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The Existence of Customary Law Communities Rights To Forests After the Establishment of North Lombok Regional Regulation About Recognition and Protection of Customary Law Communities

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ABSTRACT

Revealing the extent of the existence of customary law communities' customary rights over forests before the enactment of Regional Regulation Number 6 of 2020 concerning Recognition and Protection of Customary Law Communities; and Revealing the extent of the existence of customary law communities' customary rights over forests after the enactment of Regional Regulation Number 6 of 2020 concerning Recognition and Protection of Customary Law Communities. The discussion is first, the existence of customary law communities before the formation of North Lombok Regency regional regulation number 6 of 2020 concerning recognition and protection of customary law communities has been recognized, this is proven in various statutory regulations, namely the 1945 Constitution of the Republic of Indonesia Article 18B paragraph 1 and paragraph 2, the basic agrarian law of the Republic of Indonesia number 5 of 1960 concerning land, as well as in various other statutory regulations, however, this existence is recognized with certain limitations, namely that the Customary Law Community as long as it is still alive, the Ulayat Rights are in accordance with with the development of society, the existence of Ulayat Rights must be in accordance with the principles of the Republic of Indonesia. Second, the existence of customary law communities in North Lombok Regency was recognized after the establishment of North Lombok Regency Regional Regulation No. 6 of 2020. However, the existence of customary law communities in terms of MHA protection of customary forest areas is still very weak because the rights given are in the form of management rights. This right can be waived if faced with public interests or revoked based on certain laws.

KEYWORDS : *Legal Protection, Customary Rights, Customary Forests, North Lombok*

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I. INTRODUCTION

According to the Ministry of Environment and Forestry (KLHK), the forest land area throughout Indonesia was 95.6 million hectares in 2020. This amount is equivalent to 50.9% of Indonesia's total land area, while according to the North Lombok Regency Regional Government, the area Forest land is around 361,000 km2, which is equivalent to 44.30% of the total land area of North Lombok Regency. These forests are spread across five sub-districts, namely Bayan, Gangge, Kayangan and Selamat sub-districts, due to the large extent of forest in Indonesia in general and in the North Lombok Regency area in particular, so that in the future there will be more conflicts or disputes between entrepreneurs. , the government and Customary Law Communities, there are three main problems related to the existence of customary law communities over forests, namely:

1. The problem of Agrarian Conflict;
2. Problems related to the recognition of customary law communities by the state; and
3. The problem of protection for customary law communities.

In Indonesia, there are many different customary law communities in each province. Customary law communities in Indonesia have their own unwritten laws which are usually called customary law. The customary law that is the focus of this research is customary rights in the form of agrarian/land, especially forests in customary law communities. Forests under customary law cannot be separated from the customary rights of customary law communities.

According to the UUPA, restrictions on recognition of customary rights are based on the basic view that after becoming a state, all land, water, space and natural resources within it become the property or rights of the entire Indonesian people, no longer solely the rights of only the owners and customary law communities, after Indonesia became independent, these were no longer separate parts of the Indonesian nation. So in the post-independence and old order era, the customary law community's customary rights received conditional recognition in the UUPA and until the New Order era and the current Regional Autonomy era.

During the New Order government, many laws and regulations related to the agrarian sector were issued, and several partial laws in the agrarian sector were even promulgated, such as: Law Number 5 of 1967 concerning Basic Forestry Provisions, Law Number 11 of 1967 concerning Mining, Law Number 8 of 1971 concerning Oil and Natural Gas, Law Number 11 of 1974 concerning Water, and Law Number 4 of 1982 concerning the Environment. Only a few of these laws touch on the existence of customary law communities' customary rights, and the mining law even prohibits the activities of customary law communities that obstruct the mining process. In organic regulations (PP No. 21 of 1970 concerning Forest Cultivation and Rights to Collect Forest Products) Forestry Law, the rights of customary law communities to collect forest products can be frozen, thus there is a change in the value of agrarian law in Indonesia which during the Old Order prioritizes collective (personal) interests while the New Order prioritizes individual interests, especially corporations (companies/ organizations).

In order to make changes to various laws and regulations which have shackled land control, in order to provide livelihoods and agrarian justice for the community, the People's Consultative Assembly issued TAP MPR No IX/MPR/2001 concerning Agrarian Reform and Natural Resource Management. In essence, agrarian reform (agrarian reform) is a structural change that is based on intra- and inter-agrarian relations in relation to access (control and utilization) of agrarian objects. However, according to Ida Nurlinda ("concretely agrarian reform is directed at making changes to the structure of land tenure and changing the guarantee of certainty of land tenure for the people who use the land and the natural wealth that accompanies it.") [1]

Through the principles and direction of agrarian reform above, as well as changes in the paradigm of decentralized government management through the provision of responsible autonomy to regions, Presidential Decree Number 34 of 2003 concerning National Policy in the Land Sector was issued, where some of the government's authority in the land sector is carried out by district/city governments. . Judging from the government system in the context of regional autonomy, all political policies are a delegation (principle of deconcentration) of central government authority to the regions. In addition, regions also have the authority to regulate land issues in order to implement the principle of decentralization (delegation of power and authority from the center to the regions).

It can be concluded that the entirety of these laws and regulations intends to recognize the rights of customary law communities, including customary land/customary rights. However, when reviewed again, there is a lack of clarity in the regulations regarding ulayat rights (customary land) which has given rise to various interpretations that are inadequate with the aim of protecting these rights lands. According to Arie Sukanti, In its implementation, the weakness of this lack of clarity is often used by certain parties to ignore the protection of the rights of customary law communities.[2] The existence of this ambiguity should be immediately minimized with regional policies that protect the rights of customary law communities.

