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Position of the Border Area in Kunto Darussalam Sub-district Rokan Hulu Regency Post the Supreme Court Decision Number 395K / TUN / 2011

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Abstract

The formulation of the problem in this study is the Position of the Border Area in Kunto Darussalam Subdistrict of Rokan Hulu Regency Post the Supreme Court Decision No. 395K / TUN / 2011. This study is a type of sociological or empirical legal study or field legal study. The data used in this study are sourced from primary legal material in the form of interviews with respondents in the field regarding matters relating to the problem under study, secondary legal material that is obtained from the Literatures Act or is data obtained through library research and the results of various references and documents. The results of the study are the position of the border region of Kampar Regency or Rokan Hulu Regency Post the Decision of the Supreme Court Number 395K / TUN / 2011. So this has an impact on Government Administration which also has implications for the political rights of the community. The related parties should really pay attention to this issue, prioritize the principle of prudence in making decisions and prioritize the interests of the community also, so that there is no prolonged conflict anymore.

INTRODUCTION

Customary law (*adat Rechts*) is a law that lives in the native Indonesian community and has characteristics as a legal system and can be distinguished from other legal systems. As a law that lives in the community, customary law tends to have an important influence on the life of the nation and state, so that in the formation of national legislation (*wetelijk regelingen*), it should pay attention to customary law. The diversity of customary law should not be an obstacle to national law development, because in such diversity there are basic concepts, principles, and legal institutions that are the same.¹ Relating to customary law is the entire unwritten legal regulations that contain the provisions of the customs of the entire Indonesian nation which consists of various ethnic groups, each of which has a custom based

¹ Darwin Ginting, *Agribusiness Land Ownership Law*, (Bogor: Ghalia Indonesia, 2010), 39.

on the view of life or cultural traditions.²

According to Mashuri Maschab, if talk about villages in Indonesia, then at least it will lead to three kinds of interpretation, first, sociological understanding, second, economic understanding, third, political understanding.³ Villages, or other very diverse designations in Indonesia, were originally local community organizations that had territorial boundaries, were inhabited by many residents, and had customs to manage themselves. This is what is called the *Self-Governing Community*.⁴ The term village as a legal community unit was only known in the Dutch colonial era.⁵

Regional autonomy when viewed from its territory, its implementation is determined within the boundaries of the region determined by the central government. Among scholars, the terms given to the division of functions between the center and the regions in the context of autonomy are not the same. R. Tresna calls the term "authority to manage the household".⁶ Bagir Manan calls the term "regional household system".⁷ Josef Riwu Kaho gave the term "system",⁸ Mahfud using the term "principle of autonomy".⁹ Although their terms are different, they are based on the same understanding, which is related to the order relating to the division of authority, duties, and responsibilities to manage and manage their households.

The community becomes a space of social interaction patterns or interpersonal relationships and relationships between social groups contained in a social system.¹⁰ The social system starts from personal behavior which is a real behavior, action, or movement of humans. This personal behavior then develops into attitudes or tendencies to behave towards humans, objects, or certain conditions. Human motion or reaction with another party is called ego and the party that reacts is called alter.¹¹ The social system that occurs in this community is inseparable from the social upheavals or social conflicts between one and another.

² Gusliana HB, "Pattern of Protection of Ulayat Land Forests of the Riau Malay Customary Community in Riau Province", *Journal of Legal Studies* 2, no. 1 (2011): 14.

³ Mashuri Mashab, "Politics of Village Governance in Indonesia", (Yogyakarta: PolGov FISIPOL UGM, 2013), 1-2.

⁴ Ni'matul Huda, *Village Government Law*, (Malang: Setara Press, 2015), 33.

⁵ Sutoro Eko, *Past, Present and Future of Village Autonomy, in Soetandyo Wignosubroto et al, Tidal Regional Autonomy, 100 Years Travel Sketch*, (Jakarta: Institute For Local Development and Tifa Foundation, 2005), 444.

⁶ R. Tresna, An excursion to the State Administrative Park, Dinya, Bandung, p. 32-36. Quoted again by M. Laica Marzuki, (Taking a Walk in the Realm of Law), 152-154.

⁷ Bagir Manan, *Central and Regional Relations According to the 1945 Constitution*, (Jakarta: Pustaka Sinar Harapan, 1995), 26-32.

