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The Existence of the Rights of Indigenous People in the Implementation of Regional Autonomy

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ABSTRACT

The authority of regional autonomy enables those in power to adjust and supervise their administrative regulations in their respective areas on behalf of the central government, and regional higher-ups along with DPRD and their regional officers are the executor of that regulation. The research objective is to examine and analyze how natives' rights are construed legally on a national and international level, as well as how their protection can be used as a tool for participation in the enforcement of regional autonomy. It also aims to derive a conclusion regarding the role of natives' rights in enforcing regional autonomy. Several methods such as statutory, conceptual, historical, case, and comparative approach are used in a form of normative legal research. The results showed (1) The concept of natives in both international and international indigenous law are applied, which is more focused on the international law, (2) Strictly speaking, there is no recognition and regulation of the natives' rights in national legal instruments to support their role and cultural existence to be involved into governmental programs and projects, (3) The involvement of these natives in the administration of local government is not yet optimal, including the recognition of customary government organizational structures.

Keywords: Customary Law Community; Regional Autonomy

INTRODUCTION

The fight to empower customary law communities aims to leverage the wealth of local culture and its profound wisdom. Natives possess invaluable expertise, including their customary laws, which reflect the noble values of past societies that have not only survived but also continuously generated new values in governance, development, and social cohesion. The customary values of a community, rooted in its cultural and social fabric, give rise to distinct sets of rules known as *adat* (Syaukani et. al., 2002). In order to promote democratic, fair, and equitable governance in regional development, it is essential to adopt a mindset that includes the active participation of indigenous peoples. This involves harnessing and developing local wisdom, culture, and customs to create a distinctive and exceptional phenomenon, all while adhering to relevant laws and regulations.

In reality, the existing regulations regarding natives do not adequately ensure their protection, recognition, and respect, particularly in their contributions to the nation and state. There is a misconception that once a nation is established and declared, everything is automatically set for development, assuming that society is a homogenous unit that uniformly supports the same traditions and culture. This perspective often overlooks the presence of various social groups within society. The potential for social divisions caused by inter-ethnic or group associations is frequently ignored, despite being a crucial factor that cannot be disregarded. Failing to address this oversight will result in social imbalance, which, ironically, has the potential to drive change and renewal, precisely what is needed for community development.

It is crucial to involve indigenous peoples, who are the rightful owners of the land and its natural resources, in any development activities conducted on or affecting their territories. This involvement should begin from the initial stage and continue throughout the realization process. The government, if mandated by the people as stated in the constitution, must put their attention to maintain dan uphold the rights of under customary law. This can be achieved by establishing legal frameworks that allow the meaningful participation of customary law communities in regional autonomy and by ensuring proper oversight of these arrangements. Involving natives in regional autonomy means recognizing them as owners, rights holders, and legal entities within their indigenous territories, responsible for managing and preserving the natural resources found therein (Lawalata, 2017).

Ensuring a common understanding and equal perception in preserving *adat* (customary law) is an obligatory task, driven by at least three fundamental reasons (Soemadiningrat, 2002). First, *adat* serves as a foundation for values, ethics, morals, and knowledge that are deeply rooted within a system of symbols, language, ideology, and customs. It forms the basis for the social, political, and economic behaviors of the customary law community. Second, preserving *adat* strengthens the collective identity of the customary law community, providing a shared source of strength to develop and uphold traditional values. Third, neglecting the preservation of customary values poses a temporary degradation that jeopardizes the existence of natives as rightful owners in various aspects of life. This threatens their rights and undermines their overall well- being.

Following the Article 32 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the government is responsible for presenting Indonesian national culture internationally. This includes the protection for people's independence in reassuring and escorting their cultural values. This commitment is reinforced by Law No. 6/2014 and Law No. 23/2014, along with their respective implementing regulations, which acknowledge the presence and importance of customary law community unity. Despite the implementation of regional autonomy through a decentralized system, the customary law community has not experienced significant involvement or benefits. Local governments have designed development plans to ensure

regional stability and support national progress. However, these development initiatives often require substantial resources, with natural resources (referred to as SDA) being one of the key assets. Development projects typically necessitate large areas of land that encompass natural resources, including preserved environments that have existed since ancient times.

Unfortunately, the interests of the community are often neglected in favor of national goals when the territory and natural resources of customary law communities are designated as investment zones. It is important to note that land, along with the natural resources found on land, sea, and coastal areas, are fundamental necessities for the well-being of a nation and are crucial elements in national development. The regional autonomy system adopted in the issue of Law No. 32/2004 is a system of a vast, evident and conscientious autonomy as explained in Common Elucidation of Law No. 32/2004:

"The principle of regional autonomy adopts a broad interpretation of autonomy, granting regions the power to govern and regulate all the elements of government affairs except those specifically designated as the responsibility of the top authority. Regions have the authority to create their own policies that focus on service provision, enhancing community participation, fostering initiatives, and empowering the community with the ultimate goal of improving the welfare of the people.".