This happens if the government and its investors take over the land of customary law communities, consciously or unconsciously they have sterilized customary institutions. With the barrenness of traditional institutions, the processes and mechanisms for self-management also become ineffective. This often happens in areas where there are abundant agrarian resources such as East Kalimantan, Jambi, Riau, West Nusa Tenggara and Papua. According to Rafael Edy Bosko (These provinces are a number of provinces where there are many indigenous communities who are "confused" about where to refer when facing a case)[3] When customary institutions no longer function, the government considers that customary law communities in the area can no longer be said to still exist, thus efforts to resolve the problems of customary law communities are directed at eliminating customary law communities in these areas.

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1 Ida Nurlinda, *Prinsip-Prinsip Pembaruan Agraria Perspektif Hukum*, (Rajawali Pers, Jakarta, 2009), p. 77

2 Arie Sukanti Hutagalung dan Markus Gunawan, *Kewenangan Pemerintah di Bidang Pertanahan*, (Jakarta: Rajawali Press, 2008), p.29

3 Rafael Edy Bosko, *Hak-Hak Masyarakat Hukum Adat Dalam Konteks Pengelolaan Sumber Daya Alam*, (Jakarta: Sinar Jaya, 2006), p.208.

One of the regional government's efforts to overcome the problem of customary law communities' customary rights is by establishing customary land, this is in accordance with the mandate of Government Regulation no. 38 of 2007 concerning the Division of Affairs between the Central Government, Provincial Regional Governments and Regency/City Regional Governments. This government regulation provides space for the regional government to determine customary land, so that the government gives legality to the customary land.In this era of legality, everything must be recognized if there is legality or approval from the government, so that the inherent rights of customary land must be changed to customary property rights. However, what happens is that regional regulations made by regional governments still experience obstacles in terms of limiting the area of customary land rights. Therefore, regulations made by regional governments must provide more recognition and protection for their customary law communities. The implementation of regional regulations governing the recognition and protection of customary law communities is still characterized by various problems, but for the Indonesian nation which consists of hundreds of islands, regional regulations are a careful and intelligent answer to safeguard the integrity of the Unitary State of the Republic of Indonesia. The spirit that must arise when looking at problems related to the implementation of regional regulations is the spirit of finding solutions to minimize negative access to problems faced by customary law communities.

Based on the background above, the author formulates the problem, namely, what was the existence of customary law communities' customary rights to forests before the formation of North Lombok Regency Regional Regulation Number 6 of 2020 concerning Recognition and Protection of Customary Law Communities? and what is the existence of customary law communities' customary rights over forests after the formation of North Lombok Regency Regional Regulation Number 6 of 2020 concerning Recognition and Protection of Customary Law Communities?

II. METHODOLOGY

The type of research used in this research is normative-empirical research (combined). This type of normative research is carried out to analyze government policies and regulations, both central and regional, in accommodating and facilitating the recognition and protection of the rights of customary law communities. Meanwhile, this type of empirical research is used to conduct critical studies in the field regarding the existence of customary law communities' customary rights over customary forest areas in customary territories. Furthermore, according to Soerjono Soekanto & Sri Mamudji, "normative legal research is a research method carried out by examining library materials or secondary data alone".[4]

The approach method used in normative-empirical (combined) legal research is a combined approach between approaches in normative research and empirical research, namely; 1) the statutory approach, namely the approach used to study and analyze, 2) the sociological (empirical) approach is an approach that analyzes how reactions and interactions occur when the norm system works in society.

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[4] Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, (Jakarta: Rajawali Pers, 2021), p.13-14.

This type of empirical research analyzes how reactions and interactions occur when the norm system works in society. This approach is constructed as an approach that examines institutionalized and socially legitimate behavior of traditional communities".[5] This approach is useful in legitimizing customary law community institutions so that they are recognized in positive legal terms as a condition for customary law communities to be recognized so that their rights receive protection from the state.

III. CUSTOMARY LAW COMMUNITY'S RIGHTS TO FORESTS BEFORE THE ESTABLISHMENT OF NORTH LOMBOK REGENCY REGIONAL REGULATION NUMBER 6 OF 2020

Customary rights are a form or method of recognizing the existence/existence of customary law communities on land by existing legal institutions, which are widely available in the archipelago, in fact making up the largest number of land areas in Indonesia. Customary land of customary communities is a form of customary community legal territory whose ownership is controlled communally by a group of tribes inhabiting a certain area led by a traditional leader or traditional leader. In terms of formal legality, customary community rights have a place in national law, but at the law in action level they still lack legal recognition and protection when dealing with development interests, so that customary law communities who own customary rights are often marginalized (neglected). /forgotten). Which results in structural poverty (poverty experienced by community groups because the social structure of the community cannot use its sources of income)

a. Existence of Customary Law Communities' Ulayat Rights Over Forests in the 1945 Constitution.

The recognition of customary law communities in Indonesia is contained in Article 18B of the 1945 Constitution which states, "The division of Indonesia into large and small areas, with the form of government structure determined by law, taking into account and remembering the basics of deliberation in the state government system and the rights origins in a special area." Looking at this explanation, it can be said that the 1945 Constitution contains recognition of the existence of "traditional political and relational alliances" which originate from or are part of the cultural system of various community groups included in the territory (legal area) of the Unitary State of the Republic of Indonesia. In this way, it can easily be understood in a limited way that this recognition is not only limited to aspects of the institution's form, but also to the structural aspects of the organization, work mechanisms, the regulations it contains, as well as the various rights and obligations contained therein. in the institutional system.[6]

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[5] Mukti Fajar ND dan Yulianto Achmad, *dualisme Penelitian Hukum Normatif dan Hukum Empiris, (Yogyakarta: Pustaka Pelajar*, 2010), h. 47-49.

[6] Ibid, h. 133

b. The Existence of Customary Law Communities' Customary Rights to Forests in the Basic Agrarian Law.

