

## **Indigenous Community-Based Forest Management: A Study about Status and Role of Customary Institution in Dayak Siang, Murung Jaya Regency, Central Borneo**

Sadiani<sup>1</sup>, I Nyoman Nurjaya<sup>2</sup>, Moch. Munir<sup>3</sup>, Suhariningsih<sup>4</sup>

Faculty of Law, Brawijaya University, Malang,  
INDONESIA.

### **ABSTRACT**

*Indigenous community-based forest management is one of local wisdoms applied by Dayak Siang tribe. The management reflects the respect shown by the community from generation to generation because their ancestors resided in the forest hill of Puruk Kambang. In the execution of its supervision, Puruk Kambang traditional forest is managed in three patterns of arrangement: first, the area from the foot of the forest to the surrounding area within a radius of 1.000 meters is cultivated for growing fruits; second, area stretching from the slope to the centre of the mountain is used for cultivating trees that have economical value, and at the same time function in preserving the natural spring of the forest for the benefit of the community; third, the area from the centre to the top of the mountain is specially allocated as the venue for customary rituals and worships. The management of the forest is based on philosophical value of *belom bahadat*. The status and the role of Dayak Siang traditional institution protects the interests of the indigenous community; in the absence of dispute, institution of customary law area does not interfere in the management of the traditional forest, and it is conducted entirely by the community residing in the areas surrounding the forest. In contrast, traditional institution plays its role in working on and solving the problem, shall it arise, until the time of deciding customary law.*

**Keywords:** Forest management, indigenous community

### **INTRODUCTION**

Regarding natural resources, it is mentioned in the preamble of the 1945 Constitution of the National Republic of Indonesia that it is the obligation of the nation to “protect the whole nation and the homeland of Indonesia” through the control and fair use of forest resources available in the country. It is then concretized in the 1945 Constitution of the Republic of Indonesia, Article 33 Clause (2), that “earth, water, air and natural resources within (the country) are under the control of the nation and are to be utilized solely for the prosperity of the citizen.” It means that the natural resources available are to be employed to bring the physical and spiritual well-being of Indonesian citizens that is just and covers the whole population.

The Decree of People’s Consultative Assembly (*Majelis Permusyawaratan Rakyat*) No. IX/MPR/2001 of the Renewal of Agricultural and Natural Resource, Article 1 states that the Decree of the Consultative Council regarding the Renewal of Agricultural and Natural Resource acts as the foundation of legislation related to the renewal of agriculture and the management of natural resources. Article 2 states that agriculture renewal covers a continuous process of reorganizing control, ownership, use and consumption of agrarian resources and is conducted in order to gain assurance and law security, as well as justice and

welfare for all of Indonesian citizens. In addition, Article 3 states that the management of natural resource contained on the land, the sea and the air is conducted in optimum, just, ceaseless and environmentally friendly ways. The emphasis placed on the decree in Article 4 points that the Nation organizes the management of agricultural and natural resources entirely for the sake of the people's well-being.

The IX/MRR/2001 Decree holds principles as mentioned in Article 6 that agriculture renewal and natural resource management should be carried on in accordance with other principles, such as item (f) to actualize justice in the control, use, consumption and maintenance of agrarian and natural resources; (g) to preserve the continuation (of resource) and to become able to ensure its maximum benefit for both today's and future generation, by keeping attention in the environmental capacity and support; (h) to lead the social and ecological function as well as the preservation according to social and cultural circumstances of the area; (i) to improve integrity and coordination among development sectors in performing the agriculture renewal and the management of natural resources, and (j) to acknowledge and respect the rights of indigenous community and cultural diversity of the nation for agricultural and natural resources.

An interesting phenomenon of forest management has been applied by people in the hinterland of Central Borneo from a long time ago up to the present. They have preserved Puruk Kambang indigenous forest from hundreds years ago in Tanah Siang Selatan Subdistrict, Murung Raya Regency of Central Borneo. In 1985, the traditional forest was in the work contract between the Indonesian government and Indo Muro Kencana, Inc. However, even until the research is conducted, both the management and the supervision of the forest are still under the control of indigenous community. The primary reason of why Puruk Kambang forest is still under the management and care of Dayak community is because the population believes that the traditional forest was the place where *Hatala Langit* (God) descended their ancestor, *Putri Sikan*. It is believed that she lived on the mountain, got married, and raised her offspring who scattered to various places in Central Borneo.