The legislation regarding village governance is distinct from that of regional governments, allowing village communities the flexibility to organize their government structures according to their original forms, particularly for customary law community units. This separation concurs with the mandates of Article 18B and Article 28I of the 1945 Constitution of the Republic of Indonesia. Article 18B of the constitution is as follow the central acknowledges and honors regional government constituents that possess unique characteristics or special status as determined by legislation. Besides that, the central acknowledges and honors the cohesion of customary law society and the presence of conventional rights and align with community development and the fundamental aspects of the State of Republic of Indonesia, under the provision of law.

In addition, Article 28 I paragraph (3) of the 1945 Constitution mentions that the cultural identity and rights of traditional society are honored based on the progress of society and civilization. However, the state's declaration regarding 'acknowledgement' and 'honor' for the presence of customary law community seems to be ungranted automatically. There are about four constitutional and juridical prerequisites that a community unit must fulfill in order to be considered as a part of customary law community. These fulfillments serve as the basis for formal acknowledgment. First, as long as the existence of customary law community is present. Second, concurs with the period and civilization. Third, concurs with the principles of the Republic of Indonesia, and fourth, provisioned by law.

Customary law society' existing systems are still ineffective as required by globally regarded norms. In 1957 and 1989, the International Labour Organization (ILO)

approved agreements to safeguard and uphold the rights of communities that use customary law. The ratification of these agreements by each signatory nation determines their legal force. In order to address concerns in regards to the natives, the United Nations Permanent Forum on Natives Issues was established. This forum elevars the rights of natives in alliance with the UNDP and the United Nations High Commissioner in defending Human Rights.

As in 2004 to 2007, the UNDP regional office in Bangkok actively joined with the National Human Rights Commission and the Ministry of Social Affairs to initiate the rights of natives, marking a substantial progress. This result was the UN General Assembly's adoption of the United Nations Declaration on the Rights of Natives on September 13, 2007. Despite not having legal force, this proclamation is a crucial worldwide guide for developing legislation pertaining to the rights of natives. This confirms that the statement does not need approval by signatory governments.

At the national level, Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states the succeeding provisions. According to Law No. 6/2014 on Villages and Law No. 23/2014, the focus of regional autonomy is primarily on the development of autonomous governance within the Regency/City regions. These laws are guided by principles such as democracy, community participation, equitable justice distribution, and recognition of cultural diversity in each region. However, in terms of implementing the provisions outlined in Article 18 and Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, Law No. 6/2014 and Law No. 23/2014 have not specifically addressed the inherent rights of customary law society for the human rights. These rights are protected under the 1986 ILO Convention, which includes the rights to self-determination and the rights to be actively engaged inauthority.

These include the rights to adequate food, healthcare, housing, economic security, education, employment, children's rights, workers' rights, minority and natives' rights, land rights, equality, environmental protection, good governance, and fair implementation of the law. The decline and erosion of cultural values and customs among natives highlight the level of recognition and attention given to their existence. This situation reflects the unique identity of Indonesian, which encompasses customary law communities, within the framework of the State of the Republic of Indonesia.

Refers to the descriptions above, the formulation of the problems in this study is as follows: First, what is the legitimate definition of native' rights under the provision of domestic and international law? Second, how may the protection of natives' rights be a tool for participation in the accomplishment of regional autonomy? Third, what duty does the natives' rights has in the regional autonomy realization?

LITERATURE REVIEW

Pancasila State of Law Theory

The Republic of Indonesia's 1945 Constitution's Article 1 (paragraph 3), which recognizes the Unitary State idea as a legal framework, contains this statement. The phrase "the State of Indonesia is a state of law" is stated directly in this clause. This constitutional framework has legal ramifications and calls for accountability in how society, the country, and the state are really implemented. All prerequisites and rules of the rule of law must be met and upheld for the constitutional declaration of Indonesia as a state of law. In other words, it must be properly implemented in how society, the

country, and the state operate on a daily basis. The notion of the rule of law is referred to by many names in various linguistic and legal systems. It is known as "rechtsstaat" in Dutch, "État de Droit" in French, and "Rechtsstaat" in German. It is often referred to in English as the "Rule of Law." Although it predates these concepts and has been studied by philosophers like Plato, the concept of the rule of law exists today. In his "Nomoi" theory, Plato claimed that an efficient legal framework is necessary for good government. This shows how the necessity of the rule of law in maintaining a fair and orderly society has long been acknowledged (Azhari, 1995).

Aristotle's work, Politica, more forcefully espoused Plato's concept of Nomoi. Plato was a teacher of Aristotle. Aristotle believed that a good state was one that was ruled by its laws and constitution. Three things make up a constitutional government are the public interest guides the practice of government, government is run in accordance with legislation, namely broad rules rather than arbitrary regulations that disregard customs and the constitution. Moreover, constitution-based government means government by the will of the people, not by coercion (Ridwan, 2007).

