

# Legal Politics of the Establishment of Traditional Kampung in Empowering Indigenous Communities in Papua Province

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**Abstract.** The legal politics of the existence of customary law communities is regulated in the 1945 Constitution of the Republic of Indonesia Article 18B Paragraph (2). The type of research used in this legal research is normative legal research. The results of this research are Law no. 6 of 2014 concerning Villages Article 101 paragraph (1) The Government, Provincial Governments, and Regency/Municipal Governments may carry out structuring of Traditional Villages. Specifically, the customary territory in Papua is divided into 7 customary areas. This customary area is used to group ethnic groups in Papua. The concept of tribal division is based on kinship, marriage, ulayat rights, type of leadership, physical characteristics, and geographical areas. The findings in this study are that the formation of traditional villages in Papua Province is so that traditional villages become strong, advanced, independent and democratic to create a strong foundation in implementing governance, development towards a just, prosperous and prosperous indigenous community.

**Keywords:** Legal Politics, Traditional Village, Papua Province

## 1 Introduction

The State of Indonesia is the State of Law as mandated in the 1945 Constitution of the Republic of Indonesia (after this referred to as the 1945 Constitution of the Republic of Indonesia) Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia Stating that the State of Indonesia is a state of law [1]<sup>1</sup> The legal politics of the existence of customary law communities is regulated in the 1945 Constitution of the Republic of Indonesia Article 18B Paragraph (2) The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and following community development and the principles of the Unitary State of the Republic of Indonesia as regulated in law.

Cultural diversity (multicultural) is a cultural configuration that is protected, recognized, and respected by customary law with its traditional village that has existed for a long time is the nation's wealth. One of Indonesia's cultural treasures is the traditional village as a social alignment system with written and unwritten customary law as an instrument of social control (social control) in the life of the Indonesian customary law community.

Legal politics in Law Number 6 of 2014 concerning Villages in consideration Considering: (a). that the Village has the right of origin and traditional rights in regulating and managing the interests of the local community and has a role in realizing the ideals of independence based on the 1945 Constitution of the Republic of Indonesia; (b). that during the state administration of the Republic of Indonesia, Villages have developed in various forms so that they need to be protected and empowered to become strong, advanced, independent, and democratic so as to create a strong foundation in implementing governance and development towards a just, prosperous, and prosperous society; (c). that the Village in the composition and procedures for administering

government and development needs to be regulated separately by law. This is very important considering that the determination of the rights and obligations of legal subjects in the perspective of implementing state government must be clear and concrete [2]

The formation of traditional villages and villages is so that villages become strong, advanced, independent and democratic so that they can create a strong foundation in implementing government, development towards a just, prosperous and prosperous society. The essence of development today, both long-term development and short-term development, is to achieve the goals of the state as stated in the 1945 Constitution of the Republic of Indonesia[3]

Village Law. Article 1 number 1 which is meant by "Village is a village and traditional village or what is called by another name, hereinafter referred to as Village is a legal community unit that has territorial boundaries that are authorized to regulate and manage government affairs, the interests of the local community based on community initiatives, original rights proposals, and/or traditional rights recognized and respected in the system of government of the Unitary State of the Republic of Indonesia. Furthermore, Article 6 paragraph (2) stipulates that "Villages consist of Villages and Traditional Villages. Law No. 6 of 2014 concerning Villages Article 98 Paragraph 1 Traditional Villages are stipulated by Regency/City Regional Regulations. Paragraph 2 The establishment of a Traditional Village after the determination of the Traditional Village as referred to in paragraph (1) is carried out by considering the factors of the implementation of Village Government, implementation of Village Development, Village community development, as well as Village community empowerment and supporting infrastructure.

Article 99 Paragraph 1 Merger of Traditional Villages can be carried out on the initiative and agreement between Traditional Villages. Paragraph 2 The Regency/Municipal Government facilitates the implementation of the amalgamation of Traditional Villages as referred to in paragraph (1). Article 101 paragraph (1) The Government, Provincial Governments, and Regency/Municipal Governments may carry out structuring of Traditional Villages. Paragraph (2) Customary Village arrangement as referred to in paragraph (1) shall be stipulated in a Regional Regulation. Paragraph (3) The Regional Regulation, as referred to in paragraph (2) is accompanied by an attachment of a map of regional boundaries.

