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Developing a Natural Resource Management System as an Effort to Strengthen Legal Protection for Indigenous Communities

Roy Rovalino Herudiansyah[1], Pujiyono[2], Nur Rochaeti[3]

[1,2,3]Faculty of Law, Universitas Diponegoro, Jalan dr. Antonius Suroyo, Semarang City, Central Java 50275, Indonesia

Corresponding Author: royherudiansyah1977@gd-3.uno

Abstract: Indonesia, as an archipelago with thousands of ethnic groups and diverse customs, is known for its wealth and cultural diversity, as well as its abundant natural resource potential. On the other hand, the situation for Indigenous Communities is increasingly difficult and marginalized amidst the onslaught of the Extractive Industry in Indonesia. The territories of Indigenous Communities often become targets for land grabbing by the state and corporations, supported by business licenses, particularly for natural resource management. Large-scale land-based infrastructure development projects further exacerbate this situation. Indigenous Communities often do not receive adequate legal protection, and their traditional rights have begun to be neglected. Indigenous Communities have been recognized in various laws and regulations, including the 1945 Constitution of the Republic of Indonesia, which mandates the protection of Indigenous Communities and their traditional rights through specific legislation. This research aims to identify the implementation of the recognition of customary rights as the rights of Indigenous Communities, and the government is expected to build a monitoring system that will provide legal protection for Indigenous Communities in the context of natural resource management permits in Indonesia. To achieve this goal, the author of this article used a qualitative research method with a descriptive qualitative research specification. The data collection techniques were carried out through observation as well as a review of relevant laws, regulations, and legal documents.

Keywords: Indigenous Communities, Monitoring, Natural Resources, Legal Protection, Exploitation, Exploration.

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1. Introduction

Indonesia is a country with abundant natural resource potential. Various forms of natural resources, such as mining products, fisheries, livestock, water, and energy sources, can be found. Given the diversity of these natural resources, the state has the right to explore and exploit them. Generally, natural resources are of high economic value, attracting investors who then exploit these resources. In the context of natural resource exploitation, there is potential for very serious impacts on indigenous communities, the socio-cultural environment, and the surrounding natural environment. Exploitative activities such as illegal logging, illegal fishing, and illegal mining are examples of human actions that frequently occur, leading to environmental degradation (Aini, 2021).

Article 18B, paragraph (2) of the 1945 Constitution of Indonesia states that the country recognizes and respects the unity of Indigenous law communities and their traditional rights as long as they are still alive and following the development of society and the principles of the Unitary State of the Republic of

Indonesia as regulated by law. This indicates that certain conditions must be met for the existence of indigenous law communities in Indonesia to be recognized: (1) as long as the unity of the indigenous law community still exists; (2) in line with societal development; (3) following the principles of the Unitary State of the Republic of Indonesia; and (4) regulated by law. These four conditions, which must be met by the government to grant recognition to indigenous law communities, serve as clear benchmarks. These conditions emphasize that national interests must take precedence. This means that recognition must be sought by the indigenous law community, and the burden of proof for their existence lies with them. The policy to recognize or not recognize indigenous law communities rests with the central government (Wignjosoebroto, 2005).

In various parts of Indonesia, customary law is in effect, covering practices such as clearing forests for farming and other agricultural activities, livestock grazing, hunting wildlife, and harvesting forest products. Many forest areas are sustainably managed by indigenous law communities as their source of livelihood, guided by their wisdom. Juridically, the lack of a comprehensive formulation of the existence of Indigenous communities has led to an increase in the seizure of Indigenous lands, criminalization, and the use of violence in development projects. This situation is reflected in data collected by the Alliance of Indigenous Peoples of the Archipelago (AMAN). The data shows that throughout 2023, at least 2,578,073 hectares of indigenous land were taken over through violence and criminalization of local communities, resulting in 247 victims, 204 of whom were injured, one person killed, and approximately 100 houses of Indigenous Peoples destroyed because they were considered state conservation homes (A. M. A. Nusantara, n.d.). However, the current reality is contrary to the aspirations of the Indonesian nation. Conflicts of interest often occur between the government and indigenous communities (Nadiyya, 2021). This situation inevitably leads to the marginalization of indigenous communities. Their customary rights are not protected by the government, putting their communal land rights at risk from investments made by investors. For instance, the exploitation of the Papuan forests, which are one of the largest tropical rainforests in the world and home to extraordinary biodiversity. These forests also hold abundant natural resources such as timber, minerals, and petroleum. However, the exploitation of natural resources in the Papuan forests has created a significant dilemma between the need for development and environmental conservation efforts. For example, there is large-scale logging carried out to meet international market demands, leading to significant deforestation. Additionally, land is being cleared for palm oil, rubber, and cocoa plantations, often involving the burning of forests, which can damage vegetation, cause air pollution, and contribute to global climate change (Septiani, 2024).