Hadjon (2007), It is argued that the different historical backgrounds of the concepts of "rechtsstaat" and "rule of law" no longer need to be seen as contradictory, as both ultimately aim to achieve the protection of human rights. Both concepts share the common goal of safeguarding individuals from arbitrary exercise of government power, even when the law is used as a means of oversight. While the background supporting the concepts of "rechtsstaat" and "rule of law" differs from the background of the establishment of the Republic of Indonesia (NKRI), the concept of the state of law adopted by the NKRI does not simply replicate either the "rechtsstaat" or the "rule of law." However, the use of the term "state of law" is influenced by the literal meaning of both concepts. For this reason, Hadjon (2007) The author further suggests that it would be more suitable for the Republic of Indonesia to use the term "Pancasila legal state" to differentiate it from the backgrounds of the concepts of "rechtsstaat" and "rule of law." This is done to emphasize the unique nature of the state law concept adopted by the NKRI in relation to the aforementioned concepts.

Legal Pluralism

Legal pluralism is the opposite of legal centralism, because legal centralization is the idea that law is the only formal institution owned by the state, and there is also an assumption that legal pluralism is a way to criticize state power. Galanter (1974) says that every rule or legal decision does not always contain a single meaning when applied to real situations with unique time and space. This statement means that every person or group of people in the situation system always gives double meaning to every system of legal rules (Tanya, 1998).

The diversity of legal systems that apply in Indonesia is a legal need of Indonesian society. This is because Indonesian society is pluralistic. Customary law is factually still alive and still enforced and is still needed in answering the complexity of the vortex of globalization. Customary law as values (truth and justice) that live in the midst of society.

Integration Theory

Romli Atmasasmita also outlined the contrasts between the Gerald Dworkin notion of "Law as Integrity" and Integrative Legal Theory because of revisions to Development Law Theory and Progressive Legal Theory. Regarding the idea of "Law as Integrity," Gerald Dworkin claims that "Law as Integrity supports law and legal rights

unreservedly. Jt hypothesizes that the limitations imposed by the law serve society not only by ensuring procedural fairness and predictability, but also by securing a resemblance of equality among people (Wacks, 2006).

Furthermore, with reference to the Theory of Development law and Progressive Legal Theory, Romli Atmasasmita further argues that the development of Indonesian legal theory until now has produced a '*tripartite character of social and bureaucratic engineering*' which means the existence of a mixture of dynamic norm systems, behavioral systems and value systems sourced from Pancasila as the spirit of the ideology of state and nation of Indonesia.

Based on the legal theory perspective, the relationship that is relevant to the development of Indonesian society while building, is a combination of development legal theory with progressive legal theory which is strengthened by the application of integrative legal theory. The combination of the three legal theories is believed, firstly, to be able to prevent the development of foreign influence in the means of national law formation and its execution in the reality of society, and secondly, will be able to explore more deeply the social moral values of the Indonesian nation which will be used as material in the formation of law, both through the process of legislation and jurisprudence.

RESEARCH METHOD

This study adopts a normative legal research approach, which focuses on examining legal texts and norms as they are written in legislation or considered benchmarks in the functioning of a nation and state. The research also involves analyzing the presence of customary law community rights in the implementation of regional autonomy, utilizing various approaches such as statutory analysis, conceptual analysis, case analysis, historical analysis, and comparative analysis.

Through the statutory approach, the researcher gains an understanding of the degree of coherence among legal materials. These materials are then classified, systematized, and scrutinized, comparing them with legal theories and principles proposed by experts. The findings are subsequently analyzed from a normative perspective, leading to the formulation of arguments and offering prescriptions as potential solutions to the issues under examination.

RESULTS

Legal Concepts of the Rights of Natives under National and International Law

Legal concept of natives' rights in National Law

The country's founding fathers recognized the presence of numerous sociological groupings that set the foundation for the creation of the Indonesian nation from the very beginning of debating and preparing for Indonesia's independence. In light of this, the state created rules that recognized the Indonesian nation as consisting of Volksgemeenschappen (communities) and Zelfbesturende Landschappen (territories with self-government), as defined in the context of Article 18 of the 1945 Constitution.

The State maintains and promotes Indonesian national culture while maintaining the independence of communities to maintain and strengthen their cultural standards, as stated in Article 32 paragraph (1) of the 1945 Constitution. The adoption of Law No. 6/2014 on Villages, Law No. 23/2014 on Local Government, and other regulations,

which recognize the existence and significance of customary law community unity, strengthen this notion.

After the 1945 Constitution was amended, localities that practiced customary law grew more pronounced. Article 18 of the Constitution was amended to include Articles 18A and 18B with the second amendment in 2000, resulting in a full set of rules for Indonesia's communities with customary law. Two paragraphs of Article 18B are devoted to discussing the recognition of communities that use customary law. In accordance with legal requirements, paragraph (1) recognizes and respects peculiar or distinctive local administrative entities. In paragraph (2), it is emphasized that customary law community units and their traditional rights should be acknowledged and respected as for their existing presence and concur with societal advancement and the fundamental values of the State of the Republic of Indonesia, as established by law.