⁸ Moh. Mahfud MD, *Political Law in Indonesia*, (Jakarta: LP3ES, 1998), 96-98.

⁹ Soerjono Soekanto, *Indonesian Customary Law*, (Jakarta: Raja Grafindo Persada, 1983), 3.

¹⁰ Ibid.

¹¹ Siti Hapsah Isfardiyana, *Customary Law*, (Yogyakarta: UII Press, 2015), 74.

In Indonesia there are often conflicts of varying nature such as religious conflicts, investment conflicts, political conflicts, social conflicts, legal conflicts, regional conflicts. Geographically, the territory of Indonesia is a group of islands consisting of thousands of large and small islands separated from each other by straits, vast oceans. The condition of this region has consequences for the birth of various tribes with customs, cultural habits, and the variety of languages of each region.¹²

Rokan Hulu Regency was born or formed based on Law Number 53 of 1999 concerning the Formation of new Regency. Rokan Hulu Regency is one of the districts that was born from Kampar Regency, where the seven sub-districts in it are Tambusai Sub-district, Kepenuhan, Kunto Darusalam, Tandun, Rokan IV koto, Rambah, and Rambah Samo, the disputes were five villages that were in the Kunto Darusalam sub-district because before the division of the five villages had disputed into the Siak Hulu sub-district for reasons of too far distance for the government bureaucracy to the Siak Hulu sub-district, the five disputed villages were entrusted to the Kunto Darusalam sub-district for government administration.

After the division there was a dispute over the five villages because there was no affirmation between the statuses of the five villages, then Kunto Darusalam sub-district was included in the area of Rokan Hulu Regency which was mentioned in the provisions regulated in the Law on the Establishment of 8 Regencies in Riau Province.¹³ Then in 2005, the conflict of five villages occurred again before the democratic party election of the regent and deputy regent, where the Governor's Regulation came out which decided 5 villages into the Kampar region, this is because the status of the five villages is unclear. After all, some residents have Rokan Hulu Regency Resident Identity card (KTP) and some people have Kampar Regency Resident Identity Card (KTP).¹⁴

There are five factors causing boundary conflicts and to identify the main causes of boundary conflicts can be seen from:¹⁵ (a) some problems are related between people or groups; (b) problems about data; (c) issues related to lack of conformity/value; (d) there is a structured force from outside which pressures the actors in the dispute, and; (e) the existence

¹² Sarundajang, *Backflow of Central Power to the Regions*, (Jakarta: Kata Hasta Pustaka, 2005), 21.

¹³ Article 4 of Law Number 53 Year 1999 Concerning the Establishment of 8 City Regencies in Riau Province.

¹⁴ Tribune Pekanbaru, Thousands of residents Do Not Enter DPT (Five Villages Still Polemic Status, KPU Kampar and Rohul-Riau KPU Not Running. Friday, June 22, 2018.

¹⁵ Siti Shofiyah, Tugiman, Marwoto Saiman, "Border Conflict of Five Villages in Kampar Regency and Rokan Hulu Regency (A Historical Review and Its Impact on Community Services)", *Journal of Educational Sciences*, Educational Studies Program of the Faculty of Teacher Training and Education.

of Issues of interest that is not being noticed or there is no suitability in terms of desires.

Based on the explanation that the writer explained above, the writer is interested in conducting research and pouring the results into scientific works by taking the title Position of the Border Area in Kunto Darussalam Sub-district, Rokan Hulu Regency. Research purposes is to find out the position of the border region in Kunto Darussalam District, Rokan Hulu Regency, Post the Supreme Court's Decision Number 395K / TUN / 2011.

In this study, the authors used a type of sociological or empirical legal research or field legal research. Sociological research is research obtained directly from the community or primary research data¹⁶ which uses community assumptions in looking for facts that occur in the field to answer an existing problem, the method of an approach based on disputed border areas, research locations in the Kunto Darussalam Subdistrict of Rokan Hulu Regency Post the Supreme Court's Decision Number 395K / TUN / 2011 and the study is under the applicable laws and regulations, the reason the author chose a location in the region is because of border conflicts in the region. Meanwhile, this study is descriptive, which means the research intended to provide a detailed, clear, and systematic description of the problems of the main problem of the study.¹⁷ From this discussion, deductive conclusions are drawn, that is, concluding from general to specific.

