

Policy Reform for Indigenous Law Communities of the Coral Reef Conservation

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Abstract. Indigenous populations' wisdom ensures effective and sustainable management of natural resources for their benefit. Indonesia acknowledges indigenous peoples' rights, including their natural resources. Coral reef preservation is influenced by economic and political considerations. Law enforcement necessitates a delicate balance of legal clarity, pragmatism, and fairness. Gustav Radbruch's three components form the basis of legal ideas. Conflicts may emerge, and justice must triumph in such instances. As a result, the government should emphasize justice through incorporating communities in development, recognizing indigenous peoples' rights, and including them in resource management. This is consistent with John Rawls' idea of honest justice, which promotes social fairness for all Indonesians.

Keywords: Customary Law Community, Environmental Preservation

1 Introduction

The large-scale exploitation of natural resources in coastal regions and tiny islands without regard for sustainability has a negative influence on the quality of the ecosystem in the vicinity, particularly coral reefs. If no national effort is made to slow the pace of coral reef degradation, coral reef degradation may become more widespread and visible. Recognizing this, the government must develop a national strategy on coral reef management in order to slow or halt the rate of coral reef destruction, which is becoming broader and greater with time. Control and management of natural resources in coastal and marine areas can lead to conflict between government and customary law community units; for example, in the Aru Islands Regency, the petulant/layout area of everyday law communities is frequently controlled by fishermen or prominent business people. or those with large cash and a variety of sophisticated instruments, making it difficult for indigenous peoples in coastal areas and tiny islands to obtain fish and other marine resources.

Fisheries entrepreneurs with big money are allowed to place FADs in locations next to customary law communities' catch areas since they have a government authorization, resulting in a reduction in fish resources in customary law communities' catch areas. [1]

Indigenous peoples of Benjina Island, Aru Islands Regency, no longer have access to pearl diving since the surrounding sea has been polluted with garbage from fish aquaculture. Finally, the customary law community gave up and was unable to achieve anything, resulting in poverty in the Ulayat/sea petuanan area, which is rich in natural resource potential.[2]

Other exciting cases, among others, occurred in the village of Ety, West Seram Regency, where pearl businessmen arbitrarily plotted a coastal area in the customary law community's petuanan/ulayat area and, in the end, prohibited the customary law community from approaching the pearl cultivation area with their business license. Whereas the area has been a source of life for traditional fishing villages to sustain their family from generation to generation since prehistoric times. The government's policy that gives permission to entrepreneurs but ignores the interests of indigenous peoples, especially those living in coastal areas, of course, impacts the lives of indigenous peoples, and ultimately, they live in an atmosphere of uncertainty.

This condition produces an imbalance since the government has a strong hold on power. The existence of indigenous peoples is acknowledged in the constitution as comprising petulant (layout) areas both at sea and on land. This suggests that the government must maintain consistency and pay respect to the presence and rights of indigenous peoples as a group that existed before the state was founded in different development strategies, particularly in the legal sphere. Ignorance of indigenous peoples' rights and realities creates an imbalance that can lead to many upheavals in the lives of society, country, and state.

Based on the background described above, the problem that will be discussed in this paper is how the ideal legal policy for indigenous peoples on the coast relates to coral reef conservation.

2 Discussion

According to Hazairin [3], Customary law communities are community units that are complete enough to stand independently, with a legal unit, a unitary authority, and a unitary environment based on shared rights to land and water for all its members. The form of family law (patrilinear, matrilinear, or bilateral) affects the government system, which is primarily based on agriculture, animal husbandry, fisheries, and the collection of forest products and water products, with some hunting. In a community with a togetherness that gives rise to the ideals of mutual cooperation and aid among its members, all members have the same rights and duties. Based on this, the proverb "where there is a community, there is a law" (*ubi societas ubi ius*) becomes true because there will undoubtedly be laws governing people's lives in every society.