National legislation, such as Law Number 39 of 1999 on Human Rights, also addresses the rights of natives and the laws governing them. This law's Article 6 provides that to guarantee the safety of human rights, it is essential to acknowledge and safeguard the unique characteristics and requirements of natives through legal measures, societal support, and government actions. Next, the preservation of the cultural identity of customary law communities, including their rights to ancestral lands, is safeguarded and adapted to contemporary circumstances. Article 6 of Law No. 39/1999, which emphasizes the state's commitment to ensuring, defending, and upholding the rights of natives throughout several spheres of communal life, conspicuously reflects the notion of human rights. This entails taking into account natives' interests while maintaining regional autonomy.

Natives' rights under the provision of International Law.

The discourse on natives, in the view of experts, has always gone hand in hand with the history of modern colonialism around the 16th century. At that time, natives who inhabited the customary territories of each indigenous community were controlled and colonized by colonialists. Mention of natives is known by the following terms, among others: *indigenous, native,* or *oborigina*. The subject of international law according to Kantaatmadja (1984), means that: "Subjects of international law have immunity and privileges recognized by international law and have the ability to make international agreements with other states and international organizations'/other entities".

The international instruments that establish the freedom and autonomy of natives in the supervision of natural resources, which were first introduced after the African Charter, are stated below: first, the International Covenant on Civil and Political Rights refers to an international treaty that focuses on protecting individuals' civil and political liberties. Second, the International Covenant on Economic Social and Cultural Rights pertains to a global treaty that emphasizes the rights of individuals refer to the context of economic, social, and cultural. Third, sovereignty over Natural Resources, as stated in the United Nations General Assembly Resolution 1803 (VII) of 1962, discusses the principle of nations having control and authority over their natural resources. Fourth, the Charter on the Rights and Duties of States, outlined in the General Assembly Resolution of the United Nations, specifically Resolution 3281 (XXIX) of 1974, addresses the rights and responsibilities of sovereign states (Nasution et al., 1997).

In addition to the aforementioned global agreements, there are also regional agreements that deserve recognition. One example is the African Charter on Human and Peoples' Rights, specifically Article 21. These regional instruments have played a

crucial role in acknowledging and addressing the rights of natives, giving them a place in broader discussions.

On December 9, 1998, the United Nations General Assembly adopted Resolution 53/144, that outlines the rights and obligations of individuals, groups, and social institutions within nations and states. This resolution emphasizes the promotion, protection, and implementation of universally recognized human rights and true freedoms at both national and international scales. These rights and freedoms are accepted and endorsed by the international community of nations.

The Declaration on the Rights of Indigenous Peoples, adopted in 2007, reiterates the importance of safeguarding and advancing the rights of natives to their lands, territories, and natural resources. This principle is specifically emphasized in Article 8, paragraph (2), letter b.

The government is responsible for establishing efficient mechanisms that prevent and rectify any actions aimed at or resulting in the deprivation of natives' ownership and control over their lands, territories, and natural resources. This principle is further emphasized in Article 26: first, indigenous communities hold the entitlement to the lands, territories, and resources that they have historically owned, inhabited, utilized, or acquired. Second, indigenous communities have the right to possess, utilize, develop, and exercise control over the lands, territories, and resources that they hold due to traditional ownership, occupation, or use, as well as those they have acquired through other means. Third, states are obligated to grant legal acknowledgment and protection to these lands, territories, and resources. Such recognition should be carried out while duly respecting the customs, traditions, and land tenure systems of the respective indigenous communities.

The mentioned provisions underline the responsibility of states to ensure the legal acknowledgement and safeguarding of natives' lands, territories, and natural resources. This recognition should be conducted in a manner that demonstrates respect for the prevailing customs, traditions, and land tenure systems that have long been upheld by the respective indigenous communities (Alting, 2011; Terre, 2006).

Regulation of the Rights of Natives Can Be an Instrument of Engagement for the Implementation of Regional Autonomy

The construction of law that enshrines these rights as a national instrument is necessary due to Indonesia's acknowledgement and for the rights of Indigenous Peoples, which result from the nation's involvement in international and regional accords. In addition, Indonesia defines Pancasila as the primary source of all state laws since it adheres to the idea of a Pancasila Legal State, where harmony is greatly valued. Article 2 of Law Number 12 of 2011 Concerning the Formation of Legislation, as revised by Law Number 15 of 2019, which highlights the significance of recognizing Natives' rights within the national legal system, expressly states that this acknowledgment is made.

Various laws and regulations that deal with the recognition and defense of indigenous populations and their rights further clarify the Pancasila principles, which serve as the cornerstone for recognizing and respecting natives and their rights. Article 33(3) of the 1945 Constitution lays forth the legal justification for recognizing the customary law community and their rights to manage natural resources. The land, water, and

resources that available must be under governmental control and utilized for the greatest benefit of the people, states Article 33(3).

The aforementioned constitutional affirmation represents the values outlined in the Republic of Indonesia's 1945 Constitution, particularly the values of the Unitary State of the Republic of Indonesia (NKRI) and the defense of human rights. These ideas serve as the cornerstone for enacting regional autonomy, which calls for the participation of the community of customary law. According to Article 1, paragraph (1) of the 1945 Constitution, which established Indonesia as a Unitary State, regional autonomy is implemented in accordance with the promotion of the Unitary State of the Republic of Indonesia. Additionally, the concept of rights protection and fulfillment mandates that the state uphold equal rights for all Indonesian citizens, including those who live under customary law, and provide them complete control over their traditional regions (land, inland waters, and seas).