According to Yance Arizona, "The existence of customary rights is clearly regulated in the customary law that applies in the customary law community concerned. In the agrarian legal system, customary law itself is the source of agrarian law. Ahmad Chomzah stated that customary law is a source of unwritten law, whose existence is recognized and protected by the 1945 Constitution".[7] As the main law that specifically regulates agrarian issues, Article 5 of the UUPA clearly states that agrarian law that applies to land, water and space is customary law, as long as it does not conflict with national and state interests, which are based on national unity, with socialism as stated in the law and other regulations, all by paying attention to elements that rely on religious law. Based on the provisions of Article 5 of the UUPA above and referring to General Explanation III number (1) of the UUPA, it can be concluded that Agrarian Law which applies to earth, water and space is:

a. Customary law, as long as it does not conflict with national and state interests;
b. Based on national unity;
c. Based on Indonesian socialism;
d. Based on various regulations contained in the law and other laws and; And
e. Everything by paying attention to elements originating from Religious Law.

Furthermore, in the UUPA there is an article that mentions the existence of customary land rights, namely in Article 3 which reads as follows:

> "*Bearing in mind the provisions in Articles 1 and 2, the implementation of customary rights and similar rights of customary law communities, as long as they still exist, must be in such a way that it is in accordance with national and state interests, based on national unity and must not conflict with the Law and higher regulations.*"

From the explanation above, if we look carefully, the provisions in Article 3 are a rubber article and give rise to ambivalence, on the one hand customary land rights are recognized but on the other hand they must not conflict with national and state interests, as well as higher laws and regulations. So the implementation of Article 3 in the field depends on the taste of the authorities in interpreting national interests. The facts prove that in the New Order regime under the leadership of President Soeharto, many government and private projects in the name of the public interest took ulayat land without compensation or inadequate compensation. customary rights so that once again even though the existence of customary rights is recognized in the legal system in Indonesia. However, due to the dilemmatic nature that is often attached to customary rights, the existence of customary rights is neglected. This happens when local indigenous communities cannot prove ownership and the extent of their customary land.

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[7] Yance Arizona, *"Hak Ulayat: Pendekatan Hak Asasi Manusia dan Konstitusionalisme Indonesia"*, Jurnal Konstitusi, Edisi 2 Voi. 6, (Juli 2006), h. 132.

c. Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 9 of 2015 concerning Procedures for Determining Communal Rights to Land of Customary Law Communities and Communities in Certain Areas.

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 9 of 2015 was issued based on the consideration that it is to realize the noble ideals of the Indonesian nation and realize a serious political commitment in fair, sustainable and environmentally friendly management of natural resources as stated in regulated in MPR Decree Number IX/MPR/2001 concerning Agrarian Reform and Natural Resources Management, it is necessary to review the laws and regulations relating to natural resources. National land law recognizes the existence of Communal Rights and similar rights from customary law communities, as long as in reality they still exist, as intended in Article 3 of the UUPA. Apart from that, the rights of people who control land for a long period of time and it is a place to live and earn a living need to be protected in order to realize the greatest prosperity of the people's land.

In the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency, Communal Rights are intended as collective ownership rights over the land of a customary law community or collective ownership rights over land given to communities in forest and plantation areas. From this definition, it turns out that "customary rights" are not explicitly mentioned and regulated. Implicit customary rights are mentioned in the basis for consideration of point b with the phrase, "and similar things from customary law communities, as long as in reality they still exist, as intended in Article 3 UUPA" and the provisions of Article 1 number 15 concerning recognition of the rights of customary law communities with the phrase, "the existence of the rights of customary law communities as long as in reality they still exist", as well as the provisions of Article 17 letter a which reads, "Customary Law Communities and their land rights which already exist and have been determined before this regulation comes into force, remain valid and can be granted communal rights on his land".

The regulations of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency appear to equate communal rights with customary rights. This can be concluded conclusively from the provisions of the preamble to point b where the phrase "as intended in Article 3 UUPA", does not mention communal rights, but rather defines customary rights. Then in the provisions of Article 1 number 15 concerning recognition of the rights of customary law communities with the phrase "the existence of the rights of customary law communities as long as they in fact still exist", then one of the rights of customary law communities is customary rights. Apart from that, the provisions of Article 17 letter a which reads, "Customary Law Communities and their land rights which already existed and were determined before this regulation came into force, remain valid and can be given communal rights to their land", so the conclusion is that what is meant by Law Community rights Existing customs are none other than customary rights as regulated in Regional Regulations, which by Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency are equated or replaced with the terminology of Communal Rights.

d. The Existence of Customary Law Communities' Ulayat Rights Over Forests in Several Sectoral Laws in Indonesia.

1) The Existence of Customary Rights of Customary Law Communities Over Forests in Law Number 41 of 1999 concerning Forestry.

Article 5 paragraph (2) states that state forests as referred to in paragraph (1) letter a, may be in the form of customary forests. Furthermore, paragraph (3) of the same article states as follows:

1. The government determines the status of forests as referred to in paragraph (1) and paragraph (2); and
2. Customary forests are determined as long as in reality the customary law community in question still exists and its existence is recognized.

The position of customary forests is not a rights forest, because customary rights are not rights such as Ownership Rights, Cultivation Rights, and so on. The law makers may follow the line of thought of the UUPA which states that customary rights are temporary rights. In fact, the Forestry Law recognizes customary law communities in Article 67 which reads:

a. Customary law communities, as long as they still exist and their existence is recognized, have the right to;
b. Collect forest products to fulfill the daily needs of the customary community concerned;
c. Carry out forest management activities based on applicable customary law and not in conflict with the law; and
d. Receive empowerment in order to improve their welfare.
e. Confirmation of the existence and elimination of customary law communities as referred to in paragraph (1) is stipulated by Regional Regulation
f. Further provisions as referred to in paragraph (1) and paragraph (2) are stipulated by Government Regulation.

If we look closely, Article 67 explicitly recognizes and protects customary law communities (hereinafter referred to as MHA), however, with the opening of HPH, HTI, MHA are often defeated. What is often disputed is the HTI boundary, because HPH often enters the customary forest area which is customary land. Based on Article 3 of the UUPA, the recognition of customary rights is limited by two things, namely regarding its existence and implementation.