Soon after Indo Muro Kencana, Inc. acquired the work contract to operate mining activity in the area of Dayak community, there was community movement led by forest experts who, through *Pulo Basan* association, filed a letter dated 27<sup>th</sup> September 1993 showing Dayak tribe response about the circumstance. The letter was addressed to the Regent of Barito Utara in Muara Teweh, to the Chairman of Regional House of Representative of Barito Utara Regency in Muara Teweh, to the Head of Tanah Siang Sub-district in Saripoi and to the Director of Indo Muro Kencana in Camp. Konut. They stated in the letter:

“...Puruk Kambang traditional forest is a sacred place for Dayak Siang Murung community, because we believe that the place is where Dayak tribe ancestor, *Putri Sikan*, started her life in the world after she was descended from the heaven by *Hataala Langit*. Therefore, the forest area is highly respected. ... prohibiting community who owns the land at the top, the slope and around *Puruk Kambang* (Kambang Mountain) within a radius of 1.000 meters from the mountain foot from giving its rights to any party and in any form. For Indo Muro Kencana, Inc. who set the mining project to annul the mining, to not take anything or make good use of anything of the top, the slope and the area surrounding Puruk Kambang. Those who neglects the above command will be sentenced to customary sanction...”

The practices applied by the community in the forest management are: *first*, the area from the foot of the forest to the surrounding area within a radius of 1.000 meters is cultivated for paddy, vegetables and fruits; *second*, area stretching from the slope to the centre of the mountain is used for rubber tree plantations; *third*, the area from the centre to the top of the

mountain is considered as the sacred spot to pray and do some rituals. Such forest management lasts from one generation to the next generation within Dayak Siang tribe, and they are willing to sacrifice their life to maintain the existence of the forest so that it will not be destructed and annihilated because of excessive exploitation.

The management of traditional forest conducted by Dayak tribe in Tanah Siang Sub-district, Murung Raya Regency reflects that folk's law is more vital and efficient than Forestry Acts as a state law in traditional community. With careful examination, it can be seen that Dayak tribe in Central Borneo is a part of custom community that has its own philosophical values about life, as so many other tribes in Indonesia and around the world do. Philosophical values of Dayak people in Central Borneo is expressed with philosophical expression "*belom bahadat*" (be civilized). The philosophy of "*belom bahadat*" for the tribe means that in their lives people should *belom bahadat* towards God, towards each other and towards natural environment.

In the context of managing traditional forest that has magical and religious values, Dayak Siang community ceaselessly manages the forest for generations with their local wisdom. This attitude arises due to the fact that land and forest are life resources given by *Hataala Langit* (God) for the well-being of the people who live in the area. Thus, it is important to maintain and preserve the existence of the forest by planting fruit and rubber plants, as well as other plants that have economic value to support the people's lives. Referring to the aforementioned concept and reality, forest is of an important element of community life and cannot be detached therefrom. As the result, it is not an exaggeration that the existence of tradition forest becomes a highlight in Dayak community, and that the forest needs protection since the mission of forest management is to preserve the environment by conserving the forest.

Addressing the issue of natural resources, Dadang states that government should hold land and natural resources matter as one of strategic issues that needs to be prioritized. In addition, government should give ways for valuation, protection and fulfillment of the rights of indigenous community over natural resources that have been neglected, and set the action in accordance with the amendment of Article 18B Clause (2) of 1945 Constitution saying that the Nation acknowledges and respects indigenous communities and traditional institutions including their traditional rights provided that they still exist and are in accordance with community development as well as with the principle of the Republic of Indonesia as regulated in the constitution. It is relevant with the statement of President Susilo Bambang Yudhoyono addressed during the commemoration of Indigenous Community International Day in Taman Mini Indonesia Indah in Jakarta, on Wednesday, 9<sup>th</sup> August 2006:

