

Protection of Legal Rights of Ulayat Peoples in Sumba Timur District, Indonesia.

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ABSTRACT--*Customary rights are rights owned by indigenous peoples in Indonesia, such as adat land, adat customs, rituals, culture, adat order and life values to respect their environment which arises based on inner and outer relationships. Indonesian legislation has provided protection for indigenous rights and all the traditional rights of indigenous and adat peoples, but the reality is that in East Sumba district, that the regional government does not provide maximum protection for indigenous rights. The existence of Indigenous Rights in East Sumba Regency still exists and is preserved by the adat law community, by utilizing Indigenous land for the people's living needs and carrying out the Marapu beliefs that are still hereditary. Legal protection for indigenous rights is still far from the mandate of Article 18 B of the 1945 Constitution, and other laws and regulations, because regional regulations actually limit their existence. Constraints in the legal protection of customary rights are the existence of customary rights not accompanied by ownership of customary land rights certificates.*

Keywords: *legal protection, indigenous rights, customary law communities*

I. INTRODUCTION

The existence of Indigenous rights, especially customary land, still exists in almost all regions of Indonesia, because the customary rights are inherent in the cultural values of the community, and a place to perform traditional rituals, as a place to make a living, so that arises from outward and inner relations from generation to generation and uninterrupted between the adat law community and the indigenous land as the area of adat rights. Recognition in the Indonesian State Constitution also expressly states it, namely in Article 18 B paragraph (2) of the 1945 Constitution the Amendment states:

The state recognizes and respects the adat law community units and their traditional rights

The mandate of Article 18 B paragraph (2) becomes the basis for the regulation of the legislation underneath in the recognition and respect for the adat law community units and their traditional rights that still exist in Indonesia.

The unity of adat peoples includes cultural identity and traditional rights respected in line with the development of time and civilization.

Indonesian regulations recognize and protect the existence of indigenous rights in line with the recognition of international provisions. The recognition was stated in the United Nations Declaration on the Rights of Indigenous Peoples which was endorsed by the General Assembly of the United Nations in its 61st session at the United Nations Headquarters in New York on Thursday, September 13, 2007, with 144 countries supporting , 4 opposed and 11 abstained.

Protection of indigenous rights under international law is regulated in the United Nations Declarations on The Rights of Indigenous Peoples. One of the court decisions generally stated that:

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples.

Legal protection becomes an important factor, bearing in mind that customary rights are increasingly eroded by economic factors and interests in the name of the interests of the people and the State. The regulation of indigenous rights in the laws and regulations in Indonesia also contains a contradiction and until it is decided by the Constitutional Court decision.

The international community also recognizes the existence of indigenous rights as the rights of indigenous peoples, namely in the Declaration of the United Nations Declarations on The Rights of Indigenous Peoples which emphasizes the protection and respect for the rights of adat peoples based on equal rights with other citizens, both in politics, economy, social structure, community culture, values and practices of traditional customs. Adat peoples have rights to land or territories and resources by using, developing and controlling them for the lives of indigenous peoples.

The state will provide legal recognition and protection of these lands or territories and resources along with all matters inherent in the customs, traditions and land tenure systems of the adat peoples concerned. This includes compensation for land, territories and resources that were

confiscated, controlled and used or destroyed without the consent of adat peoples.

Protection of indigenous rights in its implementation is still very ambiguous, and one of the areas where the existence indigenousland still exists but does not receive legal protection should be the customary rights of indigenous peoples in East Sumba Regency.

This confusion is based on the situation that the indigenous community's adat land rights in the East Sumba Regency have been transferred to many functions without the permission of the adat people and without giving up as a process of relinquishing rights. The transfer of title to the communal land was carried out without the knowledge of the customary law community in East Sumba Regency.

It also becomes unclear the existence of indigenous land in East Sumba Regency, due to the existence of the East Nusa Tenggara Province Regulation No. 8/1974 concerning the Implementation of the Affirmation of Land Rights, Article 2 paragraph (1) states that land formerly controlled by adat peoples or tribal lands, his control is under the authority of the regional government. This provision emphasizes the lack of legal protection of indigenous rights.