The Presence of the Natives' Right in the Application of Regional Autonomy

The application of local administrative has faced a variety of difficulties and changes during the course of the administrative history of the Republic of Indonesia, that are strongly related to the existing system of constitution at various points in time. Since the Republic of Indonesia was founded, the local government system has been implemented, and a number of laws and regulations have been passed to provide a framework for controlling local government activities.

Subsequent laws have been established to control the operation of local government in the Republic of Indonesia, beginning with the passage of Law Number 1 of 1945 on Regulations Regarding the Position of the Regional National Committee. These include Law Number 1 of 1957 on the Principles of Regional Government, Law Number 18 of 1965 on the Principles of Regional Government, Law Number 5 of 1974 on the Principles of Government in the Region, Law Number 22 of 1999 on Regional Government, Law Number 32 of 2004 on Regional Government, and finally, Law Number 23 of 1948 on the Stipulation of Primary Rules Regarding Self-Authority in Regions Entrusted to Adjust and Organize Their Own Households.

The aforementioned series of legislation serves as an example of how difficult and complex it is to establish local government under the Republic of Indonesia. The complexity is brought on by the need to handle a wide range of problems and worries that develop within the setting of the nation. As local governments work to strengthen institutional arrangements at all levels, from the village to the provincial level, they are reflecting the desire for decentralization in their development. This continuing procedure represents the ongoing work to improve local administrative and governmental organizations.

Every stage of local government legislation continues to be complicated by the power relationships and governance structures that must be established between the national and local governments. The interaction between province and regency/city governments, as well as between regency/city governments and the village governments under their authority, becomes a focal point for figuring out the best way to successfully control these concerns, especially at the lower level.

The post-reform period, which was marked by the implementation of Laws No. 22/1999 and 32/2004, which gave local governments the freedom to manage and watch over their own internal affairs while adhering to the principles of decentralization and

assistance tasks, is highlighted in the historical development of local governance (medebewind). Nevertheless, despite these developments, there are still several issues that limit the efficacy of regional government administration.

The organization and operation of regional government have undergone substantial modifications as a result of Law No. 23/2014, which superseded Law No. 32/2004. The split of regional government into separate components is another aspect of this change that will have an impact on how regional autonomy is implemented. Notably, Law No. 23/2014 is broken up into three independent laws: the laws governing villages, the rules governing regional head elections, and the laws governing regional governments. This underlines the fact that after being in force for around ten years, Law No. 32/2004 still retained a number of provisions relevant to regional government, creating a number of difficulties and problems.

Over various time periods, the number and rights of communities governed by customary law have fluctuated along with changes in regional authority. The alterations made by amending regional government legislation have also had an impact on communities that practiced customary law previous to Indonesian Republic's founding. Analyzing the presence of communities with customary law and their rights within the context of local government administration since the Republic of Indonesia'sindependence is thus crucial.

DISCUSSION

Legal Concepts of Natives' Rights in National and International Law

Legal Concept of Natives' Rights in National Law

Based on KBBI (Indonesian Dictionary), the word "existence" refers to a state of being or the presence of something. The idea of existence in terms of natives refers to their presence and ongoing existence as a separate community within a territory or nation.

There are roughly 250 zelfbesturendelandchappen (self-governing territories) and volksgemeenshappen inside the territory of Indonesia, according to the confirmation given in Article 18 Number II of the 1945 Constitution (community territories). The "desa" in Java and Bali, the *nagari* in West Sumatra, the "banua" in West Kalimantan, the *lembaga* in Toraja, the *negeri* in Maluku, the *dusun* and *marga* in Palembang, and so on are examples of these locations. These areas are regarded as exceptional regions and have their own distinctive organizational systems. Entire nation laws dealing to these special areas shall protect their inherent rights and characteristics. The Republic of Indonesia acknowledges and honors the unique status of these territories.

The 1945 Constitution's explanation in Article 18 Number II makes numerous important points that should be addressed. First off, it recognizes that there are many communal groups in Indonesia that have unique arrangements. Communities with their own self- governing structures, or zelfbesturende landschappen, are referred to as having a "original arrangement." The combination of zelfbesturende and landschappen, expressing the link between self-management and the area, indicates that this self- management is formed within a particular regional context (landschap). Second, all zelfbesturendelandschappen and volksgemeenschappen society groupings may be seen as distinctive areas. Based on historical use of names like "desa" in Java and Bali, *nagari* in West Sumatra, *banua* in West Kalimantan, *lembaga* in Toraja, *negeri* in Maluku, *dusun* and *marga* in Palembang, among others, these community groupings are recognized to possess extensive self-management systems. The existence of a judicial system, which includes customary courts (Inheemse rechtspraak), as defined in

Article 130 of the Indische Staatregerings (IS) and Article 3 of the Indische Staatsblad 1932 Number 80, as well as village courts, is a necessary component of full self- management (dorps rechtspraak). Thirdly, the justification places a strong emphasis on respecting communities that still adhere to their original patterns and features. Finally, it emphasizes how important it is to take recognized community groups' rights of origin into account. This suggests that the government should not ignore or intentionally try to remove the rights of origin of these communal groupings in national administration and growth.