POSITION OF THE BORDER AREA IN THE SUBDISTRICT OF KUNTO DARUSSALAM ROKAN HULU REGENCY POST SUPREME COURT DECREE NUMBER 395K/TUN/2011

Based on article 18B paragraph 2 of the 1945 Constitution, the state recognizes the customary law community units and their traditional rights as long as they are still alive and under the principles of the Unitary State of the Republic of Indonesia as stipulated in the law. The village government is the lowest administrative unit in the administration of regional government. In this case the village is the lowest unit of government under the Regency and City government.¹⁸ The administration of this regional government must be based on the prevailing laws and regulations. This is also related to conflicts that occur within a certain regional area. This conflict is usually closely related to disputes between regions relating to land or regional boundaries. Given the importance of an owner of the position of land or area

¹⁶ Soerjono Soekanto, *Introduction to Legal Research*, (Jakarta: UI-Pres, 2000), 10.

¹⁷ Ibid.

¹⁸ Josef Mario Monteiro, *Local Government Law*, (Jakarta: Pustaka Yustisia, 2016), 121.

in Indonesia.

The land has a very urgent role in human life and also becomes one of the objects that are prone to disputes and conflicts between others.¹⁹ Conflicts that occur can involve local governments, companies, and local communities.²⁰ The villages of Intan Jaya, Tanah Datar, Muara Intan, Rimba Jaya, and Rimba Makmur are transmigration areas that are part of the Siak Hulu Subdistrict of Kampar Regency, of which the five villages were transmigration areas in 1990-1993, namely UPT I Rimba Jaya, UPT III Muara Intan, UPT IV Rimba Makmur, UPT V Intan Jaya, and UPT VII Tanah Datar included in Sinama Nenek Village, due to the considerable distance from the subdistrict center, to facilitate community services such as the distribution of IDT funds, BANGDES funds, by the Government of the Kampar Regency to the 5 Villages, the service was entrusted to the Kunto Darussalam Subdistrict, which at that time was still part of the Kampar Regency area before the expansion of territory.²¹

Then a dispute began in the five villages with various arguments from each of the District head Regent of the Rokan Hulu Regency claiming that the five villages entered their territory because the five villages had been carrying out government activities in the Kunto Darussalam Subdistrict, while the Kunto Darussalam Subdistrict entered Rokan Hulu Regency based on Law No. 53 of 1999.

In several previous studies, it was seen that the rise of disputes over boundaries was triggered by one of the unclear administrative boundaries between the new autonomous region and the old area. This problem then spread to various dimensional conflicts such as social conflicts and Natural Resource conflicts.²² Among the many regional boundary conflicts, some of them have an impact on other conflicts such as social conflicts and natural resource conflicts. The irony is that until now the desire to split regions, from the village / sub-district, district, and provincial levels, continues to roll. The reason is the same, namely to

¹⁹Ahmad Sodiki, *Politics of Agrarian Law*, (Jakarta: Konstitusi Pres, 2013), 1-2.

²⁰ Ratna Sari Dewi, "The Role of the Regional Government of Kuantan Singingi Regency in Resolving Plasma Plantation Conflict in Partnership Pattern Pt. Tbs and Kud. Ps in the District of Kuantan Mudik in 2010", *Online Journal of FISIP Students, Faculty of Social and Political Sciences, University of Riau, Pekanbaru* 2, no. 2 (2015), 2.

²¹ Dessy Artina Interview with Head of Subdivision of Boundary Administration Section, on Tuesday, July 31, 2018, at 10:00 WIB.

²² Djoko Harmantyo, "Regional Expansion and Spatial Conflict: Regional Autonomy Policy and Its Implementation in Indonesia", *MAKARA, SAINS* 11, no. 1, (2007), 16-22.

improve people's welfare and shorten the bureaucratic cords.²³

The Government of Rokan Hulu Regency continues to carry out Government Administration activities in five Villages which so far have been carrying out governance in Kunto Darussalam Subdistrict so that when Governor Regulation No. 30/2005 was issued, it stated that five Villages were included in the Kampar Regency administration area. Then was sued by the Regent of Rokan Hulu to the Supreme Court with a request for a judicial review of Governor Regulation Number 30 of 2005 which according to the Rokan Hulu Regency government contradicted the Law on Regional Formation and Law 32 of 2004 concerning Regional Government. Then the Supreme Court granted a material test of Governor Regulation No. 30/2005 with Decision Number 05 P/HUM/2006 which ordered the Governor to revoke Governor Regulation No. 30/2005 concerning the determination of five Villages decided in Governor Regulation No. 30/2005 into the Kampar Regency.