One comparison in this study is research in Manggarai Regency, East Nusa Tenggara. The Manggarai Regency Government took actions that did not recognize and provide legal protection for indigenous rights to adat community land in Colol Village, Poco RanakaTimur District, East Manggarai Regency (before unfoldment).[1]

Many indigenousrights have disappeared, although some still survive and are retained by indigenous peoples. The importance and high economic value of land causes the transfer of adat land rights not through the applicable procedures. Protection of the existence of adat peoples and the rights attached to it is the responsibility of the state to protect, both in the legislation and in the realities of the lives of adat peoples.

II. RESEARCH METHOD

The research method used in this study is based on an empirical juridical approach method, emphasizing the mutual aspects of law and empirical institutions in examining the rules that apply in society. The research specifications are analytical descriptive. Descriptive analytic itself has the meaning of a method of processing data into something that can be expressed clearly and precisely with the aim that it can be understood by people who do not directly experience it themselves.[2]

Sources of research data are primary data and secondary data, with data collection methods through interviews and document studies. The collected data is then analyzed descriptively

qualitatively, that is, after the data collected is then outlined in the form of a logical and systematic description, to obtain clarity of problem solving, and then deductively drawn conclusions, namely from general matters to specific matters

III. FINDINGS AND DISCUSSION

1. Customary Rights Arrangement In Indonesia

The regulation of indigenousrights in Indonesia starts from the Preamble of the 1945 Constitution which says: "protect the whole nation and spill over the blood of Indonesia..." which then forms the basis of the formulation of Article 33 paragraph (3) of the 1945 Constitution which forms the basis for Article 18 B paragraph (2) of the Law The 1945 Constitution Amendments regarding the recognition of indigenousrights and mandating the state so that the use of the earth (land), water and natural resources contained therein shall be used to create prosperity for the people of Indonesia. This has become the basis for all laws and regulations governing land, water and all natural resources in Indonesia.

The regulation of indigenousrights in Article 3 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (herein after referred to as the Basic Agrarian Law), confirms that the implementation of indigenous rights and the implementation of such rights from the legal communities adat, as long as in reality it still exists, must be such that it is in accordance with national interests and does not conflict with statutory regulations.

The definition of indigenous rights, indigenousland and adat law communities is regulated in Article 1 number 1, 2 and 3 of the Regulation of the Minister of Agrarian Number 5 of 1999 concerning Guidelines for Settlement of Customary Rights of the Customary Law Community (herein after abbreviated to Regulation of the Minister of Agraria Number 5 of 1999). Article 1 number 1 Regulation of the Minister of Agrarian Number 5 of 1999 states:

Indigenousand similar rights from customary law communities (hereinafter referred to as indigenous rights) are the authority according to adat law owned by certain adat law communities over certain areas which are the environment of their citizens to take advantage of natural resources.

The intended benefit is to use land, in the area of customary rights for the survival and life of community members, has an outward and inward relationship between generations and the uninterrupted relationship between the adat community and the customary land area. The land in question is the land on which there are customary rights (Article 1 number 2 of the

Regulation of the Minister of Agrarian Number 5 of 1999) and the adat law community is a group of people who are bound by the adat law order as joint citizens of a partnership. The basis of an alliance is equality of residence or on the basis of descent (Article 1 number 3 Regulation of the Minister of Agrarian Number 5 of 1999).

The existence of indigenous rights is based on:

- a. The existence of a group of people who are still bound by the legal order in a legal enumeration, and apply it in their daily lives;
- b. The existence of indigenousland which is the environment of the citizens of the legal alliance;
- c. The existence of the legal order regarding the management, control and use of adat land that is applicable and obeyed by the members of the legal community.

The determination and research on customary rights is regulated in Article 5 of the Minister of Agrarian Regulation No. 5 of 1999 which confirms that:

- a. Done by the Regional Government by involving adat law experts, adat law communities, Non-Governmental Organizations and agencies that manage natural resources.
- b. The existence of the adat community's remaining indigenous land is stated in the basic map of land registration by affixing a cartographic mark and, if possible, delineating its boundaries to record it in the land register.

