implementation and synchronization still experience weakness so that existence SKTA more difficult to find its purpose. This is because there is still no synchronization between the Government Regulation and the Governor Regulation which regulates the authority of the institution issuing customary land rights certificates. The law must always follow developments and objective circumstances that occur in society. Government Regulations concerning Land Registration need to accommodate the existence of Kedamangan so that SKTA issued can have certainty and legal strength in its implementation. Moreover, for the sake of legal certainty and the progress of the natural resources of the Dayak indigenous people and to prevent future disputes, it is very urgent to need a clear regulation and also need to carry out ongoing socialization to the Dayak indigenous people.

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