The urgency to promote a monitoring system for the exploitation and exploration of natural resources for indigenous communities has actually been researched and written about from different perspectives and study objects. Laely Nurhidayah (2017) conducted research on the management of natural resources and the rights of Indigenous peoples: a case study of Enggano, where the Enggano community fought for the recognition and protection of their customary rights, especially the rights to manage natural resources including forests and the sea, which they felt had been detrimental to the survival of the Enggano community itself. Conflicts that arose included the existence of a government version of the village customary institution that differed from the original customary institution, conflicts over land status due to discrepancies in customary government, the sale of customary land to outsiders/foreigners, and the desire for regulation and recognition, as well as the protection of communal land rights through regional regulations. Ni Luh Ariningsih Sarti (2020) wrote about the recognition and legal protection of indigenous peoples (from the perspective of the rule of law). Her writing discusses the desire to preserve the nation's cultural heritage and uphold a rule of law based on the Constitution, along with the central government's firmness in implementing the constitutional mandate to draft legislation equivalent to laws related to Indigenous peoples and their communal land rights.

Based on several previous researches, this paper aims to identify the legal requirements necessary for communities, particularly indigenous communities in Indonesia, to obtain greater legal protection and recognition of their customary rights and communal land rights in the management of natural resources by investors/companies. It also explores legal options that can be pursued for customary recognition

under existing legislation and the optimization of a monitoring system for the exploration and exploitation of natural resources in customary forest areas to realize the protection of indigenous communities as a national identity. Based on this description, the paper is titled "Building a Natural Resource Management System as an Effort to Strengthen Legal Protection for Indigenous Communities in Indonesia," with the following problems: (1) What is the current condition of the natural resource management monitoring system in Indonesia? and (2) What principles should underpin the monitoring system for natural resource management to strengthen legal protection for indigenous communities in Indonesia?

2. Methodology

"Virtual" reality is objective, actual, and computable, generated by social circumstances. Issues related to politics, culture, economics, race, and gender are increasingly acknowledged as being correct (Ispriyarso & Wibawa, 2023). This research is normative, focusing on legal principles related to the recognition and legal protection of indigenous peoples from the perspective of the rule of law. The research approach used in this study was the statute approach and the conceptual approach, which utilizes the views and thoughts of experts regarding indigenous peoples. Data collection involved gathering legal materials through document studies, including a review of relevant literature (secondary data) encompassing primary, secondary, and tertiary legal materials, such as legislation, reference books, and legal dictionaries. The data is then analyzed descriptively and qualitatively.

3. The Existing Condition of the Natural Resource Management Monitoring System in Indonesia

In the Indonesian language dictionary, the term "*pengawasan*" (monitoring) originates from the word "*awas*," which means to pay close attention, in the sense of observing something carefully and thoroughly, with the sole activity being to report the actual facts of what is being monitored (Sujanto, 1986). Monitoring is one method to develop and maintain public legitimacy regarding government performance by creating an effective monitoring system, including both internal and external monitoring, as well as encouraging community involvement in the monitoring process. According to Sujamto, monitoring is any effort or activity aimed at identifying and assessing the actual reality of task or activity implementation, determining whether it is being carried out properly or not (Sujamto, 1990). This definition emphasizes that the monitoring process should proceed systematically according to predetermined stages.

Based on Victor M. Situmorang, monitoring can be classified into several types (M et al., 1993):

1. Preventive Monitoring and Repressive Monitoring
    a. Preventive Monitoring: This type of monitoring is conducted through a pre-audit before the work begins. For example, it involves monitoring the preparation of work plans, budget plans, and plans for the use of manpower and other resources.
    b. Repressive Monitoring: This type of monitoring is conducted through a post-audit, which involves inspecting the implementation on-site (inspection), requesting implementation reports, and so on.
2. Internal and External Monitoring
    a. Internal Monitoring: This monitoring is carried out by personnel within the organization itself.
    b. External Monitoring: This monitoring is conducted by personnel from outside the organization. The purpose of this monitoring is to understand the progress of the work, correct any errors, assess whether the work is being carried out according to the program outlined in the planning, and evaluate the results.