"...the existence of indigenous communities should be acknowledged, respected as long as they still do exist. Moreover, they should be organized in much better ways. For the purpose of organization, bill regarding Constitutional Rights of Indigenous community is needed. It is crucial for the bill to bear strategic value so that it gives clarification for all parties and plays a role in law establishment in Indonesia. It is hoped that the bill is decreed in the near future. Acknowledgement and respect need to be measured with community development and principles of Unitary State of the Republic of Indonesia. It is also must be regulated by the Acts to ensure the clarity of every aspect related to the issue. It is the Acts that shall regulate any rights of indigenous community. However, the consummation of the rights should still hold on to the principle of the nation. It does not mean that everything should be in uniformity; instead, every party should acknowledge diversity and dissimilarity, and set priority towards the interest of the nation. It is unfortunate that diversity was exaggerated during colonial domination to create conflict

and tension. Even in the political history of Indonesia, the concept of unitary state was interpreted as uniformity in almost all aspects. It will be better to take moderate and precise steps. Indigenous community should be acknowledged and respected as long as its existence, and should be developed in order to strengthen the unity and integrity of the nation.”

The picture of such forest management is merely a small part of so many local wisdom practices possessed by Dayak indigenous community in Central Borneo. When one value of the wisdoms is violated, the offender has transgressed customary law, and the case must be settled by customary local institution in Dayak community. To conserve the values embedded in Dayak community, Provincial Government of Central Borneo deals with the issue by putting into effect the Provincial Regulation of Central Borneo No. 16, 2008 about Dayak Traditional Institution in Central Borneo. The enactment of the regional regulation is based on several considerations. One of them is related to the fact that customary law institutions exist, grow and develop, and play an important role in the life and the existence of Dayak indigenous community. As the existence of these institutions is a part of national commitment to Unity in Diversity principle, it needs to be preserved, developed and empowered by delegating them some authority, responsibilities, functions and roles. They also need to be supported and assisted so that they might function to meet the demand and the need of autonomous region within the frame of the Unitary State of Indonesia. Following up the regional regulation authorized by the government of Central Borneo province, regulation No 13, 2009 about customary land and customary rights over land in Central Borneo Province was issued by the Governor.

Both the provincial and governor regulations are positive measures and legal defense accommodating local wisdom of Dayak tribe for a continuous preservation of the customs. However, the realization of the regulation has to face systemic obstacle, such as power struggle among authoritative individuals, institution and investor who holds the mining work contract (Indo Muro Kencana, Inc.).

Based on the background elaborated in previous paragraphs, the problems of the research are formulated in the form of the following questions: How does the indigenous community in Dayak Siang manage the traditional forest of Puruk Kambang which is in the work contract of Indo Muro Kencana, Inc.?; What is the status and the role of customary law institution in protecting the interest of Dayak Siang community who manage the traditional forest of Puruk Kambang?; How should legal construction be made in the future regarding the state and role of customary law institution of Dayak tribe in providing protection and law assurance for the community?

### **STATUS AND ROLE OF CUSTOMARY INSTITUTION IN DAYAK SIANG, MURUNG JAYA REGENCY, CENTRAL BORNEO**

The result of the research discusses the future legal construction related to the status and role of Dayak customary institution in providing protection and legal assurance towards the community attending the forest. Regarding the fact that Dayak Siang indigenous community has gained control over and has administered Puruk Kambang forest because of its direct spiritual bond with Dayak Siang community, therefore the management and its utilization should be based on the philosophical value of *belom bahadat* that is practiced in three patterns of the management. However, the implementation of state power that makes the work contract with Indo Muro kencana, Inc. in order to analyse utilize the natural resources causes major effect on ecology, social and customary legal reaction as the foundation of local wisdom preserved for generations as “living law”. This happens because traditional forest is a

part of indigenous community. It is true that customary law is legally acknowledged, but it is not clearly mentioned about regulation of the community rights over land and the forest. This gives impression to the community that there is no justice and legal assurance for them. Even though they have potentially contributed to forest management, in particular cases there are still many of them who, in fact, lost their rights over the forest and natural resources supporting their lives. To make it worse, in addition to their loss of means of livelihood, they are also imprisoned for collecting the products of the forest they have managed.

Therefore, when a crime befalls to indigenous community because government interest is put first before the local community interest, the identity of the community reflected in a local wisdom through its “customary laws” will become worthless and has no power against the state authority.