Jayapura Regency Regional Regulation Number 8 of 2016 concerning Traditional Villages in the consideration Considering the letter a.) That the Traditional Village is a customary law community unit whose existence is recognized in the 1945 Indonesian State Law and has the authority to organize its members independently based on the original authority that owned in order to realize a just and equitable welfare; b ) Whereas the Traditional Village is a tangible manifestation of the customary law community unit with its traditional rights which are still maintained, upheld, respected and implemented by all its members; c) That the granting of greater authority to regions through regional autonomy is an opportunity for structuring the existence of villages in particular for the arrangement of indigenous peoples so that the administration and implementation of regional development can benefit the welfare of indigenous peoples in the Jayapura Regency area; d) Whereas the provisions of Article 101 of Law Number 6 of 2014 concerning Villages authorize the Regency/City Regional Government to carry out structuring of Traditional Villages through Regency/City Regional Regulations Until now the formation of customary villages has not been evenly distributed in Papua, the formation of customary villages needs to be carried out as a tangible manifestation of the recognition and protection of the rights of indigenous peoples, recognition of customary territories and planning for development based on customary areas. Legal politics is a legal policy or official policy line on the law that will be enforced either by making new laws or by replacing old laws in order to achieve state goals. [5]

Legal politics, in general, is useful to know the processes involved in the elements of the study area that produce legal policies that follow the needs and sense of justice of the community, which states that if the law is built on a foundation that is not in accordance with the spiritual structure of the community, it will cause community resistance to the law. strong in accordance with good law enforcement must meet sociological, philosophical and juridical requirements. [6]

Papua is divided into seven customary territories. This customary territory is used to group ethnic groups in Papua. Since ancient times, Papuans have known territorial boundaries based on

tribal divisions that have been passed down from generation to generation. The concept of tribal division is based on kinship, marriage, ulayat rights, type of leadership, physical characteristics, and geographical areas. The seven customary areas consist of five customary areas in Papua Province and two customary areas in West Papua Province. (1). Mamta's customary territory, the Mamta's customary territory includes the city of Jayapura, Jayapura Regency, Sarmi Regency and Mamberamo Raya Regency. (2). The Saereri customary territory, the saereri customary territory is in the northern coastal areas and islands to the north of Papua, the districts of Biak Numfor, Supriori, Yapen and Waropen., (3) Anim Ha. Anim Ha means True Man. Anim Ha Covers, Merauke Regency, Boven Digoel, Asmat and Mapi., (4) Lapogo. The Lapogo customary area consists of the districts of Jayawijaya, Bintang Mountains, Lanny Jaya, Tolikara, Nduga, Puncak Jaya, Yalimo, Central Yahomiko and Puncak District., (5) Mee Pago. The Mee Pago customary areas include the Regencies of Dogiyai, Nabire, Intan Jaya, Paniai, Mimika., (6) Domborai. The Domborai customary area includes Manokwari, Bintuni, Sorong, Raja Ampat, Tonminabuan., (7) Bomberai Bomberai customary area includes Fakfak, Kaimana, Kokonao [7]<sup>7</sup>

The existence of the division of customary territory in Papua from the past, this can be used as the basis for the formation of traditional villages that are adapted to the characteristics of each customary area. The legal problem is that the Government, Provincial Government, and Regency/City Government have not mapped the boundaries of customary territories. This can cause conflict Franky Woro, representative of the indigenous people of the Awyu Tribe, said that before investors came, the people lived in harmony and peace. However, since oil palm plantations began to enter, everything has changed. Previously, indigenous peoples owned forests that could provide food and drink. Forests provide life, but after the company arrived, indigenous peoples were increasingly marginalized. Elisabet Yulanda Ariks, representative of the indigenous Mpur Tribe, Tambrauw, said that people's lives depended on the forest. The community considers the forest as a mother who breastfeeds and provides for their children and grandchildren. If the mother is gone, then the children and grandchildren will be gone. Franky Samperante, Executive Director of the Pusaka Foundation, said that indigenous peoples expect the government to protect the rights of indigenous Papuans[8]

To solve problems in Papua, we must understand the philosophy of the indigenous people of Papua with a cultural approach, because the land and forest issues continue to occur, there is a gap between *das sollen* and *das sein* regarding the recognition and respect for indigenous peoples, state recognition of indigenous peoples and their rights in the constitution. as well as in the implementing law, but conflicts between the state and customary law communities, as well as between customary law communities and customary law communities. This is because the state is still half-heartedly respecting the existence of indigenous peoples[9] The current village government system in Papua has not accommodated the original government system based on origin rights, it is necessary to establish a traditional village as a tangible form of recognition and respect for indigenous peoples. With that said, the author initiated a research with the title Politics of Law for the Establishment of Traditional Villages in Papua. Based on this explanation, the problem discussed in this paper is how is the Legal Politics for the Establishment of Traditional Villages in Papua Province?

## **2 Method**

To obtain data to describe the Legal Politics of the Establishment of Traditional Villages in Papua, the type of research that the author uses in this study is normative legal research or library law research. [10] After the data has been collected and is complete enough, the next step is to process and analyze the data. The data analysis technique used is a qualitative analysis technique, where after all the data is collected, processing, analyzing, and constructing the data is carried out. After the data is processed, the next step is to interpret the data to draw conclusions. Descriptions and conclusions in interpreting the research data will relate to theories, opinions and formal rules that have been stated in the previous section to find the ideal traditional village concept in Legal Politics. Formation of Traditional Village

### 3 Result and Discussion

The Constitution of the State of Indonesia affirms that Indonesia is a state of law<sup>11</sup> Customary law communities (MHA) are expressly included in the 1945 Constitution Article 18B paragraph (1) The State recognizes and respects special or special local government units, paragraph (2) The State recognizes and respects customary law community units and their traditional rights if they are still live and in accordance with the development of its people. This means that the State has recognized and respected the unity of the MHA and their rights. MHA has been recognized for its existence in the 1945 Constitution. However, to realize the recognition, protection and empowerment of the Indigenous Law Community, a law is needed that regulates and guarantees this.