The presence of indigenous peoples with local knowledge in coastal areas is seen to be capable of appropriately using marine biological resources. Indigenous peoples' various local wisdoms avoid overexploitation of marine ecological resources. However, indigenous peoples

in coastal areas are unlucky to be in a disadvantaged situation where the local authorities do not give their presence meaningful consideration. This situation can lead to the exploitation of coastal and marine resources, putting a strain on coral reef ecosystems. Damage to coral reefs in the coral reef region and its surrounds, no matter how little, would undoubtedly affect their output. Finally, it has major social and economic ramifications for local populations, particularly traditional fishermen who rely on coral reef resources. It is exactly because they are the ones who are frequently poor. Attempts to safeguard or conserve natural resources on Indonesian territory can be carried out by reserving areas with the potential for diversity of marine biota species, natural phenomena, and uniqueness, as well as their ecosystems. Conservation areas are essentially the last line of defense for the conservation and sustainable use of marine resources and ecosystems. It is intended that by using this strategy, attempts to sustainably conserve life support systems, preserve germplasm sources and their ecosystems, and utilise marine natural resources would be made.

Indigenous peoples' local expertise will not be wasted in managing their natural resources so that current natural resources can be efficient and sustainable for the benefit and welfare of the community. The indigenous people's existence as a unitary state of the Republic of Indonesia is acknowledged by their customary rights and legal system, which include natural resources on their land. Economic and political considerations also have an impact on conservation efforts for coral reef ecosystems.

When it comes to upholding the law, three factors must be considered: legal certainty (*rechtssicherheit*), expediency (*zweckmassigkeit*), and fairness (*gerechtigkeit*). Gustav Radbruch's three aspects are regarded to constitute the pillars of legal ideals (*idee des Rechts*). This legal ideal will serve as a guide for humans in their legal lives. These three core values must exist in a balanced manner, but they are not always in a harmonic connection with each other, but rather contrary, conflicting, and in tension (*spannungsverhältnis*). In the case of such a confrontation, justice must take precedence.

The importance of justice in the management of natural resources owned by customary law communities is to respect indigenous peoples' rights. Related to this, the essence of a state or government is more than just seeking approval or agreement; it must also provide broad access to the community, including customary law community units, in order for people to participate in the development process without being marginalized (marginalized). However, indigenous peoples must be positioned as an important component of the development process as a whole. This means that the government, as a policymaker and in political and legal choices, must respond favorably to the community's active engagement. Customary law communities should not be created primarily on the whim of the government, but should be allowed the freedom to be creative in accordance with their capacity in order to achieve a balance. Development policies must be integrated while remaining based on customary law. Communities with customary law that should be acknowledged as part of the national legal system. [4]

According to RZ Titahelu [5], Customary law communities are individuals who have had social, economic, and cultural institutions, as well as political institutions, for centuries, and who have laws that are expressed in rules or norms connected to their beliefs and view on life, and all of this is visible. Especially in comparison to other towns in the country.

In numerous Indonesian locations, such as Papua and Maluku, Awig-awik in West Nusa

Tenggara, Kelong in Batam, Panglima Laot in Aceh, and Mane'e in the Talaut Islands Regency, customary law (community customs) still exists. Customary legislation (local tradition) is extremely successful in preserving coastal and marine resources from harmful activity.[6]

Despite the pressures of contemporary management systems, several ancient methods have survived and are being used today. To achieve social justice in the administration of indigenous peoples' natural resources, indigenous peoples must be included in the direction of these resources. Providing chances for the community to engage in the administration of local government creates prospects for growth in the region that is drawn from the community's ambitions. It will decide the achievement of the region's growth implementation, in addition to community engagement. However, it must be supported by a focus on the traditional qualities of a location as a site speciality involvement of indigenous peoples in determining customary seas can be classified as involvement in safeguarding the potential of natural resources, which are common property. Participation provides a forum for the community to negotiate policies, particularly those that have a direct influence on people's lives. Furthermore, the public can be made aware of the potential effects of enacting a regulation early on. Participation ensures that the interests of the community are not ignored by the rule makers because, in essence, all of the regulations included are directed at the benefit of the order of people's lives, as occurred in Nggodimeda and Siomeda Villages, Central Rote District, where indigenous peoples participated in the implementation of papadak in the two villages through involvement in planning, implementation, and supervision of actions that are contrary to papadak rules

Community participation in the management of coastal areas is regulated through PerMenKP Number 40 of 2014 concerning Community Participation and Empowerment in the Management of Coastal Areas and Small Islands. This PerMenKP emphasizes that the participation of coastal communities has an important meaning in the management of coastal areas. Article 1, paragraph 5, states that community participation is defined as the care and involvement of the community, either physically or non-physically, directly or indirectly, on their own awareness or based on guidance in managing coastal areas. The form of community participation is in the planning, implementation, and monitoring processes. Coastal communities have an essential role and are given authority by regulations to manage coastal areas by local wisdom and customary law.