The 1945 Constitutional Amendment made it plain that the commonality of customary law was acknowledged. Article 18 of the 1945 Constitution was changed in the second amendment of 2000 by the insertion of Articles 18A and 18B, leading to the present formulation of Articles 18, 18A, and 18B, which expressly addresses the arrangements relevant to the customary law community.

Article 18B of the 1945 Constitution expressly recognizes and respects local governing bodies that have special or exceptional qualities that are governed by law (paragraph 1). Additionally, it outlines the honor and acknowledgement of the Masyarakat Hukum Adat (customary law community) members and their custom rights, if the existence is present regarding societal development and the unitary state principles of the Republic of Indonesia, as outlined by law (paragraph 2).

The human rights aspect is evident in the wording of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, that outlines four juridical prerequisites for the acknowledgement and safety of the rights of the customary law community. These prerequisites are as follows: First, hypothetically, the legal criteria may be justified since it is difficult to provide legal status to a community of customary law that doesn't exist or isn't active in actuality. To recognize their social structure, culture, and identity, as well as their leadership institutions and the limits of their customary areas, the community that practices customary law must thus perform an inventory (*hak ulayat*). Second, further explanation and clarification are required since the phrase "In accordance with the evolution of society" is open to arbitrary interpretation by state authorities. This expression gives people the freedom to dismiss communities governed by customary law based on presumptions about their social, cultural, economic, or political activities that may not correspond to the idea of "community development."

Third, article 37 paragraph (5) of the 1945 Constitution's statement "In suitability to the concept of the State of the Republic of Indonesia" indicates that the Unitary State of the Republic of Indonesia's form cannot be altered. The connection between the State of the Republic of Indonesia and communities with customary law, or vice versa, and the relationship between communities and customary law in the Republic of Indonesia, has to be clarified in light of this clause. The nation's founding fathers took a clear and unwavering position on this necessity. Republic of Indonesia has acknowledged and honored Customary law communities to be regarded as unique territories, and as such, all state laws dealing to these regions should recognize and protect their rights oforigin.

Fourth, customary law communities are unable to fully take use of the possibilities afforded by Law Number 12 of 2011, which permits communities to participate in the creation of laws and regulations, since the word "regulated in the Act" limits their power to do so. Only two laws—Law No. 18 of 2001, which recognizes the distinctiveness of

Nangroe Aceh Darussalam Province, and Law No. 35 of 2008, which recognizes the distinctiveness of Papua and West Papua Provinces—currently expressly recognize communities under customary law and their rights. But it's important to remember that the rights of the natives' presence not just in these two provinces, but also in practically every province in Indonesia.

Legal Concept of Natives' Rights in International Law.

International legal frameworks within United Nations have established the basis of Natives' protection of their human rights. The United Nations Human Rights Council (UNHRC) has issued the United Nations Guiding Principles on Economic and Human Rights to address the presence of customary law communities and their rights in business activity (UNGP). These guiding principles act as tactical directives for businesses upholding human rights norms. The UNGP, which Ruggie (2007) wrote and which the UNHRC approved on June 16, 2011, adheres to the three foundations of the UN framework: secure, honor, and rectify the human rights.

Additionally important is the 2007 United Nations Declaration on the Rights of Natives. The preservation and promotion of Natives' rights over their area, territories, and natural resources are mentioned in Article 8, paragraph (2)(b). It claims that any activities intended to deny Natives possession and power over these resources should be prevented and compensated for by the State using efficient methods. Article 26 further emphasizes:

Native communities own the rights to the lands, territories, and resources that are historically possessed, occupied, utilized, or obtained through traditional means. They have the rights to hold, use, expand, and govern these lands, territories, and resources. It has been the responsibility of states to legally acknowledge and safeguard these lands, territories, and resources, while keep recognising the customs, traditions, and land tenure systems of the respective natives.

The aforementioned stipulations highlight the responsibility of member states to ensure the legal acknowledgment and safety of lands, territories, and natural resources. Apart from guaranteeing such recognition and protection, states must also apply effective measures to prevent the diversion or disposal of hazardous substances on natives' lands and territories without their complimentary and informed consent. Furthermore, nations are obligated to establish suitable programs to monitor, preserve, and restore the well-being of indigenous communities, when necessary, in order to safeguard their health. Then in the provisions of Article 30 emphasizes that:

The arms engagement within the lands or territories of natives is prohibited, except under permission of a legitimate public interest or is fully approved by natives themselves. Before utilizing indigenous lands or territories for military purposes, states are required to conduct meaningful consultations with the affected indigenous communities. These consultations should be carried out through appropriate procedures, and specifically involve the representative institutions of the indigenous peoples.

