

Promulgation of Regional Regulations Number 1 of 2019 on Recognition and Protection of Indigenous and Tribal Peoples in Teluk Bintuni Regency

St. Laksanto Utomo

Faculty of Law, Sahid University, Jakarta, Indonesia
Jl. Prof. Dr. Supomo, SH No.84 Tebet, South Jakarta 12870.

Abstract: *In accordance with the mandate of the 1945 Constitution of the Republic of Indonesia that the State recognizes, respects and protects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of the people and the principles of the Unitary Republic of Indonesia through recognition and protection of indigenous and tribal peoples. With the issuance of the Regional Regulation on the recognition and protection of indigenous peoples in the Bintuni Bay Regency, automatically the life, traditional customary rights that have existed for generations have been recognized by the government and can be carried out with corridors that are in accordance with general norms. Bintuni Law School of Law and West Papua Province Law Bureau conducts socialization activities on the Regency of Bintuni Bay Regency Number 1 Year 2019 Recognition and Protection of Customary Law Communities in Bintuni Bay Regency so that Indigenous people know that their rights have been protected by the government in the form of The Regional Regulation so in the future whoever will lead will still have legal certainty*

Keywords: Customary Law Community, Legal Protection, Regional Regulation, Bintuni Bay

1. Introduction

Customary institutionalization is an element of an indigenous community existence because it is an important point of indigenous peoples that existed long before the founding of the Republic of Indonesia, efforts to restore the position of indigenous peoples as public legal entities that are part of the government reappeared in Law no. 6 of 2014 concerning villages. Recognition and protection of the rights of indigenous peoples in Papua is one of the political steps that must be undertaken by the Papua provincial government in the context of carrying out the mandate of the 1945 Constitution in the context of fulfilling human rights and obligations that must be carried out by the State.

Teluk Bintuni Regency (Bintuni Bay Regency) is a regency of West Papua Province of Indonesia. It covers an area of 20,840.83, comprising administrative districts on both sides of Bintuni Bay, a gulf which separates the Bird's Hea; Peninsula and Bomberai Peninsula which form the main constituents of the province; The regency has seven tribes including Kuri tribe; Wamesa people; The Irorutu tribe; Sebyar tribe; Simuri tribe; Sough, and; Moskona tribe. The seven tribes have traditional rules which have been used to regulate their daily life. Recognition and protection over the rights of indigenous Papuans is an urgent need so that they can enjoy their inherent rights and are sourced from their political, economic, social and cultural structures, religious traditions, history, outlook on life, and customary law. Then a Regional Regulation is needed that regulates the Recognition and Protection of Customary Law Communities.

In accordance with the mandate of the 1945 Constitution of the Republic of Indonesia that the State recognizes and respects and protects the unity of customary law communities and their traditional rights as long as they are

alive and in accordance with the development of the people and the principles of the Republic of Indonesia. Through recognition and protection of indigenous and tribal peoples, on the other hand based on Decision of the Constitutional Court Case Number 35 / PUU-X / 2012 concerning Testing of Law Number 41 of 1999 concerning Forestry, in the framework of ensuring the existence of a just legal certainty towards the Customary Law Community and rights traditionally can be regulated in a Regional Regulation. Therefore, the existence of the Customary Law Community in the Bintuni Bay Regency still exists and is part of the community component that must be recognized and respected by the State.

With the issuance of a Regional Regulation on the Recognition and Protection of Indigenous Peoples in the Regency of Bintuni Bay Number 1 of 2019 concerning Recognition and Protection of Indigenous Peoples in the District of Bintuni Bay, it is necessary to conduct socialization to the customary law community in the Regency of Bintuni Regency.

2. Methods

The method used is the tutorial class, transferring knowledge and may be used as a part of a learning process. More interactive and specific than a book or a lecture, a tutorial seeks to teach by example and supply the information to complete a certain task. The tutors gave an explanation to the indigenous people, students of the Bintuni School of Law. In its implementation, this activity is carried out to provide socialization to participants on the Recognition and Protection of Indigenous Peoples.

The target in this activity is the Bintuni Bay indigenous people students of the STIE Bintuni Faculty of Law as a tertiary institution in the Law in the area of activity because

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it is hoped that in the future there will be a change of mindset about indigenous peoples in knowing the Regional Regulation of Recognition and Protection.

This activity took place on Saturday-Sunday, February 22-23, 2020, at STIE Bintuni. In addition to the instructor's support, this community service activity was also accompanied by the Head of the West Papua Province Legal Bureau, as well as the Chair of the STIE Bintuni Bay Law Department. Because indigenous peoples have unequal educational levels, the activities do not start with pre-test and post-test but instead directly conducted counseling and discussion.

3. Results and Discussion

In carrying out this activity, the Implementers collaborated with the Bintuni Law School of Law and West Papua Province Law Bureau.

The form of the activity was carried out in the form of a discussion that was guided by the moderator of the Head of the STIE Bintuni Department. This class tutorial was attended by 48 participants and came from indigenous community leaders, traditional leaders and students.

One week before the activity begins, the organizer with STIE Bintuni is coordinating with the West Papua Province Law Bureau as the jurisdiction of the activity, things are done in the form of administrative requirements, materials to be provided to participants, as well as implementation accommodation, The organizer then visits the location, STIE BINTUNI, to provide guidance / socialization on the regulation on the recognition and protection of indigenous and tribal peoples in the Bay of Bintuni Regency and the forms of its implementation.