2) Recognition And Protection Of Customary Rights Of Indigenous Legal Communities In Law Number 7 Of 2004 Concerning Water Resources.

The water resources sector in Indonesia is currently undergoing fundamental changes with the enactment of Law Number 07 of 2004 concerning Water Resources as a replacement for Law Number 11 of 1974 concerning Irrigation. The changes are related to the reform of water resources management policies that began in 1993, but were only effectively implemented in 1999. In 1993, a draft of the Plan on National Policy on Water Resources (1994-2020) was prepared, which was the result of a study on National Water Resources and Policy sponsored by UNDP and FAO. In 1997 BAPPENAS initiated various discussions and seminars with the theme of Agenda for Water Resources Policy and Program Reform,

which aimed to provide input for REPELITA VII. Several visions of water resource management in Indonesia were produced with a management approach from a supply approach to a demand approach, then the way of looking at water is not only seen as a public good but also as an economic good, and the implementation of water management by implementing incentive and disincentive policies.[8]

The norm in the Water Resources Law states that the implementation can be carried out by the private sector if in the area there is no BUMN/BUMD that provides services to fulfill the water needs of its community. With this regulation, it is clear that the Water Resources Law provides an opportunity for private sector involvement in providing water for its people. Providing an opportunity for the private sector to provide raw water for the people will eliminate state control over water resources. Private business entities, as profit-oriented institutions, will of course only invest if there is a guarantee that the investment made can be returned. Therefore, business entities need guarantees against both political risks and performance risks, and the problem of these guarantees is borne by the community through compensation payments from the government and tariff adjustments. In relation to the provision of raw water for the community, private business entities will not invest if the community's income is low and topographically difficult because it will make the investment made difficult to return, the consequence is that the provision of raw water for communities in remote areas is neglected.

The Water Resources Law regulates the recognition of customary law communities' customary rights. Article 6 paragraph (2) of the Water Resources Law essentially regulates that control of water resources is carried out by the government and/or regional government while still recognizing the customary rights of local customary law communities and similar rights, as long as they do not conflict with national interests and statutory regulations. In the explanation, it is stated that what is meant by rights similar to customary rights are rights that were previously recognized with various names from each region, the meaning of which is that the area in the form of a water source for the customary law community is the same as the area in the form of a forest for the customary law community, for example: pertuanan in Ambon; panyampeto or pewatasan in Kalimantan; wewengkon in Java, prabumian and payar in Bali, totabuan in Bolaang Mangondou, torluk in Angkola, limpo in South Sulawesi, muru on Buru Island, and paer in Lombok.

Meanwhile, in paragraph (3) it states that the customary rights of customary law communities over water resources remain recognized as long as they still exist and have been confirmed by local regional regulations. The explanation of this provision states that the recognition of the customary rights of customary law communities, including similar rights, must first be understood, that what is meant by customary law communities is a group of people who are bound by their customary legal order as citizens together with a customary legal association based on the same place of residence on the basis of descent.

[8] Kesimpulan Pengujian Undang-Undang No. 7 Tahun 2004 tentang Sumber Daya Air terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Diajukan oleh: Tim Advokasi Koalisi Rakyat untuk Hak atas Air Di Mahkamah Konstitusi Republik Indonesia Maret 2005.

e. Recognition and Protection of Customary Rights of Customary Law Communities in several Regional Regulations.

In addition to being regulated in the Law, the existence of customary rights is regulated in regional regulations because it is supported by the era of regional autonomy so that regional governments are given broader authority to regulate their regions and communities, with this authority, regional governments issue legal products in the form of Regional Regulations, including regulations on the existence of customary law communities. The forms of regional regulations that regulate the existence of customary law communities are as follows;

1) Lebak Regency Regional Regulation No. 32 of 2001 concerning Protection of Customary Rights of the Baduy Community.

Lebak Regency Regional Regulation Number 32 of 2001 was formed with the consideration that the Baduy community as an indigenous community that is bound by its customary legal system as citizens together with a legal association that recognizes and applies the provisions of its legal association in daily life, has a territory that is customary in nature and has a relationship with its territory. Therefore, the Baduy community in carrying out relations with its territory is regulated and limited by its customary territory, so that it needs to be protected, so that in order to protect the customary rights of the Baduy community, it needs to be stipulated and regulated by the Lebak Regional Regulation.

The substance of the regional regulation that is meant by customary rights is the authority that according to customary law is held by a certain customary law community over a certain area which is the living environment of its citizens to take advantage of natural resources, including land in that area, for the continuity of their lives and livelihoods, which arises from the physical and spiritual relationship that has been passed down from generation to generation and is unbroken between the customary law community and the area in question. Customary land is a plot of land on which there are customary rights from a particular customary law community. The determination of the customary rights area of the Baduy community is limited to lands in the Village, Sub-district and Regency areas which are measured according to the reconstruction map and stated in the minutes as the basis for determining the Regent's Decree.

Basically, not all land areas include the customary rights of the Baduy community, as regulated in Article 5 of the Lebak Regency Regulation, there are several land areas that are not included in the customary rights of the Baduy community, namely land areas owned by individuals or legal entities with certain land rights according to the UUPA and land areas that have been obtained/released by government agencies, legal entities or individuals in accordance with the applicable provisions and procedures. In addition, the Lebak Regency Regulation regulates criminal violations and the provisions for their investigation. Complaints of criminal violations are made against any non-Baduy community who carry out activities that disturb, damage and use the customary land rights of the Baduy community, which are subject to a maximum imprisonment of 6 (six) months or a maximum fine of Rp. 5,000,000 (five million rupiah).

2) Regional Regulation of West Sumatra Province Number 16 of 2008 concerning Customary Land and its Utilization.