In the context of Papua, it is regulated in Law Number 21 of 2001 concerning Special Autonomy for the Papua Province, Article 43 paragraph (1) states that the Papuan Provincial Government is obliged to recognize, respect, protect, empower, and develop the rights of indigenous peoples by referring to the provisions of the applicable legal regulations. apply. The rights of indigenous peoples include the customary rights of the customary law community and or individual rights of the members of the customary law community concerned. In the implementation of customary rights, the customary control of the customary law community implements the provisions of local customary law by respecting the control over the land of the former customary rights obtained by other parties legally. Meanwhile, the provision of ulayat land and/or individual lands of customary law community members for any purpose is carried out through deliberation with the customary law community and the concerned residents to obtain an agreement regarding the transfer of land and its compensation. Whether or not these rights exist in the district/city area is carried out by a research committee: The research team consists of experts on customary law, customary institutions/customary elders in charge of ulayat rights, NGOs, the legal department of the regent and officials from other relevant agencies. In the arrangement of traditional villages, status changes, mergers, formation, and determination of traditional villages are carried out. The determination of the customary village or at the same time the determination of the customary community, must be interpreted as a social unit. The customary village regulations that have been clearly defined refer to Article 101 of Law Number 6 of 2014 concerning Villages. The legal consequences must first be issued by a Provincial Perda as a condition for granting a registration number and customary village code from the Ministry of Home Affairs. Previously, the mandate of the Special Autonomy Law as stated in Article 3 paragraph (5) stated that the establishment, expansion, abolition, and/or merger of districts or villages or referred to by another name, shall be stipulated by a Regency/City Regional Regulation. That is what shows the alignment of arrangements between Law Number 21 of 2001 concerning Special Autonomy for the Papua Province and Law Number 6 of 2014 concerning Villages[12] Autonomy comes from the Greek, namely auto which means self and nomos which means law / regulation [13]

Even though they have received constitutional recognition indigenous peoples are still faced with a number of challenges. According to Amos Soumilena, Head of the Indigenous Peoples Task Force in Jayapura Regency, 90 percent of indigenous peoples in Papua live in forest areas. However, the State considers that forest areas with the status of a nature reserve cannot be carried out at all. For indigenous peoples this policy is considered as a limitation of space for movement.

According to Amos, another challenge that is no less complicated is investment. The customary rights of indigenous peoples will be intervened. Amos encourages indigenous peoples to rise up with their tenure rights (guarantees) and there must be a mapping of customary areas. Legally, this customary arrangement has a strong bargaining position when dealing with outsiders. In addition, there are conflicts between tribes in the struggle for customary territory boundaries. Synergy within indigenous peoples is absolutely necessary because there are many potential natural resources that can be utilized. If the economic pockets of indigenous peoples are not managed properly, indigenous peoples will lose their rights and natural resources. Chairman of the Jayapura Regency Customary Council, Pieter Dantru. Confirming that the empowerment and empowerment of

indigenous peoples is a big undertaking. One example is that the regional languages in several villages are starting to be eroded by the development of the Age [14]

The same thing was conveyed by Ignasius Ndiken, chairman of the Mrind indigenous peoples institution (LMA) that investors who enter Kemerauke without involving indigenous peoples can cause conflict within indigenous peoples[14] Customary lands used by investors The local government does not communicate with the LMA Indigenous Peoples Institution, only carried out by the Regional Government. Participation Indigenous peoples do not get sufficient information regarding investments that will enter traditional villages[15]

In the past, Papua's very rich nature made relatively young Papuans get to eat. If in the morning people go fishing, on the same day they can feel the fruits of their labor. If a family looks for sago for days, even weeks in the forest, they will surely find it. Natalis Ndiken as the head of the Ndiken clan in the village of Saneggi said that nature is getting tougher and not spoiled anymore. Chairman of the DPC PDIP Merauke Regency Heribertus Silvinus Silubun, SH said that indigenous peoples need to be protected by preserving the customs and culture of indigenous peoples in Papua[16] Thus, according to the author, it is necessary to establish a traditional village in Papua Province as a form of Recognition and Respect for the legal community which is strengthened by regional regulations as the legal umbrella.

#### **4 Conclusion**

Recognition and respect for customary law communities has been clearly and firmly regulated in the 1945 Constitution and the Papua Special Autonomy Law and in the Village Law it is necessary to strengthen the existence of traditional villages by being stipulated by regional regulations so that the performance of traditional institutions or customary councils is more optimal and can preserve culture and customs. indigenous peoples in Papua Province

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