The socialization is carried out by giving lectures on topics that have been prepared, followed by question and answer session. In the question and answer session opened, things happened as expected, the questions raised by the participants on average showed their lack of knowledge about the Regional Regulation. From a number of questions raised, it was also understood, that the participants did not understand the the regulation because it had not been socialized, which basically required cooperation from all parties, not only the government but also the community,

especially indigenous peoples, but more importantly starting from themselves.

During the session, the tutors were able to obtain information, that there were some participants who knew that the regulation had been issued by the local government but had not been socialized so that the implementation of the regulation was not optimally effective in reaching the target, this showed that the information absorbed by them through the media was not good and fast because the average indigenous people are people who are not yet familiar with communicating with officials in this case government officials.



Question and answer session explores participants' knowledge, information / material presented to participants in the socialization of the Regional Regulation on Recognition and Protection of Indigenous Peoples in the Regency of Bintuni Bay including 1). *Traditional rights* which are communal or individual rights which are inherent in indigenous peoples, originating from their social and cultural systems, especially rights to land, territories and natural resources, 2). *Customary law* which is an unwritten rule or norm that lives in the Customary Law Community, regulates, is binding and maintained, and has sanctions, 3). *Customary institution* is a set of organizational and / or customary government institutions that grow and develop together with the history of customary law communities to regulate and resolve various life problems in accordance with applicable customary law. the existence of customary law communities consisting of land, water, and waters along with all natural resources contained therein which are determined by certain limits, whose control, management and use are carried out according to customary law,4) *Customary territory*, hereinafter referred to as ulayat rights, is the living space which is the place of existence of customary law communities consisting of land, water, and waters along with all the natural resources contained therein which are determined by certain limits, which are mastery, management and its use is carried out according to customary law,5) *Customary land* which is parcels of land contained in customary territories whose types and arrangements are determined based on customary law, 6). Customary forest which is a forest area and all forest resources within the territory of customary law communities, 7) *Mapping of customary territories* is used for a process of translating landscapes into cartographic forms based on the history of origin and governance of a customary area in

accordance with the knowledge system and practices that apply within the relevant adat law community.8). *Local wisdom* is ideas, values, and views that are wise, traditional knowledge, full of wisdom, good values that live and develop in an indigenous community and are adhered to by members of their community. Traditional justice which is a judicial institution that lives in the daily practice of customary law communities and functions to resolve customary disputes based on customary law and / or new mutually agreed norms;9). *The Customary Law Community Consultative Body*, is a body that is formed and jointly established by tribal customary institutions whose membership comes from the representatives of each customary law community and has the duty to facilitate and mediate conflict resolution among fellow customary law communities and between customary law communities and parties others outside the customary law community and / or to deliberate on the interests of the customary law community and their achievements.



The rights of indigenous peoples themselves include a). customary rights; b). clan rights to land and natural resources and their use, c). the right to obtain compensation from outside use of natural resources, d). the right to obtain benefit sharing from natural resources, genetic resources and traditional knowledge by outsiders,e). the right to take care of oneself, f). the right to exercise customary law and justice,g). the right to spirituality and culture, and h). other rights regulated in statutory regulations. while the obligations of indigenous peoples include: a). obey and implement the values and norms of customary law, b). obey and implement agreements that have been made with other parties, and e). other obligations stipulated in the legislation.

Recognition and protection of indigenous and tribal peoples aims to: a). provide legal certainty regarding the existence, customary territories, customary forests and the rights of indigenous peoples, b). strengthen access, participation and improve the welfare of indigenous and tribal peoples towards their land, water and natural resources through customary institutions, c). realize the management of indigenous territories in a fair, useful and sustainable manner based on customary law; d. managing customary institutions and traditional leadership,e). realize democratic social life and respect each other and recognize social and cultural differences, f). realize development policies that recognize and protect the rights of indigenous and tribal peoples in the bay bintuni district, and g). realizing dispute

resolution based on the recognition and protection of the rights of indigenous peoples and their customary law.

From the explanation of the implementation of these community service activities, the Bintuni Regional Regulation has been socialized as well as indigenous peoples have begun to understand that their existence, rights and obligations are protected by the law so that their activities in life can use their rules made and believed to be hereditary by continuing to refer to social norms in general

4. Conclusion

Recognition of indigenous and tribal peoples in the regional regulatory framework as a place to carry out social empowerment or community empowerment to manage and protect their customary territories. Communities as the subject of development, especially indigenous and tribal peoples must certainly pay attention to their rights in each development process, bearing in mind their involvement and role as well as those in development, it is necessary that the Regional Government recognizes, protects and empowers existing traditional institutions for generations and / or forms new institutions in the Customary Law Community according to local customary law based on adat agreements.

The customary law community settlement area in Teluk Bintuni Regency can be designated as a Customary Village in accordance with statutory provisions and provide legal certainty regarding the existence, customary territories, customary forests and customary law community rights; strengthen access, participation and improve welfare

5. Acknowledgement

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Author Profile

Dr. Laksanto Utomo, SH.MH is a Faculty member of Faculty of Law, Sahid University Jakarta, and Chair Person of Indigenous Law Lecturer (APHA)