According to Sule and Saefullah, the function of monitoring is essentially a process carried out to ensure that what has been planned proceeds as intended (Kurniawan et al., 2005). The monitoring function

includes identifying various factors that hinder an activity and taking necessary corrective actions to achieve the objectives. In conclusion, the monitoring function is required to determine whether what has been planned and coordinated is being executed properly. If it is not proceeding as expected, the monitoring function also involves the process of correcting ongoing activities to ensure that the planned goals are still met. Regarding this, there are four aspects related to the monitoring function (Kurniawan et al., 2005): (1) Strengthening the sense of responsibility of employees entrusted with tasks and authority in the execution of work; (2) Educating employees to perform their duties following established procedures; (3) Preventing deviations, negligence, and weaknesses to avoid unwanted losses; (4) Correcting errors and misconduct to ensure that the execution of work does not encounter obstacles or lead to wastefulness.

Licensing (*Perizinan*), derived from the root word *'izin'* (permission), has various meanings depending on the field. Licensing is a form of regulatory function and control exercised by the government over activities carried out by the public. This licensing can take the form of registration, recommendations, certification, quota determination, and permits to conduct a business, which typically must be held or obtained by an organization, company, or individual before they can engage in certain activities or actions. Several experts have defined licensing as follows: Ateng Syarifudin defines licensing as something that aims to remove a prohibition, turning something forbidden into something allowed. This is akin to the Dutch phrase *'Als opheffing van een algemene verbodsregel in het concrete geval*,' it means the removal of a general prohibition in a specific case (Adrian Sutedi S.H., 2010). E. Utrecht believes that if the rulemaking generally does not prohibit an action but still permits it as long as it is conducted according to the conditions specified for each concrete case, the state administrative decision that allows the action is considered a license (E.Utrecht, 1994). From the explanations above, a license is essentially a decision by an authorized government official or administrative body, and its content or substance can have various characteristics, as follows:

1. Free License
2. Bound License
3. Beneficial License
4. Burdensome License
5. Terminating License
6. Long-Term License
7. Personal License
8. Property-Based License

Referring to the provisions set out in Law No. 7 of 2004 on Water Resources, the granting of license or authorizations to perform an otherwise prohibited action is given by the authority entrusted with it. This reflects the logical consequence of the principle of legal supremacy, where every government action must be based on legitimate authority and regulated by applicable laws and regulations. Furthermore, having legitimate authority is one of the benchmarks for the validity of the permits granted to specific parties. Licenses are used as a tool by the authorities, in this case, the government, to influence the public to follow recommended practices to achieve desired objectives. As a tool, licenses function as an instrument to direct actions or behaviors, helping to design and engineer a just and prosperous society. Additionally, the license can be utilized to establish societal functions. The objectives of the licensing system are: (1)Legal Certainty (2) Protection of Public Interests (3) Prevention of Environmental Damage or Pollution (4) Equitable Distribution of Certain Goods (5) Control of Certain Activities (6) Guidance by selecting individuals and activities in a manner that supports the intended goals. The use of a license as a monitoring instrument is demonstrated by issuing specific permits for community activities. Various requirements in the license application process serve as controls to ensure that permits function effectively for monitoring community activities. Actions requiring permits are those that need special

supervision, and the issuance of a license is subject to conditions that must be met by the applicant. Monitoring is necessary to provide legal protection for citizens against the impacts of administrative decisions. Moreover, oversight of the permits issued is crucial to prevent misuse or deviations from permitted actions. Monitoring permits is the responsibility of the issuing agency.

Regarding the supervision of government authority in issuing licenses, to achieve good governance, government officials must comply with all regulations, particularly when determining whether a license can be granted or not. Subsequently, monitoring whether the license is used appropriately. Supervision is closely related to law enforcement in environmental management and natural resource management.

Supervision is conducted by the Minister of Environment, who appoints officials to carry out this oversight. The appointed officials are Environmental Supervisors (PPLH), both at the central and regional levels (Katili, 2009). Another critical aspect of natural resource and environmental supervision is the involvement of the community, particularly indigenous people living around conservation areas. The mechanism for community involvement in supervision involves enforcing local customary regulations, which can positively contribute to natural resource conservation. Hence, the goal of achieving sustainable natural resource conservation can be maximally attained, avoiding negative and detrimental impacts on the community itself (Katili, 2009).