Maria S.W. Sumardjono [3] emphasized that technically juridical, customary rights are inherent rights as a specific competency in the adat law community, in the form of authority to manage and regulate the land and its contents, with the ability to act in and out of the adat law community. These special characteristics, such as non-transferability, make indigenous rights a special right.

The definition of indigenous and tribal peoples is mentioned in Article 1 number 1 of the Minister of Domestic Regulation Number 52 of 2014 concerning Guidelines for Recognition and Protection of Indigenous and Tribal Peoples (hereinafter abbreviated to the Minister of Domestic on Recognition and Protection of adat and Tribal Peoples), namely:

Adat Law Community is an Indonesian citizen who has specific characteristics, lives in harmony in accordance with traditional law, has ties to ancestral origins and/or similarities of dwellings, there is a strong relationship with land and the environment, as well as a value system that determines economic institutions, politics, social,

culture, law and utilize one particular area for generations.

Recognition and protection as referred to in Article 4 are carried out through stages:

- a. Identification of the Adat Law Community;
- b. Verification and validation of the Adat Law Community; and
- c. Establishing adat law communities.

Article 5 confirms that the identification of adat law communities is carried out by the Regent/Mayor through the Sub District Head, based on:

- a. History of the adatlaw society;
- b. Adat territories;
- c. Adat law;
- d. Property and/or adat objects; and
- e. Adat government institutions/systems.

The results of the identification are verified and validated by the district /city Adat Law Community Committee, and then announced to the adat Law Community within 1 (one) month and this recommendation is determined by Decree of the Regional Head (Article 6).

Regional Government has a large and important role in determining and recognizing customary rights, as confirmed in Minister of Agrarian Regulation No. 5 of 1999 and Minister of Domestic Regulations No. 52/2014 which regulates new forms of the determination of adat peoples through Regional Head Decrees and/or Joint Regional Head Decrees. The content of the regulatory material in Minister of Domestic Regulations No. 52/2014 is still being debated in terms of the content of the regulation and its potential to contradict Law No. 23/2014 concerning Regional Government and Law No. 15/2019 concerning Amendments to Law Number 12/2011 concerning the Formation of Laws and Regulations, because: First, the legislation governing the determination of adat law communities and Constitutional Court Decision No.35/PUU-X/2012 do not recognize the type of determination of indigenous peoples in the form of Regional Head decisions. Secondly, the Joint Decree of the Regional Head is not known as a type of statutory regulation in the Law on the Formation of Laws and Regulations.

Legal protection becomes an important factor, bearing in mind that indigenousrights are increasingly eroded by economic factors and interests in the name of the interests of the people and the State. Indigenous rights are also human rights because they contain the cultural identity of customary law communities protected by law in accordance with the times of Article 6 of Law Number 39/1999 concerning Human Rights).

2. Adat Law Community and Indigenous Rights Protection

Adat law communities are also referred to as "traditional communities" or the indigenous people, in daily life more often and more popularly referred to as "adat peoples". Some legal experts distinguish the term adatlaw peoples from adat peoples. The difference is that there are those who see that "adat law society" is a translation of the term adat rechts gemeenschap, while "legal society" is the translation of the word adat people.[4]

According to the Regulation of the Minister of Domestic Number 52/2014 concerning Guidelines and Protection of Adat Law Communities in article 1 paragraph (1), what is meant by:

Adat law peoples are Indonesian citizens who have distinctive characteristics, live in groups in harmony in accordance with their adat law, have ties to their ancestral origins and/or similarity in dwellings, there is a strong relationship with land and the environment, and a value system that determines economic institutions, politics, social, culture, law and utilize one particular area for generations.

Theoretically, the understanding of the legal community and the adat law community are different, according to Kusuma Pujosewojo[5], the legal community as a society that is settled, bound, and subject to its own legal system.

Adat law community is a community that arises spontaneously in a certain area, the establishment of which is not established or ordered by a higher authority or other authority, with a great sense of solidarity among members of the community as outsiders and using their territory as a source of wealth can only be utilized entirely by its members.

The legal community is determined by a higher authority or other authority to be bound and subject to the legal products that are made while the adat law community is not ordered by certain authorities, but in the form of deliberation among members of the community so that together in making their own legal products to regulate the order of life of the people.