In Article 6 of Regional Regulation Number 16 of 2008 concerning Customary Land and its Utilization, it is stated that the ruler and owner of customary land is;

1. The customary village Ninik Mamak (KAN) assembly for the Nagari Ulayat land.
2. The tribal chiefs represent all members of the tribe as owners of the tribal customary land, each tribe in the nagari.
3. The head of the waris represents the members of each jurail paruik clan as owners of customary land in the clan.
4. The eldest male heir of the rajo represents the members of the clan in the maternal lineage as the owner of the customary land of the rajo.

The table above shows that the customary land of the nagari has a public aspect whose control and management is carried out by the ninik mamak. The customary land of the tribe and the customary land of the clan are collective property rights of members of a tribe or clan. Meanwhile, the customary land of rajo is customary land whose control and use is regulated by the oldest male from the maternal line who is still alive in several places in North Sumatra.[9]

There are some doubts about the existence of the customary land of rajo. This is because the Minangkabau people do not know the existence of a king. The results of the research by the Drafting Team for Regional Regulations (RANPERDA) on customary land formed by the WEST SUMATRA REGIONAL PEMDA in 2001 stated that customary land of rajo is almost no longer known, even if it exists it can be classified into the group of customary land of nagari. Previously, customary land of rajo was found in the rantau area, such as in Pasaman and Sawahlunto Sijunjung. Between customary land of the community, customary land of the tribe and customary land of the nagari there is a hierarchical relationship and reservations. If the customary land of a community runs out, then its customary land becomes customary land of the tribe. If a customary land of a tribe runs out, then its customary land turns into customary land of the nagari. So that customary land will not run out. This is in accordance with the proverb which states that customary land is sarnporono habis.[10]

This regional regulation also provides legal certainty for customary land in the province of West Sumatra by registering customary land. Regional Regulation No. 16 of 2008 classifies customary land in West Sumatra into 4 (four) types of customary land, namely nagari customary land, tribal customary land, kaum customary land and rajo customary land. These customary lands can be registered at the Regency/City Land Office. If registered, nagari customary land is given HGU, right of use or HPL status. Tribal customary land and kaum customary land are given ownership rights status. While rajo customary land is given use rights and management rights status.

[9] Ibid.
[10] Ibid. h 110.

The issue of customary land registration in West Sumatra has become a controversy in various circles. According to Hengky Andorra, there are two views, namely those who consider customary rights as independent rights and on the other hand there is an assumption that customary land needs to receive legal certainty from national law. From the provisions above, it is understood that if customary land is registered at the Land Office, its status will be changed to HGU, right of use, HPL. Ownership Rights, HGU and Right of Use, ownership rights which are land statuses recognized in Indonesian land law.[11]

If customary rights are labeled as property rights, it is feared that customary rights will lose their local identity as collective rights and become a commodity for buying and selling and transactions for parties who want to control customary land which will ultimately be owned privately, especially if the penghulu and mamak kepala heirs do not understand the legal rules of customary land, they will be easily tempted by persuasion and coaxing to sell land belonging to their people. a group of people and HGU is the right to cultivate land that is directly controlled by the state for agricultural, plantation, fishery and/or livestock companies. If the customary land of the village is registered at the Land Office and the rights holder is given HGU, then the legal status of the customary land of the village can be ascertained to have changed to state land. In this case, the holder of HGU is not very free to utilize the land he controls. Its use is limited to agriculture, plantations, fisheries and/or animal husbandry. Its use is also limited to a maximum period of 30 (thirty) years and can be extended for a maximum period of 25 (twenty five) years.[12]

The right to use is the right to use and/or collect the proceeds from state land, freehold land or HPL land. This means that the right to use can only be granted on state land, freehold land or HPL land. If customary land is registered, of course its legal status will change to one of the 3 (three) types of land. Most likely, the customary land will change to state land. The right to use is granted for a maximum period of 25 (twenty five) years or can be granted for an indefinite period as long as the land is used for certain purposes. HPL is the right to control the state, the implementation authority of which is partly delegated to its holder. The holder of HPL can grant land rights to other parties. Based on Article 67 paragraph (I) of the Regulation of the Minister of State for Agrarian Affairs/Head of BPN No. 9 of 1999.

From the various laws, ministerial regulations and regional regulations that have been explained above, it can be concluded that in terms of formal legality, the customary rights of indigenous peoples have a place in national law, but at the level of law in action, there is still a lack of recognition and legal protection when faced with development interests, so that it often causes customary rights owners to be marginalized (ignored). This results in structural poverty, namely a form of poverty caused by low access to resources that generally occurs in a socio-cultural or socio-political order that does not support the liberation of poverty and the existence of indigenous legal communities that are still shackled by the conditions imposed by the state which are implied in various legal products, both in the form of laws, ministerial regulations and regional regulations.

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[11] Hengky Andora, "Pendaftaran Tanah Ulayat "(Tinjauan Yuridis Atas Berlakunya Peraturan Daerah Provinsi Sumatera Barat No. 6 Tahun 2008 Tentang Tanah Ulayat Dan Pendaftaranya)", Jurnall, Risalah hukum Fakultas hukum Universitas Mulawarman, Vol. 1 No. 1, h. 66.

[12] Ibid. h. 75.

IV. CUSTOMARY LAW COMMUNITY'S RIGHTS TO FORESTS AFTER THE ESTABLISHMENT OF NORTH LOMBOK REGENCY REGIONAL REGULATION NUMBER 6 OF 2020

a. North Lombok Regency Regional Regulation Number 6 of 2020 as a form of recognition and protection of customary law communities in North Lombok Regency.

Since there are so many rights of Indigenous Peoples that have been regulated in various laws and regulations, Regional Regulation No. 6 of 2020 is not intended to create some kind of "new rights". This Regional Regulation is more intended to "state and clarify" the rights of Indigenous Peoples that already exist in various laws and regulations so that they can be implemented at the North Lombok Regency level. As for some of the "new rights" contained in this Regional Regulation, they are not intended to eliminate the existence of rights, both indigenous peoples' rights and state rights that already exist in various existing laws and regulations. These new rights emerged to respond to the local context of North Lombok Regency and to anticipate future developments, and also to translate the principles of human rights that should be referred to in various laws and regulations. The spirit that is built in Article 18B paragraph (2), Article 28I paragraph (3) and Article 32 paragraph (1) and paragraph (2) of the 1945 NRI Constitution is the spirit of autonomy that is given as widely as possible to regions. These three provisions are the ones that are most often referred to when discussing the existence and traditional rights of customary law communities. However, this does not mean that the constitutional basis for the traditional rights of customary law communities is only in these three provisions.