With the fact of what happens in the area of Puruk Kambang indigenous forest that is controlled for generations by Dayak Siang community, the forest existence should be acknowledged, respected and protected. The Decree of the Constitutional Court No. 35/PUU-X/2012 affirms the issue by stating that the existence of indigenous forest in its integration of a particular region is the consequence of acknowledgement about customary law as a “living law”. It is supported further by the Decree of the Court No.: 3/PUU-VIII/2010 dated 6<sup>th</sup> June 2011, saying that the Constitutional Court has given its avowal of the indigenous community unit. Consideration is also put into Article 33 Clause (3) of 1945 Constitution stating that land, water, and the natural resources therein are under the control of the nation. With the addition of “are to be utilized solely for the prosperity of the citizen” clause, the Article ensures that the prosperity of the citizen becomes the primal measure for the country to determine the administration, organization, and management of land, water and the other natural resources. The control of the state towards these resources should also give attention on the existing rights, be it individual or collective rights.

The research finds concept recommendation as the form of finding of the study as follows: *“Indigenous Forest Management Established on the Unity in Diversity Paradigm”* needs to be elaborated into *“Indigenous Forest Management”* by the control of the state, especially in the act of planning, forming, and carrying out the regulation. The citizens consisting of individuals from different ethnics and backgrounds with religious, custom and tradition diversity had existed long before the Republic Indonesia was born. Nonetheless, their existence and traditional rights should also be acknowledged and respected as constitutional rights, especially after the amendment of 1945 Constitution. It is important and fundamental to regard indigenous communities as legal subjects, because according to the Constitution, they have been acknowledged as “right bearer”. Consequently, responsibilities are given to them related to forest management within reach of their territory.

Starting out from Article 18B Clause (2) of 1945 Constitution saying that *“The nation acknowledges and respects indigenous communities including their traditional rights provided that they still exist and are in accordance with community development as well as with the principle of the Republic of Indonesia as regulated in the constitution,”* affirmation on its interpretation is given through the Decree of the Constitutional Court asserting articulately that indigenous communities are legal subjects, and since they are constitutionally recognized and valued as “right bearers”, they can be given some responsibilities. Regarding the indigenous forest management, there needs to be a more elaborate interpretation about the law. It is that the indigenous community must receive recognition as the executor of a legal system which includes therein community sub-system, customary law sub-system, system of indigenous community rights and sub-system of customary law institution, because

empirically the customary law sub-system will function in guarding indigenous community, including their rights.

Bearing in mind about the importance of the status of customary institution in defending customary laws, community and its rights, the avowal of “customary institution” should be formulated in a clear, firm and eloquent way in a constitution that serves as a solid unit attached to the idea of “customary community”. It is suggested for an amendment to be made on Article 18B Clause (2) of 1945 Constitution so that it reads: *“The nation acknowledges and respects indigenous communities and **traditional institutions** including their traditional rights provided that they still exist and are in accordance with community development as well as with the principle of the Republic of Indonesia as regulated in the constitution.”* For further clarification, notions on the concept of customary institution, its responsibility and authority in enforcing customary laws in a community should be included in the Article. Customary institution is to be featured in the fifth amendment of the 1945 Constitution regarding “Indigenous Forest Management Established on the Unity in Diversity Paradigm”, which is a prominent breakthrough in accommodating local wisdom to put state system in order. Consequently, every act related to the operation of Article 18B Clause (2) of the 1945 Constitution should be adjusted to the foundation of the constitution.

## CONCLUSION

The management of indigenous forest of Puruk Kambang performed by Dayak Siang community covers three divisions of the area; first, the area from the foot of the hill to the surrounding area within a radius of 1.000 meters cultivated for growing seasonal plants and fruits; second, area from the slope to the centre of the mountain used for planting trees that have economical value, and at the same time function in preserving the natural spring of the forest; third, the area from the centre to the top of the mountain specially allocated as the venue for customary rituals. The management is founded on *belom bahadat* philosophy.

The status and role of Dayak Siang customary institution in protecting public interest of caretakers of Puruk Kambang forest is as follows: customary institution does not interfere in managing the forest when there is no dispute to be concerned about. At such a time, the organization of the area is conducted wholly by and for the benefits of the community living in the area. However, shall a dispute arises, the institution plays its role in processing and solving the problem until the time of sentencing the law.