The definition of adat law community according to terHaar[6] was formulated as follows. "Adat law community is a human unity as a unit, settled in a certain area, has authorities, has tangible or intangible wealth, where members of each unit experience life in society, is a nature and none of the members it has the mind or tendency to wish to dissolve the growing bond or leave in the sense of breaking away from that bond forever.

The holistic, communalistic, and transcendental nature of adat peoples is clearly depicted clearly described by Sudyat, et al as the special features that distinguish adat peoples from law communities in general, as follows:[7]

- a. The adat community authority decides whether an act is a legal act or decides on a dispute that occurs between its members according to adat law, according to the custom that the group considers appropriate or appropriate.
- b. Certain individuals or individuals in a adat community commit an act and all adat peoples will benefit or suffer losses,
- c. In the adat law community there are objects, land, water, plants, temples, and buildings that must be maintained and maintained together, maintained together with cleanliness from supernatural powers.
- d. Only members of the community concerned can benefit from objects, land, water, plants, temples, and other buildings, which they maintain and maintain together, are kept clean with supernatural forces.
- e. The existence of a adat law community that is felt by members as a natural necessity, a juridical meta reality, so that such a adat law community is not possible to be established or held by a higher agency, formalized or formed and disbanded by outsiders, held by law laws or other regulations, especially by foreign institutions, and so on: adat peoples arise spontaneously.
- f. In the adat law community there will not be a thought about the possibility of dissolving the adat community.
- g. If an outsider (not a member of an adat community) wants to enjoy the results of goods (land and so on) from the adat community, he gives something to the adat community as a sign of outsider recognition of the rights of the adat community.
- h. In the adat community there is a community structure which is the characteristics of the community, namely: that within the community there are layers consisting of several people or small groups that have priority, strength or authority (voorrang, overwicht of gezag) to members other members.
- i. Adat people are found in the lower layers of Indonesian society.

Based on some of the above understanding, it can be concluded that adat peoples are formed based on a joint decision to submit themselves to the legal products made, and the continuation of the formation of adat peoples is everlasting, so that none of the people from outside who enjoy the use of the results of goods or land owned by the adat people. This explanation means that the land, water, and wealth contained in the land of adat peoples can only be enjoyed by the adat peoples to achieve the welfare of these communities.

According to terHaar[8], there are strict customary rights boundaries, namely as a result of the meeting between legal alliance with other alliances and vague boundaries, namely in the form of vast vacant land. Including vast lands which are controlled by customary rights are rivers, lakes, long sea lanes, while the plants in question are plants or plants that grow wild (fruit trees, wood trees for carpentry or firewood, etc). Animals are wild animals that live freely in the forest. Customary rights along with everything that is in it requires legal protection through clear regulations specifically regulating the rights and obligations contained therein.

Legal protection is all efforts made consciously by every person and government agency, private sector that aims to strive for security, control and fulfillment of welfare in accordance with existing human rights as regulated in Law number 39 of 1999 concerning Human Rights Human.

Customary rights are the rights of the legal community to control land in their territory, have the authority and power to regulate and utilize their use or management for the benefit of the legal community, have a lasting relationship (not alienated) as a single entity that is inseparable from the legal alliance. The most important feature of customary rights is the legal community as its subject, areas with certain limits as objects, there are authorities, the nature of relationships that are eternal, hereditary and related to legal alliance as the basis. Based on these characteristics, the customary rights are a series of authority and obligations of a particular customary community over an area that is their customary land. The intended authority contains these rights and obligations constitutes the right of an indigenous community to take advantage of the said natural resources.

According to Setiono [9], legal protection is an act or an effort to protect the community from arbitrary acts by the authorities that are not in accordance with the rule of law, to realize order and peace so as to enable humans to enjoy their dignity as human beings. The protection will provide protection to the community so that people can enjoy all the rights they have by law. Legal protection will coexist with law enforcement as a process of making efforts for the establishment or actual functioning of legal norms as guidelines for behavior in traffic or legal relations in the life of the community and state.

