

# Customary Law and Challenges of Imbo Putui Customary Forest Management

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**Abstract**—Forests provide many benefits for human life. Forests protection is a responsibility of mankind in the world. Regulations and forest protection are carried out at the national, regional and international levels. Many studies are conducted on infraction of forest regulations in the world. This study examines customary law and challenges of the Imbo Putui customary forest management in Kampar Regency, Indonesia. The method used is socio legal research, a combination of document study research and field research, primary and secondary data sources through in-depth interviews to respondents from adat leaders, customary forest managers and customary law community. Then analysed qualitatively. This study found that the existence of dynamic customary law development following the development of customary law community. Challenges in management: first, the infraction of customary law norms caused by economic factors and weak customary law enforcement. Second, optimization of economic benefits through potential customary forest tourism, the study centre customary forests, and breeding kelulut bees. Then infrastructure facilities are needed. Third, empowerment of customary law community.

**Keywords**—customary law, challenges, Imbo Putui Customary Forest, Kampar Regency

## I. INTRODUCTION

Based on the research of Sofia R. Hirakuri explained that low compliance with existing forest management laws, rather than lack of laws, is often a leading cause of unsustainable forestry practices in many tropical forest countries. Nevertheless, the degree of compliance varies across nations. Her research examines the contrast of Brazil, a law compliance country, with Finland, the most successful country [1].

Indonesia in the period 2015 to 2018, according to the Director General of Environmental and Forestry Law Enforcement (LHK), Rasio Ridho Sani during the Performance Reflection Dialogue for 2019 Work Preparation in Jakarta explained the results of the work, among others, his party managed to bring 567 environmental crime cases to court. In addition, 18 civil cases related to environmental and forestry crimes have been brought to court [2].

In Indonesia, regulations of forests other than regulated by state law, customary forests regulated by customary law that applies to customary law community. This study will examine the Imbo Putui customary forest in Kampar Regency.

Previous research by Hengki Firmanda, explained that the Imbo Putui Customary Forest mysticism has been used for meditation (mysticism practice). The forest is inhabited by flora and fauna that lived hundreds of years ago. Such as tigers, bears, tapirs and various types of birds. Also, there are approximately 60 (sixty) types of trees. Such as chelate, red meranti, kempas, pasak bumi, fig, and others. According to customary law norms, hunting and logging are prohibited. Penalties for violating are regulated by customary law. For logging, if you cut down a tree diameter 20 (twenty) cm and above, you must pay 50 (fifty) sacks of cement. According to customary law norms, the wood can only be used for bridges construction in petapahan village, or other public facilities, as well as building houses for underprivileged families or making canoes for fishermen. However, there is a rule that who cut down are required to replant the same number of trees [3].

## II. PROBLEM FORMULATION

There are two main studies in this research, the first is about customary law, second, the challenges of the Imbo Putui customary forest management in Kenegerian Petapahan, Kampar Regency.

## III. RESEARCH METHODS

The research method in this study is Socio Legal Research. Soetandyo Wignjosoebroto divides legal research into two parts, namely: Doctrinal Research and Non-Doctrinal Research (Socio Legal Research) [4]. According to Sulistyowati Irianto, sociolegal studies are interdisciplinary studies that are a "hybrid" of the major studies of law and the sciences of law from the perspective of society that were born earlier. The need to explain legal issues in a more theoretically meaningful way nourishes this study. Meanwhile, practically, this study is also needed to explain the operation of this law in daily life [5].

The sociolegal research method is a combination of doctrinal legal assessment methods and empirical legal research methods (borrow from social methods), which researched by document study, combined with field study [6]. As F. Sugeng Istanto found that to find data for legal research is by literature and field study [7]. Respondents are people or community groups who provide answers the questions posed by researchers [8]. namely Ninik Mamak, customary forest managers and customary law community. The data in this study were primary data and secondary data, then the data were analysed qualitatively.

#### IV. RESULTS AND DISCUSSION

Southeast Asia according Grace Y. Wong et.al has long promoted social forestry (SF) with the engagement of diverse actors and objectives. Social forestry is found in conservation areas, fallow forests, tree plantations, areas in timber concessions and locally managed agro-forest systems [9]. In Indonesia, one of the social forests is customary forest. Customary forests are found in various provinces in Indonesia. Riau province has two customary forests that have been recognized by the state in Kampar Regency.