This provision underscores the states appointment to engage in meaningful consultations with Natives, especially via representative institutions, before using their lands and territories for the sake of military objectives. When it comes to the use of lands, territories, and natural resources owned by Natives, states are required to engage in genuine negotiations and cooperation. These negotiations will involve the

representative institutions of Natives and aim to achieve their independent, previous, and informed consent for any projects that may impact their lands, territories, and resources, specifically in terms of the expansion, usage, and exploration of minerals, water, and other resources.

Furthermore, nations are expected to establish effective procedures in providing fair and just compensation for any activities and to implement appropriate approaches to minimize environmental, economic, social, cultural, and spiritual harass. With regard to the UNGP, Prihandono (2016) expressed the view that it builds upon the pillars of protect, respect, and remedy. The first foundation concentrates on the nation's duty to encounter human rights violations committed by third parties, such as businesses, via corresponding policies. The second foundation pertains to the duty of corporations to honor human rights by exercising due diligence to prevent violations and disclosing the impacts of their measures. The third foundation emphasizes the need for accessible avenues for resolving issues faced by those who suffer corporate-related human rights mistreatment, in both judicial and non-judicial means (Prihandono, 2016).

These guiding principles are universally applicable and should be viewed as a cohesive and entangle entity. They encompass the objective of customary law communities in promoting standards and practices concerning business and human rights, with the aim of generating concrete outcomes for communities and individuals impacted by business activities, including customary law communities (Taqwaddin, 2010).

The regulation of the rights of natives can be an instrument of engagement for the implementation of regional autonomy.

As stated above, Titahelu in Kepala Badan Strategi Kebijakan Luar Negeri (2022) stated expressed his opinion that "natives are society that have social institutions, economic institutions, cultural institutions and political institutions for generations, and have laws that are manifested in the form of rules or norms that have been bound to their own values and outlook on life, and all appear to be special when compared to other communities in the country."

Signs or symbols can be used to see whether a community still uses customary law or not, including the following: first, there are normative rules, proverbial formulations, or unwritten legal principles. Second, there is regularity in putting these proverbial formulations into practice through the decisions of the customary chiefs in the local indigenous community (Dewan Adat decisions). Third, there is a recognized process or ritual in the resolution of a problem, particularly a dispute. Fourth, there is an imposition of sanctions or coercion on violators of normative rules. Fifth, there are specialized institutions in the social, economic, and political structures and systems that exist (Mertokusumo, 2003).

When viewed from the rule of law aspect, some of the arrangements for natives and their rights in legislation are still sectoral, which can be an obstacle in implementing full recognition and protection of the existence of natives and their rights (Bahar, 2005). Therefore, it will make natives have to negotiate the acknowledgement and safety of the presence of natives and their rights realisation in many regulations and to many state agencies. Regarding this, Mertokusumo (2003) argues that the regulation and formulation of sectoral and facultative legal norms in the practical context are only regulative in nature and the consequences can be deviated from or if implemented are only voluntary, because without sanctions which are a manifestation of the coercive

nature of the rules / norms of law. Even some formulations of legal norms that are regulated are only rhetorical (Mertokusumo, 2003).
The principle contained in Law No. 23/2014 is participation. This principle underlies the application of regional autonomy in Indonesia. In the application of regional autonomy, customary law communities can participate in various related development policies (Kaho, 2005). The study of natives and their rights is traditionally still very general, because basically the relationship between natives and their customary territories, natural resources, the environment that natives have controlled and protected since long ago, as well as the rights that have been recognized and obtained from generation to generation from the ancestors of natives based on gifts from God Almighty.

The recognition and acquisition of these rights is in fact an obligation to protect and manage them for the life of the customary law community. The relationship between customary law community and their customary territories, natural resources, and the environment that customary law community have owned, guarded and controlled, will become a 'right' when customary law community are in contact with other parties outside the customary law community alliance, either the community alliances that are not customary law community, entrepreneurs or investors, even with the government. When dealing with outsiders, investors and the government, the concept of 'right' becomes the rightful power over something or to claim something, or authority according to the law (*adat*) over something.

According to researchers, the "traditional rights" of natives, as stated in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, refer to inherent authority bestowed by God to the ancestors of natives and passed down to their descendants. These rights encompass the unfettered entitlement to own, utilize, manage, develop, and govern their Customary Territory, including the environment, natural resources such as land, coastlines, seas, and rivers. Additionally, indigenous peoples possess the right to conduct ritual activities aligned with their beliefs, which are typically performed at specific locations within their customary domain. The comprehensive set of traditional rights held by natives can be further categorized as follows: rights to Indigenous Territory, natural resource management rights, the rights to the collection of cultivations for traditional medicines, environmental Management Rights of Natives, the rights to perform ritual ceremonies, the rights to self-govern based on the customary law and institutions, right to Education Traditional culture and knowledge (local wisdom) including indigenous languages.

The presence of community rights in the application of regional autonomy
The presence of customary law communities and their corresponding rights has experienced fluctuations throughout different periods of regional governance. The status of customary law communities that existed prior to the establishment of the Republic of Indonesia has also been impacted by alterations in regional government legislation. Consequently, it becomes crucial to analyze the presence of customary law communities and the associated rights they have in the framework of local governance since nation’s independence.