According to Van Vollenhoven[10] there are 6 (six) signs or characteristics of customary rights, namely as follows:

- a. Only the legal alliance and its members can use the land, the thickets within the territory.
- b. Those who are not members of a partnership can exercise that right, but must be authorized by the legal community.

- c. In exercising that right for non-members, one must always pay a recognitie.
- d. The legal alliance has the responsibility for certain crimes that occur in the area of its territory, if the person who committed the crime itself cannot be sued.
- e. The legal community must not transfer its rights forever to anyone.
- f. The legal alliance has the right to intervene in cultivated land, for example in the distribution of plots of land or in sale and purchase.

The influence of customary land rights on the land that has been cultivated is not the same in each region, can be seen in the following 3 (three) levels of difference:

- a. Customary rights are strong because there are no owners, the legal community can give them to other legal communities, and remain subject to the rules of the legal community, in the sense of not being able to transfer. And every time he neglected to do it, then the land can be taken back (kempitutan, los, service).
- b. Strong customary rights apply to core land owned by the population as long as boys and owners continue to work on it, the legal community cannot allow changes to the core property, it cannot be inherited from the community's rules (pekoelan rice fields, gogolan).
- c. Depletion of customary rights, where the intervention of the legal community is almost non-existent, the owner can freely sell his land (rice fields).[11]

From the description above it can be concluded that ulayat land can only be used and used by indigenous groups. The land cannot be inherited to the community who are not subject to customary law, customary land can be sold unless the customary land is first transferred to State land, in other words the land has changed its status to former customary law land.

3. Existence of Customary Law Community Customary Rights in East Sumba Regency.

The population of East Sumba Regency is not only made up of native inhabitants of the islands of Sumba and East Sumba, there are also Savu, Chinese, Chinese, Bugis, Javanese and other residents from the East Nusa Tenggara region. East Sumba Regency has economic potential that can develop, and most of the search for agriculture, livestock, home industries (especially textile or weaving crafts) and tourism.

The proximity factor and the need for land is a very big factor for community members due to meeting their daily needs. Arrangements regarding

customary rights existed before Indonesian independence, namely during the Dutch colonial period. During the Dutch colonial era, Agrarisch Wet (Staatblaad 1870 No.55), there was no regulation on the formulation of "ulayat rights". It's just that customary rights are recognized based on domeinverklaring.[12]

Land in East Sumba is not only owned by individuals, plantations and State land, but also customary land that existed long before Indonesian independence on August 17, 1945. Customary land has been used by its people as a source of meeting their needs to meet their daily needs and as an effort to realize prosperity.

The conditions for recognition of customary rights for customary law communities can still be demonstrated by the East Sumba District Community. The existence of customary rights in accordance with the provisions of the Basic Agrarian Law, namely the reality is still there, which is shown by the processing, utilization and retention of customary land by indigenous peoples and the existence of traditional values that remain preserved.

Indigenous and tribal peoples have certain ways to preserve and maintain their customary rights. First, by setting boundaries around the area usually with physical boundaries, in the form of stones, planting trees, hills, rivers and so on. Second, by showing certain officials as adat officers, in this case the task of controlling the existing customary law, whether it is in accordance with the needs of the community or not.

According to Umbu Pura Woha[13] in the history books, deliberations and customs of East Sumba explains that:

The identity of the Sumbanese is often related to their origin, called Kabihu. Kabihu is a legal alliance based on heredity (genealogical), whose members consist of people who are descended from one's ancestors. The word "kabihu" means "elbow" or "jiku". Perhaps because a village or country is considered to be in the form of "four squares" where each jiku or elbow is occupied by a group of people, each of which is a kabihu or "clan" (the term in Batak land) or "clan" (a term in the Indian tribe in America), then a country or territory is always controlled by a series of four kabihu as landlords.

According to Andreas Katanga Lili, that customary landowners are divided into, Anawaru Kabihu which controls the entire Rindi region, Watupelit Kabihu and Katorak Kabihu which controls the entire Umalulu region and Mangili Region which is controlled by Matolang, Wanggirara, Maru, and Watubulu Kabihu, East Sumba Regency. This control shows that the

existence of customary rights still exists and each indigenous community has mapped its territory.