Future legal construction related with the management of indigenous forest conducted by indigenous community will be as follows: in light of humanism consideration and implementation of the Decree of Constitutional Court No. 35/PUU-X/2012, the status of indigenous forests organized by indigenous communities all over Indonesia should be considered as ones protected by the nation. To acquire the protection and legal assurance, Article 18B Clause (2) of the 1945 Constitution that reads,

*“The nation acknowledges and respects indigenous communities including their traditional rights provided that they still exist and are in accordance with community development as well as with the principle of the Republic of Indonesia as regulated in the constitution,”* must be amended so it reads,

*“The nation acknowledges and respects indigenous communities and **traditional institutions** including their traditional rights provided that they still exist and are in accordance with community development as well as with the principle of the Republic of Indonesia as regulated in the constitution.”*

## ACKNOWLEDGEMENTS

This article is dedicated to civitas academica of Brawijaya University. They have already contributed significantly to this article.

## REFERENCES

- [1] Parlindungan, A. P. (1978). *Berbagai Aspek Pelaksanaan U.U.P.A.* Bandung: Alumni.
- [2] Trisasongko, D. (2004). “*Penataan Pertanahan dan Kekayaan Alam Harus Diprioritaskan*”. Dalam Tanah Masih di Langit: Penyelesaian Masalah Tanah Penguasaan Tanah dan Kekayaan Alam di Indonesia Yang Tak Kunjung Tunas di Era Reformasi”. Cooperative Program between Kemala Institution with *The Ford Foundation*, Jakarta.
- [3] Hatta, H. M. (2005). *Hukum Tanah Nasional dalam Perspektif Negara Kesatuan.* (First Publication). Yogyakarta: Media Abadi.
- [4] Hazairin, (1970). *Demokrasi Pancasila.* Jakarta: Tinta Mas.
- [5] Hadikusumma, H. (1992). *Pengantar Hukum Adat Indonesia.* (First Publication). Bandung: Mandar Maju.
- [6] Koentjaningrat, (1981). *Beberapa Pokok Antropologi Sosial* (Fifth Publication). Jakarta: Dian Rakyat.
- [7] Friedmann, W. (1996). *Teori dan Filsafat Hukum, Telaah Kritis atas Teori-teori Hukum*, Volume 2, Translated by Mohammad Arifin from *Legal Theory*. Jakarta: Raja Grafindo Persada.
- [8] Republic of Indonesia. The 1945 Constitution.
- [9] Decree of People’s Consultative Assembly No. IX/MPR/2001, of the Renewal of Agricultural and Natural Resource.

## LEGISLATION

- [10] The Acts No. 41, 1999 of Forestry.
- [11] Decree of Government No. 6, 2007 about Forest Structure and Plan Arrangement for Forest Management.
- [12] Decree of the Ministry of Forestry No. 32/Kpts-II/2001 about Criteria and Standards of Avouchment for Forest Area.
- [13] Provincial Regulation of Central Borneo No. 16, 2008 about Dayak Traditional Institution in Central Borneo.
- [14] Governor Regulation of Central Borneo Province No. 13, 2009 about Customary Land and Customary Rights Over Land in Central Borneo.
- [15] Work Contract of the Government of the Republic of Indonesia, No.: B-07/Pres/1/1985 dated 21 January 1985., Agreement on Work Contract signed by the President of the Republic of Indonesia, Soeharto.
- [16] Decree of Tanah Siang Selatan District about Customary Fine *Kouh Dusa Muntan Tana Pali* and *Kouh Dusa Nyongkoha* to Indo Muro Kencana, Inc./Straits. Puruk Cahu, dated 16 July 2010.

- [17] Kalteng Post, Monday 15<sup>th</sup> October 2012, page 16, *Warga Masih Bergantung Hasil Hutan*.
- [18] Kalteng Post, Indo Muro kencana, Inc. is demanded to bear responsibility for the pollution happening to Manawing and Muro rivers.
- [19] Kalteng Post, 3<sup>rd</sup> July 2013 Stop IMK, Inc, Governor forbids Company and people from entering Puruk Kambang site.
- [20] Kalteng Post, Thursday 4<sup>th</sup> July 2013, No Partial Solution, Dispute at Indo Muro kencana, Inc. Inclines to Burst in Kalteng.