4. Principles Underlying the Supervision System for Natural Resource Management for Indigenous Communities in Indonesia

Legal principles are fundamental and abstract norms that form the foundation for more specific laws and their application. These principles can be identified by examining common characteristics found in concrete rules. Legal principles are basic, general, and abstract ideas that underpin specific regulations within any legal system. This is reflected in legislation and judicial decisions, which constitute positive law. As social beings, humans are inherently interconnected with one another (Widayati, n.d.). Throughout history, humans have needed laws to maintain harmonious relationships. Essentially, humans are naturally bound by rules such as moral norms, social etiquette, and customary norms in their lives. However, these norms alone are not sufficient to ensure the continuity of human life due to the lack of strict penalties for violations, which can lead to repeated offenses. Therefore, laws with clear penalties for violations have been established. Satjipto Rahardjo emphasizes the goal of legal theory as follows (Ali, 2007a):

> Legal theory cannot be detached from its historical context. It is often seen as a response to legal problems or as a critique of dominant legal thinking at a given time. While aiming to present universal ideas, it is crucial to remain aware of the historical background of these theories. Understanding this background is essential.

From these principles, it can be concluded that law must benefit society at large regardless of anyone's social status. Given the importance of the role of law in societal order, the creation of legal regulations cannot be detached from legal principles, as these principles are the fundamental basis for the formation and implementation of laws. This is emphasized by Satjipto Rahardjo (Akbar, Ilham; Restu Aji, Gumiwang; Prada Handriyan, 2020; Ali, 2007b). There is often a misconception that principles and norms are the same, but this understanding is not entirely accurate. The fundamental differences between principles and norms include: (1) Principles are general and abstract ideas, while norms are concrete regulations; (2) Principles are concepts or ideas, while norms are detailed applications of these ideas; (3) Principles do not have sanctions, whereas norms do.

In environmental law, as regulated by the government, there are several principles for creating good regulations. These principles provide guidelines and direction for drafting regulations in a manner that is appropriate, precise, and follows the prescribed processes and procedures. According to A. Hamid S. Attamini, the principles of good legislation in Indonesia are as follows:(A.Hamis & Attamimi, 1990)

1. The Principle of Indonesian Legal Ideals

2. The Principle of a Rule-of-Law State
3. The Principle of Government Based on Constitutional Systems

Legislation in the Indonesian legal system is organized in a hierarchy known as the Hierarchy of legislation (Antariksa, 2017). The hierarchical structure of legislation implies that a regulation of a lower level should not contradict a regulation of a higher level. This aligns with the legal principle lex superior *derogat inferiori* (a higher law overrides a lower one). This is intended to create legal certainty within the regulatory system (Widayati, 2017).

Purnadi Purbacaraka and Soerjono Soekanto introduced several principles in legislation, which include (Yuliandri, 2009): (a) Laws should not be retroactive; (b) Laws made by higher authorities hold a higher status; (c) Specific laws override general laws (*lex specialis derogat lex generalis*); (d) Laws enacted later annul earlier laws; (e) Laws cannot be contested; (f) Laws serve as a means to achieve the maximum possible spiritual and material welfare for both society and individuals, through renewal or preservation—known as the "welfare state" principle".

According to Law No. 32 of 2009 on Environmental Protection and Management, several principles are included, such as (Yuriandi, 2022):

a. The Polluter Pays Principle

   This principle is aimed at one of the basic environmental policy approaches reflected in the provisions of Law No. 32 of 2009. Essentially, the polluter pays principle means that polluters must bear the costs of pollution prevention and control. Therefore, this environmental policy is aimed at preventing pollution, and the means used by the government include regulatory measures, such as permits/licenses, and economic instruments, such as levies and security deposits. In addition, pollution levies serve as an incentive for polluters to eliminate or reduce pollution.

b. The Subsidiarity Principle

   This principle states that criminal law should ideally be used as a last resort. As outlined in the general explanation of Law No. 23 of 1997 on Environmental Management (PLH), this principle requires three conditions to be met before criminal law is applied. These three conditions are: sanctions in other areas of law are ineffective, the level of the offender's guilt or the consequences are relatively severe, and the act causes public unrest.

c. The Responsibility Principle

   The principle of absolute liability means that the element of fault does not need to be proven by the plaintiff as a basis for compensation. The amount of compensation that can be imposed on the polluter or environmental destroyer, according to Article 88 of Law No. 32 of 2009, can be determined up to a certain limit.

d. The Sustainability Principle

   This principle is intended to maintain the carrying capacity and resilience of nature itself. If environmental pollution is committed by individuals or other legal entities, sanctions can be imposed to restore nature to its original state.

e. The Principle of Justice

   This principle implicitly states that the government must act fairly towards both the community and entrepreneurs.