East Sumba is divided into kabihu or the clans that control the land, in this case the clans are appointed a leader called Rato who will carry out his obligations to regulate the lives of his people and appoint the commander and worship leader of the marapu creed that still exists today. This is because in the past there were continually wars between kabihu to expand their territory and every kabihu who lost the war, the head of the leader was beheaded and made an ornament in front of the traditional house of the kabihu leader in this case called Rato. This is a symbol of the might of the Kabihu who won the war.

The authority of the customary law community head over customary rights is more clearly reflected in land clearing actions and concerning land transactions. For agricultural purposes, members of the customary community must obtain permission from the customary head. The authority of customary law communities gradually decreases or narrows, because it coincides with the growth of individual rights over land. In all kinds of land transactions must be in the presence of the customary head, as an absolute requirement for the light of legal actions in the intended. Without the intervention of the customary head, transactions that do not meet these requirements are seen as illegal and without legal force. These rules show that according to customary law the land functions socially, in the sense that the granting of legal rights to land must pay attention to the interests of the legal community and without causing harm to individual interests.

Paulus Ana Manang alias Umbu Manang said that the area of ulayat land managed individually is approximately 25 hectares, as agricultural and plantation land, while the area of communal land managed communally with several clans is estimated to be more than 1000 hectares, as grazing land and clan forest and settlement villages. Based on research results in East Sumba Regency, there are still almost 50 thousand hectares of customary land which is controlled by around 20 kabihu.

According to Umbu Wait Randja Mandi, that land is used to build a residence or garden for farming, and every indigenous community is obliged to help each other in building traditional houses and garden management. The most important thing is that with the existence of the customary land, all members of the clan or kabihu can hold a meeting to worship the Marapu faith, as our gratitude to the Almighty, because the harvest we have received is satisfactory, and this has been done for generations.

In every land that we control, there is always a special place that we provide specifically to perform the Marapuritual, this is marked by a large stone which we call Pahomba. This pahomba is

used as our altar to bring offerings as an expression of our gratitude to God.

According to Marambah Amah, the village head of Palakahembi, that the customary land still exists and the customary territory is in the territory of his administration as the village head, and physically, various traditional rituals are often performed by its citizens, especially those who still embrace the Marapu faith, in administering customary territories there is no administration. Customary land that is used by indigenous peoples for traditional ritual activities of traditional Marapu beliefs, the community also uses it for livestock raising activities or is used as cattle pasture land.

Okto Ndula, Subdistrict of Rindi said that: Ulayat land still exists, that is land which is traditionally controlled by certain clans that have a customary relationship and is still hereditary that is recognized by the surrounding community. Allotment of customary land is for agriculture, livestock, plantations, together with the customary agreement for the distribution of the results in meeting the needs of the customary landowners themselves.

Tehu Terawalangu, Sub-district Head of Kahaunga Eti District, said that: Regarding customary land, it still exists in East Sumba Regency and is controlled by indigenous peoples under the command of the kings in each region. The customary land is used by the community for traditional ritual and tribal religion activities, namely Marapu and the land is used for gardening and managing large cattle pasture land, such as cattle, horses and buffalo.

A similar opinion was also conveyed by Hina Marambajawa, the Head of Lailanjang Village, who said that: Ulayat land still exists and the land is controlled by a community consisting of several clans and there is also only one clan that is traditionally hereditary responsible. The traditional land is used for religious ritual activities, pasture and gardening.

Likewise, the opinion of Randja Ruwa, sub-district head in Umalulu sub-district said that: Ulayat land still exists, its existence is in the form of a stretch of land or customary territory which is controlled by a clan or regency that is domiciled in the Umalulu region and most of the customary kings or elders who rule. Allotment of customary land in our area is used by clans for farming, gardening, performing traditional rituals by the clans in the location.