Old Order Period
The authority and possession of land rights within customary law communities are described by van Vollenhoven as bescikkingrecht. In this context, customary law communities play a supervisory role in maintaining order and security in the utilization of customary rights. However, the evolution of land tenure patterns has shown a

decline due to political changes in land legislation that lack firm regulations and secure the rights of local natives.

Acknowledgement and honor for natives and their rights were hierarchically acknowledged during the Old Order government, evident from the Exposition of the 1945 Constitution and various regional legal provisions. The substantive rights of customary law communities encompass their rights to customary territories, customary rights, and other natural resources. In contrast, the intangible rights of natives encompass their rights associated with beliefs, traditional knowledge, customary law, and more.

New Order Period

The acknowledgement of natives and their rights during the New Order era was marked by legal uncertainties, contrasting with the more stable recognition during the Old Order period. The safety of natives and their rights significantly declined since the late Old Order period, starting from 1960, as the state increasingly prioritized the exploitation of natural resources. However, it should be acknowledged that the natural resources required for development are often located within the customary territories ofindigenous communities.

The New Order government implemented various laws and regulations to facilitate the state's development policies. Unfortunately, these policies often undermined, obstructed, restricted, or even revoked the traditional and historical rights of customary law communities without providing adequate compensation. In retrospect, it can be regarded as human rights violations when state policies result in the reduction, obstruction, limitation, or revocation of the traditional and historical rights of indigenous communities.

One notable example is an ambivalent stance of the Government reflected in Law No. 5/1960 towards customary law, natives, and their rights. On one hand, the law explicitly acknowledges that "customary law is the source of national agrarian law." However, on the other hand, the presence of natives and their rights, which are deeply rooted in socio-cultural contexts, are burdened with conditionalities that open avenues for their denial.

The Reformation Period

The successful application of regional autonomy relies on the active participation of community members. The core objective of regional autonomy is to achieve prosperity within the region. The responsibility for regional governance rests not only with the regional head, regional legislative body (DPRD), and implementing apparatus, but also with the local communities involved during the process.

The provision stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia establishes Indonesia as a state of law. This implies that the protection of natives and their rights in the Indonesian state, guided by Pancasila principles, can be explained through three foundations: philosophical, sociological, and juridical. Customary law communities are cultural assets of the Indonesian nation that require protection and recognition of their rights. Thus, the rights of natives should be acknowledged as an integral part of the rights of Indonesian citizens and as a component of human rights. The 1945 Constitution, specifically in Chapter XA, Articles 28A to 28J, obligates the State of the Republic of Indonesia to honor, secure, and fulfill the rights and freedoms of its citizens, including those of natives.

In relation to the fundamental provisions mandated by the 1945 Constitution of the Republic of Indonesia, the acknowledgement and protection of the presence of natives and their rights within the state of Indonesia is essential. The nation must guarantee protection and recognize natives and their rights as inseparable components of their existence and development. This acknowledgement and protection are crucial for promoting the dignity and self-worth of natives and for achieving a prosperous, just, and equitable Indonesian society, both materially and spiritually, in line with the ideals and national goals of the nation of Indonesian.

CONCLUSION

The primary duty of ensuring the inclusion of natives' rights within regional autonomy lies jointly with the nation as a whole. This responsibility primarily falls upon the state, which serves as the main international legal entity, based on the principles outlined in international human rights law and established global practices. The nation bears the obligation to uphold universally binding provisions of International Law and international customs, which are applicable to all communities and nations worldwide. This duty extends to the citizens residing in the state of the Republic of Indonesia, necessitating legal measures to be taken to prevent offensive of collective and cooperative human rights.

Moreover, the acknowledgment of natives and their rights within the framework of regional autonomy should encompass more than just the natural resources that constitute their living space. It should also encompass the symbolic and tangible sources of their livelihood. This recognition should extend to the organizational structure of local customary governance, operational mechanisms, regulations, as well as the various rights and obligations embedded within the institutional system of the local community. Without this comprehensive recognition, any recognition of natives and their rights would amount to mere political rhetoric. Furthermore, both theoretically and empirically, natives have been denied the opportunity to confirm their rights to natural resources and other traditional rights. Thus, advocating for the rights of natives goes beyond safeguarding their rights alone.

Furthermore, the process of protecting, involving, encouraging, and acknowledging the rights of natives in terms of regional autonomy should be established through regulatory measures and national legislation that align with both domestic and international laws pertaining to natives' rights and their fundamental freedoms. As such, the government, in its capacity as the state, has an obligation to engage in collaboration and consultations with indigenous peoples. Additionally, prior consent from natives, obtained freely, consciously, and voluntarily, must be sought for every government activity and program conducted within their customary territories. Moreover, it is essential that the positive outcomes of government initiatives and projects effectively benefit indigenous peoples, while also providing appropriate compensation for the utilization of their customary territories by the government. Government support plays a crucial role as a facilitator, coordinator, and policy-making body of the state.

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