As previously explained, various principles apply within regulations. However, some parties still do not receive the recognition, welfare, and protection they deserve. One such disadvantaged group is the indigenous communities in their customary territories. Take, for example, the case of the provinces of Papua and West Papua, which have the most extensive forests and the highest diversity of endemic flora and fauna in all of Indonesia. According to the Ministry of Environment and Forestry (2018), the forest

area in Papua covers 38,153,269 hectares, divided between 29,368,428 hectares in Papua Province and 8,784,787 hectares in West Papua Province (or 91.12% of the total land area of Papua). However, the natural forests in Papua continue to shrink. According to data from Auriga Nusantara (2021), the remaining natural forest area is approximately 33,847,928 hectares, with 24,993,957 hectares in Papua Province and 8,853,971 hectares in West Papua Province. This situation is due to deforestation in Papua, which is linked to concessions for extractive industry operations, including the plantation, forestry, and mining sectors. The area of deforestation within these extractive industry concession areas amounts to around 474,521 hectares, or 71% of the total deforestation occurring in Papua, with the largest areas found in oil palm plantations and industrial forest plantation company zones (A. Nusantara, 2021).

Referring to the case above and many similar cases in various regions of Indonesia, it is evident that protection for indigenous communities has not yet been realized. This is rooted both in government policies and in the resolution of customary land disputes involving indigenous legal communities as one of the parties. The position of indigenous legal communities is still very weak in terms of legal protection. Therefore, to provide legal protection to Indigenous communities along with their traditional rights, legal practice is needed that does not merely rely on the text of the law but also the context of the fundamental needs of Indigenous communities. In its development, the traditional rights of existing indigenous legal communities are at risk of being violated. Therefore, indigenous legal communities can become petitioners as long as they meet the requirements specified in the 1945 Constitution (UUD 1945) and other laws. According to Article 18B, paragraph (2) of the 1945 Constitution, recognition and respect for indigenous legal communities and their traditional rights must be based on the following conditions: (1) As long as they still exist; (2) By the development of society and the principles of the Unitary State of the Republic of Indonesia; (3) Regulated by law. Traditional rights are inalienable rights (*undirogable* rights) granted by the constitution to indigenous legal communities in regions that have not yet received recognition and protection from the state. This is because regional authority has not been fully granted by the central government. The communal lands of indigenous legal communities have begun to be exploited by foreign investors, yielding abundant foreign exchange, which significantly contributes to the interests of this country. However, the fate of indigenous communities has never been given special attention by either the central or regional governments. Some of the traditional rights of indigenous legal communities, whose existence is established in legislation, include: (1) The right to manage and utilize forests, particularly concerning customary forests as explained in Law No. 41 of 1999 on Forestry. The law states that state forests are forests on land that is not burdened with land rights according to Law No. 5 of 1960, including forests that were previously controlled by indigenous legal communities, such as communal forests, clan forests, etc. The inclusion of forests controlled by indigenous legal communities within the definition of state forests is a consequence of the state's right to control and manage them as an organization of power for the entire people, in line with the principles of the Unitary State of the Republic of Indonesia. (Thontowi et al., 2012). Thus, as long as indigenous legal communities continue to exist in reality and are recognized for their existence, they can engage in forest management activities and the harvesting of forest products. (2) Customary Land Rights: The customary rights of indigenous legal communities over water resources, as regulated in Law No. 7 of 2004 on Water Resources, are recognized as long as they still exist. According to Article 6, paragraph (3) of the law, state control over these water resources is carried out by the government and/or regional governments, while still acknowledging and respecting the Indigenous legal communities and their traditional rights, such as the customary rights of the local Indigenous legal communities and similar rights, as long as they continue to exist and are in line with the development of society and the principles of the Unitary State of the Republic of Indonesia (Wiguna, 2021)

5. Conclusions

According to the analysis and discussion in the previous chapter, several conclusions can be drawn in this paper:

1. The current existing condition is that Indonesia has not yet developed a more equitable and

sustainable model of license supervision for natural resource management by implementing effective supervision, which is overseen by Environmental Control Officers (PPLH) at both the central and regional levels. This condition has the potential to create conflict or struggles for indigenous legal communities, leading to a lack of strong legal protection for their traditional rights.

2. The formulation of legislation related to natural resource management permits must include legal principles that provide significant benefits (legal protection) for the traditional rights of indigenous communities. Such regulations will provide legal certainty in the supervision and management of natural resources, as well as strengthen legal protection for indigenous communities, who have historically been vulnerable.

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