Article 17

(1) The MHA that has been determined as referred to in Article 8 paragraph (2) has the right to the customary territory that is owned, occupied, and managed from generation to generation.
(2) The customary territory as referred to in paragraph (1) is communal and cannot be transferred to another party.
(3) The implementation of control of the customary rights of the MHA Unit over land in its territory as long as in reality it still exists, is carried out by the MHA unit concerned according to the provisions of local customary law.

Article 18

MHA has the right to manage and utilize natural resources in the Customary Area in accordance with local wisdom.

Article 19

(1) In the case of natural resources in the customary area that have an important role in fulfilling the livelihoods of many people, the state may manage them with the approval of the MHA.
(2) For management by the state as referred to in paragraph (1), the MHA is entitled to receive compensation.
(3) In addition to compensation as referred to in paragraph (2), the MHA is entitled to receive the main benefits in the implementation of corporate social responsibility.

(4) Further provisions regarding compensation and corporate social responsibility as referred to in paragraph (3) are regulated by the Regent's regulation with reference to the applicable laws and regulations.

Article 20

MHA has the right to benefit from the implementation of development in the region

Article 21

(1) MHA has the right to participate in the development program of the Regional Government in its Customary Territory from the planning stage, implementation, to supervision.
(2) MHA has the right to obtain information regarding development planning to be implemented in the Customary Territory by the Regional Government and/or other parties, which will have an impact on the integrity of the territory, the sustainability of natural resources, culture, and the regional government system.
(3) MHA has the right to reject or submit proposed changes to the development plan to be implemented in the Customary Territory as referred to in paragraph (2) based on an agreement.
(4) MHA has the right to propose other developments that are in accordance with the aspirations and needs in the relevant Customary Territory, based on a mutual agreement.

Article 22

MHA has the right to adhere to and practice belief systems, spiritual ceremonies and rituals inherited from their ancestors.

Article (23)

(1) MHA has the right to maintain, develop, and teach customs, culture, traditions, and art to the next generation.
(2) MHA has the right to protect and develop its traditional knowledge and intellectual property.

Article 24

(1) MHA has the right to a good and healthy living environment.
(2) The right to a living environment as referred to in paragraph (1) is realized in the form of:
    a. Submission of proposals and/or objections to business plans and/or those that may have an impact on the environment;
    b. Complaints due to environmental pollution and/or destruction; and
    c. Receiving benefits from the use of traditional knowledge related to environmental management that has economic value.

Based on the explanation above, the traditional rights of MHA in North Lombok Regency as a response to Article 18B paragraph (2) and 28I (3) of the 1945 Constitution which are included in the substance of Regional Regulation No. 6/2020 include: rights to land and other natural resources, rights to culture, rights to self-determination, rights to free, prior and informed consent (FPIC). The right to FPIC is a right of indigenous peoples to freely determine whether a development agenda may enter the territory of indigenous peoples or not. If an individual or

group is not an MHA, FPIC leads to the achievement of a consultation process, then in indigenous communities, FPIC leads to the achievement of a decision regarding the approval or rejection of MHA for each development agenda that enters the MHA area. However, there are several other and more specific rights that need to be included in the substance of this Regional Regulation.

The regulation regarding traditional rights in Article 28I paragraph (2) of the 1945 Constitution states that, "Cultural identity and the rights of traditional communities are respected in line with the development of the times and civilization". If observed carefully, there are differences in the terms used in Article 18B paragraph (2) and Article 28I paragraph (2) of the 1945 Constitution. Article 18B paragraph (2) of the 1945 Constitution uses the terms "customary law communities" and "traditional rights" while Article 28I paragraph (3) of the 1945 Constitution uses the term "traditional community rights". In the 1989 Convention on Indigenous and Tribal Peoples, it is stated that, "Indigenous and tribal peoples are translated into Indigenous and Tribal Peoples in accordance with the terms of the National Human Rights Commission and the Constitutional Court. Other commonly used translations are indigenous and traditional communities". Therefore, "indigenous and tribal peoples" and "traditional communities" in Article 18B paragraph (2) and Article 28I paragraph (2) of the 1945 Constitution can be considered to have the same intent/meaning. Moreover, both articles are the result of the second amendment to the 1945 Constitution.

In line with the concept of traditional rights in Article 18B paragraph (2) and Article 28I paragraph (2) of the 1945 Constitution, Article 26 paragraph (2) of the UN Declaration on the Rights of Indigenous Peoples provides a relevant description of the meaning of traditional rights (especially in the context of natural resource management), where traditional rights can be understood as the right to own, use, develop and control the lands, territories and natural resources that they own on the basis of traditional ownership or other traditional placement and use, as well as lands, territories and resources that are owned in other ways.[13] Customary Law Communities in North Lombok Regency as communities that existed before the state was formed, then the rights inherent in customary communities are called ancestral rights. The ancestral rights are innate rights, not given rights. Because they have ancestral rights, the MHA community in North Lombok Regency should be positioned as a community group that is autonomous from the state.

b. The Existence of the Indigenous Community of Bayan Village in North Lombok Regency over the Mandala Customary Forest After the Enactment of Regional Regulation No. 6 of 2020 concerning the Recognition and Protection of Indigenous Communities.