Based on the applicable legal rules, the institution that has the authority in resolving disputes over regional boundaries is conducted by the Supreme Court, the Constitutional Court, and the State Administrative Court.²⁴ The authority of the Constitutional Court in conducting the judicial review of the Constitution is an attempt to balance between democracy symbolized through the House of Representatives (DPR) and nomocracy symbolized through the Constitutional Court. Based on the fact that several laws are democratically established in the DPR, but are canceled by the Constitutional Court because they conflict with nomocracy.²⁵

The Riau Provincial Government facilitated the Kampar Regency Government and the Rokan Hulu Regency Government with the results of an agreement between Kampar Regency and Rokan Hulu Regency which submitted the resolution of the five Decade dispute to the Provincial Government and based on the official report of the agreement on the settlement meeting over five cases overlapping between Kampar Regency and Rokan Hulu in the contents The official report stipulated that the two Regency governments agreed to submit the dispute resolution of the five Village cases to the Riau Provincial Government by

²³ Saru Arifin, "Settlement of Regional Border Disputes Using the Regulatory Approach", *Journal of Law, IUS QUIA IUSTUM* 23, no. 3 (2016), 439-460.

²⁴ Provisions in Article 11 paragraph (2) of Law No. 4 of 2004 concerning Judicial Power which gives the authority for the Supreme Court to test legal products under the Act. While the authority of the Constitutional Court in resolving disputes over regional boundaries is based on Article 1 paragraph (3) of Law no. 24 of 2003 concerning the Constitutional Court.

²⁵ Moh. Mahfud, MD, *Constitution and Law in Controversy Issues*, (Jakarta: Rajawali Pers, 2010), 415.

observing the principles of justice and balance. Furthermore, this boundary conflict will be resolved in 2006 by sharing the two Regencies and Riau Province.

Based on the Regulation of the Minister of Home Affairs Regulation Number 1 of 2006 Concerning the Guidelines for Affirmation of Regional Boundaries, it is stated that if there is a dispute over a Regency / City territory within a Province, the settlement is mediated by the Governor. Conversely, if a dispute occurs with other provinces, then it is mediated by the Minister of Home Affairs.

According to Reydonnizar, including the issue of regional border disputes. It means, that in the case of border disputes between regencies/cities the "Judge" is the Governor. Meanwhile if there is a dispute between the Province and/or Province with the regency/City, then the "Judge" is the Minister of Home Affairs.²⁶ Regional boundary disputes are a prolonged problem in resolving border disputes between Kampar Regency and Rokan Hulu Regency. The Minister of Home Affairs, in this case acting as the central government, has issued a letter with letter number 136/410/ PUM dated 23 March 2009 which in its request the Governor of Riau to resolve the boundary between Kampar Regency and Rokan Hulu Regency and the results were submitted to the Minister of Home Affairs Cq Director-General of PUM, then the Riau Governor responded to the Minister of Home Affairs Letter with the issuance of the Governor's Letter No. 136/Tapem/82 which asks the Minister of Home Affairs to settle and decide upon disputes over the area. Then the Minister of Home Affairs issued another Minister of Home Affairs Letter No136/1431/PUM which stated that the Governor of Riau had to settle the disputes of five villages by referring to Law Number 53 of 1999 concerning the establishment of autonomous regions in Riau Province. Then the Governor of Riau was asked to socialize that the policies of the five Villages were in the administrative area of Kunto Darussalam Subdistrict, Rokan Hulu Regency to all relevant stakeholders in the Riau Province environment.