The customary forests, which found in several village, are the natural wealth of customary law community in Kampar Regency. One of them is Imbo Putui customary Forest covering an area of 251 hectares located in Kenegerian Petapahan. Customary forests as a gift from the God have a strategic position and value as part of the socio-cultural system as well as a fortress of biodiversity and ecology to protect the environment and benefit the lives of customary law community from one generation to the next.

Customary forest based on the Constitutional Court Decision Number 35/PUU-X/2012 provides an understanding that "customary forest is forest located within the territory of customary law community" [10]. According to Faiq Tabroni, the Constitutional Court Decision Number 35/PUU-X/2012 has a progressive perspective [11]. The progressive legal framework according to Satjipto Rahardjo "law is an institution that aims to deliver humans to a just, prosperous, and happiness life". Specifically progressive law, among others, can be referred to "pro-people law" and "pro-justice law" [12].

Customary forests in Kampar Regency are part of ulayat rights known as forbidden forests. According to Erman and Afdhal Rinaldi in the customary law community in Kampar Regency, ulayat rights have several functions, namely: first, the function of Cultural Identity. Second is symbols of social position. Third, functions of economic resources, this function has a lot of attention from the customary law community of Kampar Regency [13]. The existence and sovereignty of ulayat rights in Kampar Regency have been recognized according to customary law from generation to generation in line with the growth and development of Andiko Nan 44 Government.

Customary law (adatrecht) according to C Van Vollenhoven is an adat that has legal consequences [14]. Meanwhile, according to R. Otje Salman Soemadinigrat

customary law is part of the law that comes from customs, namely social rules that are made and maintained by legal functionaries (authoritative rulers) then applied and are intended to regulate legal relations in Indonesian society [15]. In line with Eugen Ehrlich stated that the living law is the law that dominates the life of the community itself. The living law is a set of provisions whose birth coincided with the birth of society. Law cannot be separated from society. Law is formed by the community, and functions to serve the interests of the community [16].

In general, the experts customary law mention that the customary law system has three elements, namely basic conceptions, principles, and norms. All three are arranged hierarchically which also explains the strength of validity. Elements of basic conception are at the highest level in the hierarchy, followed by principles, and elements of norms at the lowest position. Basic concepts and principles are abstract and therefore can be generally accepted (some places and cases). As for norms, they are concrete and therefore apply only to certain places and cases [17].

The customary law in Kampar regency is known as the Jati Adat of Kampar Regency which has many inherited laws from the Andiko Nan 44 Government which has existed for 2000 years ago and then underwent changes. The customary law of Andiko Nan 44 which regulates "ulayat right" consists of 3 (three) articles (kato), Article 1 "Ka Ghimbo babungo kayu" Article 2 "Kagughun or ka pulau babungo ompiong" and Article 3 "Ka ayu babungo kaghang".

"Ka Ghimbo babungo kayu" is anything that is produced from forests and forest management in adat areas, then Adat disi Limbago dituang into the niniok mamak (tribal head) who has the pillar for the ulayat. Customary law community who want to take forest products or process forests, they must discuss with niniok mamak who has a stake over the ulayat, so the nephew does not take others' rights (batimpiok). first, and for outsiders who want to cultivate or use the forest, they must ask an agreement from niniok mamak (baguru togak batanyo), it can be determined according to deliberation and consensus [18].

Based on an interview with Datuk Zulfahmi, Chairman of MKA LAKTA, infraction of customary law norms is illegal logging without permission from the ninik mamak. The wood sold commercially outside the area through the river on the edge of the Imbo Putui customary forest because of economic needs. Now, supervision of customary forest together with the Forestry Service. According to the customary law community of Mr. Mustadir and Mr. Amir hasan, at this time, customary forests need to be protected and customary law as the identity of the Kenegerian Petapahan, which will be passed on to the next generation. Based on interviews with Mr. Said Fauzan Tas'ad and Syafrul as managers of the Imbo Putui customary forest, the obstacle is the development of infrastructure on Imbo Putui customary forest. In the future, Imbo Putui customary forest management can improve the economy of customary law community in Kenegerian Petapahan by

optimization of economic benefits through the potential customary forest tourism, the study centre customary forests, and breeding kelulut bees.