The Sasak tribe in North Lombok, especially in Bayan village, divides the forest area into two areas, namely the "pawang area" and the "gawah area", while from the natural resource management pattern of the Bayan customary law community, the customary forest is divided into 3 functions, namely "gubuk", "bangket" and "gawah". Meanwhile, for the mandala charmer, it becomes one of the Areas that enter into the function of gawah. The area of Pawang mandal is a sacred forest area where there is a group of large trees that usually have a source of water

[13] Pasal 26 ayat (2) Deklarasi Perserikatan Bangsa-Bangsa tentang Hak-Hak Masyarakat Hukum Adat.

so that they cannot be disturbed at all. While the gawah area is an area where there are trees and various animals as a hunting ground that can be managed and harvested sustainably with the permission of the traditional representative.

Mandala customary forest is one of the customary forests in Bayan District that still exists, to the naked eye the area of Mandala customary forest is not too large, only 10.03 Ha. The orientation of the Mandala customary community in forest management is water. In the simplicity of this perspective, there is wisdom about deep environmental sustainability. The classification of a forest area as a catchment is a mechanism to protect and preserve the function of the forest as a water catchment area that is included as a protected area. This can be seen from the many types of Ficus sp (banyan) plants that are conserved by the Mandala indigenous community. No one in the Bayan community, especially the Mandala indigenous community, dares to cut down a banyan tree. Not because of the tree's spooky and scary appearance, but because the community believes that the banyan tree is a good tree in the soil cycle.

The sustainability of the Mandala customary forest is inseparable from the strong awiq-awiq carried out by the local customary community. Members of the Bayan customary law community association still have very strong bonds of togetherness in efforts to maintain and defend the territory as a collectively owned asset. Moreover, this customary forest has 9 (nine) water sources, namely Mandala, Lokok Jawa, Ampel Duri, Tiu Rare, Pancuran Teruna, Olor Baro, Baroq Tioq, Lokoq Pangsor, and Lokoq Tirpas. The Bayan indigenous community still holds sacred the nine springs that are believed to be the source of life for the Sasak people, but of the nine springs, the ones with the largest water discharge and are the source of life for the Bayan community are Ampel Duri, Mandala, and Lokok Jawa, so these springs are not only utilized by the surrounding community, but are also utilized by the PDAM for the needs of the Bayan District community. Because its sustainability is maintained, the Mandala customary forest located in the Bayan Village area, Bayan District, was appointed to represent North Lombok Regency to participate in the NTB Province-level Spring Protection (Permata) competition to win the Kalpataru, which took place on April 29, 2013.

The existence of the Bayan customary law community forest is recognized in Regional Regulation No. 6/2020 in accordance with the mandate of higher regulations, namely Article 67 paragraph (2) of the Forestry Law that the confirmation of the existence and elimination of customary law communities as referred to in paragraph (1) is stipulated by regional regulations, but its status as part of the State Forest which is in the area of the customary law community as regulated by state forests is regulated in Article 9 paragraph (2) that if the customary rights of the MHA Unit as referred to in paragraph (1) are in a state forest area, the Regent recommends to the Minister who handles forestry affairs to relinquish the status as a state forest to become a customary forest. However, in another article, the Existence of Customary Rights of Community Units.

Customary Law as referred to in paragraph (5) letter b, is considered to still exist if it meets certain criteria including the existence of a community and Customary Law Institution, the area where Customary Rights are held, the relationship, connection and dependency of the MHA Unit with its area and the authority to jointly regulate the use of Land in the area of the MHA Unit concerned, based on customary law that is still in force and adhered to by its

community. The criteria for the existence of customary forests are regulated in Article 17 as follows:

(1) MHA who have been determined as referred to in Article 8 paragraph (2) have the right to customary areas which are owned, occupied and managed from generation to generation.

Based on the provisions and explanation of the Article, the Bayan customary law community with its mandala forest is recognized as existing if it fulfills the following elements:

a. Still living in real terms, whether territorial, genealogical, or functional;
b. In accordance with the development of society; and
c. In accordance with the principles of the Unitary State of the Republic of Indonesia.

Based on the article above, the existence of the Bayan customary law community was recognized after the enactment of Regional Regulation No. 6/2020, because the Bayan customary law community has a customary institution, a customary area in the form of a mandala customary forest and its management is in accordance with the regulations of the Bayan village government, but in the future the sustainability of the existence of the customary rights of the customary law community will face serious obstacles because the fundamental is that the recognition and protection of the customary law community must be in accordance with the principles of the State of Indonesia. Not infrequently, conditions (limited recognition) of customary law communities such as this can trigger the birth of social conflicts between customary law communities and companies that want to invest heavily in order to implement development interests in the area of sustainability of customary law communities.

The conflict is rooted in the contradiction of interests between the parties, each of which bases itself on a different normative level of the legal system, namely customary law (which is used as the basis for thinking of the customary law community) and positive law (which is used as the basis for thinking and acting of the state and companies involved) with the increasing need for land/soil for the development of business projects and the state. Meanwhile, in terms of the protection of customary law communities for customary rights, this regulation is regulated in article 12, but before receiving protection, customary law communities must be registered as customary rights with the Regency Agrarian and Spatial Planning Office. In fact, in the higher regulation, namely Government Regulation Number 24 of 1997 concerning Land Registration, there is no recognition of the existence of registration objects in the form of customary rights, the objects of land registration that are recognized include ownership rights, business use rights, building use rights, use rights, management rights, waqf land and ownership rights for apartment units.

However, the form of control of customary rights by customary law communities has received a little clarity with the existence of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units and Land Registration in this regulation, the customary rights of customary law communities are given separate rights, namely in Article 5 paragraph (2) that Management Rights originating from Customary Land are assigned to customary law communities so that customary law communities have the authority to regulate their territory. However, on the other hand, this regulation includes the elimination of management rights as regulated in Article 14 paragraph (1), namely:

(1) Management Rights are revoked due to:
   a. The rights are revoked by the Minister because:
      1. Administrative defects; or
      2. Court decisions that have obtained permanent legal force;
   b. Voluntarily released by the rights holder;
   c. Released in the public interest;
   d. Revoked based on the Law;
   e. Granted ownership rights;
   f. Designated as Abandoned Land; or
   g. Designated as Ruined Land.