The territorial position that occurred in the disputes of five villages, namely Desa, Muara Intan, Intan Jaya, Tanah Datar, Rimba Makmur, and Rimba Jaya resulted in the Government Administration which became a dispute between Kampar Regency and Rokan Hulu Regency. That is because there is a dualism of village leadership, both villages that enter Kampar and villages that enter Rokan Hulu, so that one village has two village offices, both

²⁶ Soeroso, F.L., "Interpreting the Tendency to Resolve Territorial Conflicts to the Constitutional Court", *Constitutional Journal* 9, no. 3 (2012), 9.

villages formed by Kampar regency and villages formed by Rokan Hulu, this certainly has an effect on government administration in the village, because there are two governments that occur. Of course it resulted in the legal uncertainty in the administration of the five villages.²⁷

The unclear position of the border region also has implications for the political rights of the community.²⁸ The disputes between the five villages between Kampar Regency and Rokan Hulu Regency certainly have implications for the political rights of the five Villages. It is proven that five thousand residents canceled their votes in the Rokan Hulu Subdistrict Head Election after the Governor Instruction No. 1 of 2006 was signed, signed by Riau Governor Rusli Zainal whose contents emphasized Governor Regulation Number 30 of 2005 which states that the five villages are included in Kampar Regency.²⁹ This certainly ignores the political rights of the five villages as a right regulated in the 1945 Constitution.

The Riau Governor emphasized that a letter from the Minister of the Interior had stipulated that the Election of the Riau Governor in 2008 the five Villages were administratively served by Kampar Regency.³⁰ As the regional executive of Rokan Hulu Regent, he delivered some legal facts that in terms of the provisions or rules stipulated by the five villages after the material test conducted by the Government of Rokan Hulu Regency, the five Villages of governance and development remain within the Kunto Darussalam Subdistrict of Rokan Hulu Regency which is true During this time in the administration of government served in Kunto Darussalam Subdistrict, Rokan Hulu Regency.³¹

Besides, it was stated that five villages that had previously had a dispute with Rokan Hulu Regency had been determined to be within the area of Tapung Hulu Subdistrict, Kampar. Thus, for one sub-district there were 14 villages. In addition to Tanah Datar Village, Rimbo Jaya, Intan Jaya, Rimbo Makmur, and Muara Intan Village, there are also Desa Sinama Nenek, Kasikan, Bukit Kemuning, Danau Lancang, Rimba Beringin, Sukaramai, Sumber Sari, Kasau Makmur, and Talang Danto. Decisions in the regulation of Minister of Home Affairs is under Amar Decree of the Supreme Court Number 395K/TUN/2011 and Letter of the Minister of Home

²⁷ Interview with BPD Chairperson of Intan Jaya Village, Tuesday, Tanggal 31 Juli 2018 July 31, 2018, at 3:00 PM.

²⁸ Interview with BPD Chairperson of Muara Intan Village, Tuesday, Tanggal 31 Juli 2018 July 31 2018, at 17:15 PM

²⁹ Metro Riau, Five Thousand Citizens Cancel Voting, August 23, 2018

³⁰ See Governor's Letter to KPU Riau with Letter Number 140/PH/73.17a dated June 20, 2008

³¹ See Governor's Letter to KPU Riau with Letter Number No180/HKO/255/2008, dated June 25, 2008

Affairs Number 135.6 / 2779 / SJ concerning the Affirmation of Regional Boundaries between Rokan Hulu Regency and Kampar, Riau. The Minister of Home Affairs also explained the decision under the partial division of Kasikan Village, Tapung Hulu Subdistrict which is under Regional Regulation Number 17/2011. PMD and Regional Regulation Number 22 of 2003.³²

The Minister of Home Affairs stated the issuance of this Minister of Home Affairs was to support the continued implementation of government administration, population, development, and community development in the regions. The Minister of Home Affairs was also issued under Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration, as well as Law Number 39 of 2008 concerning State Ministries and Law Number 4 of 2011 concerning Geospatial Information and other relevant laws.³³

CONCLUSION

The position of the border area of Kampar Regency or Rokan Hulu Regency Post Supreme Court Decree Number 395K/TUN/2011 has been determined to be in the Tapung Hulu Subdistrict, Kampar Regency. So this has led to the implementation of governance and also has implications for the political rights of the community.

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³²<https://riau.antaraneews.com/berita/54953/putusan-ma-terkait-lima-desa-landasan-permendagri> diakses 29 April 2020

³³ Ibid.

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