#### V. CONCLUSION

the existence of customary law develops dynamically following the development of customary law community. Challenges in management: first, the infraction of customary law norms caused by economic factors, resulting in weak customary law enforcement. Second, optimization of economic benefits through the potential customary forest tourism, the study centre customary forests, and breeding kelulut bees. Then infrastructure facilities are needed. Third, empowerment of the customary law community. The synergy is needed between Customary law community and customary forest managers to protection customary forests. Empowerment of the customary law community in various economic activities of Imbo Putui customary forests management can improve their economy.

#### REFERENCES

- [1] S.R. Hirakuri, *Can Law Save the Forest? Lessons from Finland and Brazil*, Dissertati. Jakarta: The Center for International Forestry Research (CIFOR), 2013.
- [2] Kementerian Lingkungan Hidup dan kehutanan, "Tantangan Penegakan Hukum LHK Di Tahun 2019," 2021.
- [3] H. Firmanda S, "Hukum Adat Masyarakat Petapahan Dalam Pengelolaan Lingkungan Sebagai Upaya Pemenuhan Hak Masyarakat Adat," *J. Fikri*, vol. 2, no. 1, Juni, 2017.
- [4] S. Wignjosoebroto, *Hukum Paradigma, Metode dan Dinamika Masalahnya*. Jakarta: ELSAM dan HUMA, 2002.
- [5] S. Irianto, "Memperkenalkan Kajian Sosio-Legal Dan Implikasi Metodologisnya," in *Kajian Sosio Legal, SERI UNSUR.*, T. D. W. Bedner, Adriaan W., Sulistyowati Irianto, Jan Michiel Otto, Ed. Denpasar, Jakarta: Pustaka Larasan, Universitas Indonesia, Universitas Leiden, Universitas Groningen, 2012.
- [6] S. Irianto, "Praktik Penelitian Hukum; Perspektif Sosiolegal," in *Metode Penelitian Hukum: Konstelasi dan Refleksi*, I. Irianto and Shidarta, Eds. 2013.
- [7] S. Istanto, *Penelitian Hukum*. Yogyakarta: Ganda, 2007.
- [8] E.S. HS, Salim., *plication of Law Theory on Thesis and Dissertation , (Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi)*. Jakarta: Rajawali Pers, 2017.
- [9] G.Y.W. Moira Moeliono, Indah W. Bong, Thuy Thu Pham, Muhammad A.K. Sahide, Daisuke Naito, Maria Brockhaus, "Social Forestry in Southeast Asia: Evolving Interests, Discourses and the Many Notions of Equity," *Geoforum*, vol. 117, pp. 246–258, 2020.
- [10] Mahkamah Konstitusi., *Putusan Mahkamah Konstitusi No. 35/PUU-X/2012.* .
- [11] F. Tobroni, "Menguatkan Hak Masyarakat Adat Atas Hutan Adat (Studi Putusan MK Nomor 35/ PUU-X/2012)," *J. Konstitusi*, vol. 10, no. 3, September, 2013.
- [12] S. Rahardjo, *Hukum Progresif Sebuah Sintesa Hukum Indonesia*. Yogyakarta: Genta Publishing, 2009.
- [13] Erman., Afdhal Rinaldi, "Kerukunan Dan Kearifan Lokal Dalam Hak-Hak Masyarakat Hukum Adat Kampar," *Toler. Media Ilm. Komun. Umat Beragama*, vol. 4, no. 2, Desember, 2012.
- [14] C. Van Vollenhoven, *Het Adatrecht van Nederlandsch-Indie (Orientasi dalam Hukum Adat di Indonesia)*, Jilid 1. Jakarta: Djembatan, 1933.
- [15] R.O.S. Soemadiningrat, *Rekonseptualisasi Hukum Adat Kontemporer: Telaah Kritis Terhadap Hukum Adat Sebagai Hukum yang Hidup dalam Masyarakat*. Bandung: ALUMNI, 2002.
- [16] W.L.M. Trans. Ehrlich, Eugen., *Fundamental Principles of The Sociology of Law*. Cambridge, Mass: Harvard University Press, 1936.
- [17] R. Simarmata, "Pendekatan Positivistik Dalam Studi Hukum Adat," *Mimb. Huk.*, vol. 30, no. 3, Oktober, 2018.
- [18] R.D. Syarfi, Muhammad., Abdullah, Dt. Marajo Bosau, Nurhidayat., Hasan, *Adat Jati Kabupaten Kampar*. Pekanbaru: UNRI Press kerjasama dengan Dinas Perhubungan, Pariwisata dan Seni Budaya Kabupaten Kampar, 2007.