In the explanation of the article above, management rights can be removed in several ways, especially if they are released for the public interest, because whether we like it or not, many customary rights of the general public are ignored if they come into contact with projects that claim to be in the public interest, so that the form of protection for customary law communities over their customary rights becomes very weak or even non-existent.

c. **Customary Law Community Dispute Resolution Policy After the Establishment of North Lombok Regency Regional Regulation Number 6 of 2020 Concerning Recognition and Protection of Customary Law Communities**

The policy for resolving disputes in civil cases, the resolution of which is regulated in Article 29 which is stated as follows:

(1) Settlement of disputes between members of the MHA community/or with other MHA members is carried out in accordance with customary law.
(2) Settlement of disputes between MHA members and other community members can be carried out in accordance with customary law.
(3) If dispute resolution through customary law as referred to in paragraph (2) is not achieved, dispute resolution can be carried out through the courts or outside the courts based on a voluntary selection by the disputing parties.

In Article 29 paragraph (1), the Bayan customary law community in preserving its territory has its own laws called "awiq-awiq" which have been in effect continuously and passed down from generation to generation and have been outlined in Village Regulation Number 1 of 2016. The contents of the awiq-awiq include 7 (seven) main prohibitions and obligations, namely:

1. It is forbidden to take/pluck, uproot, cut down, catch animals and burn dead trees/wood found in customary forest areas;
2. It is forbidden to herd livestock around the edge and inside the customary forest area;
3. It is forbidden to contaminate/dirty water sources in customary forest areas;
4. It is forbidden to poison the River Basin District (DAS) using potash, decis, stun and others, around and outside the customary forest area, which can cause the destruction of biotics living in the river and customary forest;
5. For every individual or group water user is required to pay dues (plemer Gunja, Tawa'an, and sawi' nih) to the managers of customary forests and springs;
6. In the event of death in the Adat Bayan forest, the Asuh Pawang ritual must be held;

7. When giving birth in the Adat Bayan forest, it is mandatory to hold the Asuh Pawang ritual.

The customary sanctions that will be imposed on violators of the awiq-awiq according to Bayan Customary Law as outlined in the provisions of the Village Regulation are as follows:

a. Sanctions for violators of customary forest awiq-awiq: Those who violate all or one of these awiq-awiq will be subject to sanctions that must be complied with and implemented by handing over/paying, in the form of:
    1) 1 (one) buffalo;
    2) Rice 1 (one) quintal;
    3) Bolong money/kepeng implant amounting to 244 (two hundred and forty four) kepeng;
    4) Brown Sugar;
    5) Rice 1 (one bunch; 6) Coconut 40 (forty) grains; and 7) 4 (four) bundles of Firewood.
b. As for the heavier sanctions, if the sanctions mentioned above are not complied with/implemented for the violator, they are:
    1) Not given customary facilities such as penghulu, customary clerics in the implementation of customs in Bayan; and
    2) Excluded, isolated, expelled and not recognized as part of the Bayan customary community.

If the sanctions for the violations that have been determined are not obeyed and implemented by the violator of the awiq-awiq, then the Customary Head will give a heavier sanction, namely, the penghulu or traditional kyai will not be given in the implementation of the thanksgiving or selamatan, such as at the rice cutting event, a selamat padi (barn) event is held, then the violator of the awiq-awiq will not be attended by the kyai and the traditional community. Then the most severe sanction is that the violator will be ostracized or exiled from the life of the traditional community.

If the customary rules are violated, they will be processed according to custom and subject to material and social sanctions, supported by tools or evidence and presenting at least two witnesses. The severity of social, material and spiritual sanctions (dedosan) is determined through customary deliberation (gundem). According to Raden Surianto, "If the same person again does not heed all the provisions of the customary rules that have been imposed on him, then social sanctions will be imposed in the form of skaumang (excommunication) including being moved to another village. This also applies to non-customary communities.".[14]

V. CONCLUSION

The existence of customary law communities before the formation of Regional Regulation No. 6/2020 has been recognized, as evidenced by various laws and regulations, namely the 1945 Constitution Article 18B paragraph 1 and paragraph 2, the Basic Agrarian Law, and various other laws and regulations, but this existence is recognized with certain limitations, namely the Customary Law Community as long as it is still alive. These Customary Rights are in accordance with the development of society, the existence of these Customary Rights must be in accordance with the principles of the state, with these various requirements making the

[14] Hasil wawancara dengan Tokoh Adat Bayan Raden Surianto.

recognition and protection of the customary rights of customary law communities very weak because if at any time the customary rights are considered by the state to be no longer in accordance with the requirements set by the government/state, then the customary rights of the customary law community can be ignored or considered non-existent.

The existence of customary law communities after the formation of Regional Regulation No. 6/2020 can be seen in regulating the recognition and protection of customary law communities in North Lombok Regency, but there are still conditional limitations used in its regulation. The composition of the existence of the legal community consists of Customary institutions. The determination of customary institutions is based on the results of data collection and verification carried out by the district/city customary law community committee. The Regent forms an MHA committee to carry out the verification and validation process related to the recognition and protection of MHA. This committee is established by the Regent's decree. The customary territory consists of the Bayan customary territory. MHA rights include the right to customary forests, development, spiritual and cultural rights, the environment, etc. MHA also has rights to land and natural resources. MHA also has the right to receive restitution and fair and equitable compensation for land, territory, and natural resources that have been hereditarily owned, which have been taken over, controlled, used or damaged by any party. MHA obligations include maintaining the integrity of the Republic of Indonesia, maintaining security and order in community, national and state life, and cooperating in the identification and verification process of MHA. Also regulated are the use of land and natural resources, MHA data collection, customary justice, obligations and responsibilities of local governments, and funding. Implementation of provisions on data collection of Customary Institutions and mapping of customary territories shall be carried out no later than six months after this regulation is enacted.

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