Learning from the experiences of Nggodimeda and Siomeda Villages in Rote District, where the community engaged in the creation of coastal area management policies, significantly influenced the exploitation and protection of coastal resources. In this view, good law provides more than simply procedural fairness. Good legislation must be both competent and fair. Such legislation should be able to recognize community aspirations and be committed to attaining substantive justice. [7] This indicates how recognizing the community's wishes is the nature of the law that is responsive. Responsiveness can be interpreted as serving social needs and interests experienced and found in society. [8]

Based on this, integrating values still alive and well inside the customary law community unit into state law is required to reconcile regional autonomy with customary values based on state law. Optimizing the presence of customary institutions as a forum for indigenous peoples' existence is essential in developing indigenous peoples' involvement. Customary institutions are responsible for facilitating the Customary Law Community's opinions or aspirations to the

village government and local government, mediating disputes within and/or between Customary Law Communities, and providing decisions on resolving customary disputes. The Customary Institution has the authority to carry out its duties, including managing the rights and assets of the Indigenous Law Community to improve the welfare of the Indigenous Law Community, representing the interests of the Indigenous Law Community in relations outside the Customary Territory, and resolving Indigenous Law Community problems.

The effectiveness of customary institutions in managing coastal and marine resources will be judged by the community's comprehension and adherence to mutually agreed-upon regulations. In using coastal and marine resources, community activities will adhere to the regulations established by customary institutions. The community uses natural resources per established customary norms, ensuring that customary rules governing the right to regulate and use coastal and marine resources successfully exploit and protect coastal resources.

As a result, the government must be able to emphasize the idea of justice by carrying out growth while respecting community rights. Justice, as intended by John Rawls, is justice based on honesty, namely honestly recognizing indigenous peoples' rights so that in its implementation, it involves involving indigenous peoples in natural resource management, both in the form of planning to utilize the economic value of natural resources on the coast and the sea. So that efforts might be made to realize the value of social justice for all Indonesians.

Strengthening laws and regulations for structuring customary villages in coastal areas, accelerating integrated traditional village development, empowering traditional institutions, managing customary-based village development resources, and accumulating knowledge about conventional forces in rural areas are some of the strategic issues that indigenous coastal communities can fight for through their customary institutions. Based on these challenges, the Regency Government is expected to prepare a minimum Government Regulation respecting Customary Institutions and the Empowerment of Indigenous Village Communities.

The local government must improve the community's living level by establishing a tourist village. The use of marine and coastal resources must continue to support the preservation of indigenous peoples' local cultures. Indigenous peoples on the coast must become subjects for tourism and other economic activities, implying that indigenous peoples have complete control over regional development and cultural preservation through their customary institutions.

3 Conclusion

A good law must be competent and fair. Such a law should recognize the community's wishes and commit to achieving substantive justice. This indicates that the law that recognizes the community's wishes is the nature of the law that is responsive. To realize social justice in managing natural resources controlled by indigenous peoples is to involve indigenous peoples in managing these natural resources. Providing opportunities for the community to participate in the administration of local government provides opportunities for the creation of development in the area that is sourced from the aspirations of the community. In addition to community participation, it will determine the realization of the implementation of development in the region, but it must be accompanied by not ignoring the traditional values owned by an area as a specialty of the area.

For government policies to effectively reach policy objectives, indigenous peoples in coastal areas must be involved in policy formulation. The involvement of indigenous peoples in determining customary seas can be defined as safeguarding the potential of natural resources, which are common property. Participation provides a forum for the community to negotiate policies, particularly those directly influencing people's lives. Furthermore, the public can know the potential effects of a rule's creation early on. Participation guarantees that the rule makers do not overlook the community's interests because all rules are made to enhance the order of people's lives.

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