The opinions of these officials and traditional community leaders differed from those of Daud Radja, an employee of the East Sumba District National Land Agency who said that customary land rights no longer existed in East Sumba. The basis of Daud Radja's opinion is the result of the Limited Symposium on the Issue of Tribal Land in the Province of East Nusa Tenggara Province

which was held in May 1972. The conclusion of the Symposium, among other things, states that there has been a process of individualization and disintegration of tribes, so that tribes no longer fulfill the requirements as an alliance geneological law. This is the basis for the fact that in East Nusa Tenggara Province there are no more tribal lands, which are former land of the customary community (tribal).

Basically the opinion of the officials, both the Village Head as well as traditional community leaders, said that the ulayat land still exists along with all forms of rituals and their use by Kabihu residents or community members in general. The requirements for the existence and recognition of customary land as regulated in the legislation is the fact that it still exists, as indicated by the processing, utilization and retention of customary land by customary law community members and the existence of traditional values that are still preserved, can still be proven.

Judging from the analysis of the order of legislation, the results of the symposium cannot be a source of law and are not binding on anyone. The symposium is an academic study and does not have any ties and strength to the customary land. In accordance with statutory requirements, customary land in East Sumba Regency controlled by indigenous peoples must still be protected and defended.

4. Legal Protection of the Customary Rights of Customary Law Communities.

Legal protection for the customary rights of the legal community has been explicitly regulated starting from the 1945 Constitution, the Basic Agrarian Law to various Government Regulations and Ministerial Regulations and the Decision of the Indonesian Constitutional Court. Legal protection in legislation still has many problems that it causes. One of them is because the Basic Agrarian Law does not provide further explanation about the criteria for determining the existence of customary rights. This has led to various cases of customary land on a regional or national scale that will never have a complete settlement because there are no objective criteria needed as a benchmark for determining the existence of customary rights.

State recognition of indigenous peoples is enforced with four main requirements, namely:

- 1) As long as they are still alive;
- 2) In accordance with community development;
- 3) The principle of the unitary state of the republic of Indonesia; and
- 4) Regulated in the Act.

Based on these provisions then that the form of recognition of customary rights is more conditional recognition. This means that customary rights held

by indigenous peoples can only be done as long as in reality they still exist, do not conflict with national interests, and may not conflict with other higher laws and regulations.

The existence of customary rights in East Sumba Regency still exists but is shackled by East Nusa Tenggara Province Regulation No. 8/1974 concerning the implementation of the assertion of land rights, article 2 paragraph (1) says that land formerly controlled by indigenous peoples or tribal lands, is controlled by under the authority of the regional government.

This is very detrimental to indigenous peoples who have customary land or tribal land. The existence of this Regional Regulation becomes the basis of legal justification by the regional government for the acts of appropriation and unilateral takeover of the people's customary lands for the interests of entrepreneurs whose impact, not only on the increasingly narrow land of the people's agricultural business land, but rather on efforts that have damaged various local or cultural wisdom, values and customs. This relates to the use and responsible management of the environment including cultural heritage objects that must be preserved.

In Article 2 paragraph (1) of NTT Province Regulation number 8 of 1974, it can be concluded that the former land possession meant is when the land is not managed continuously over a period of 10 years. This provision is in line with article 4 paragraph (2) of the regulation of the minister of agrarian number 10 of 2016 concerning "Determination of Communal Rights over the Land of Customary Law Communities and Communities in Certain Regions". So it can be said that the history is broken, the relationship between the land and the indigenous people.

According to the regulation of the minister of agrarian number 5 of 1999 concerning "Guidelines for resolving the Customary Rights Rights of the Customary Law Community" in article 2 paragraph (2) that the customary community's customary rights still exist if there is a group of indigenous people who still recognize and apply the customary law itself, there are customary land which is the environment of the customary community itself, in order to meet their daily needs, and there are customary legal arrangements regarding the administration, control and use of customary land.

The object regulated by Regional Regulation NTT number 8 of 1974 is the land formerly controlled by the customary law community or tribal land in article 1 paragraph (3). This regulation becomes a problem and in this regulation there is no explanation as to what and how what is meant by the land formerly controlled by the customary law community or when the land held by the customary law community changes or switches to the former land of control. In the

explanation of the article, the article only says "quite clearly".

Thus, the absence of boundaries or explanations about what, when and or how the land controlled by indigenous and tribal peoples is transformed into the former land of indigenous and tribal peoples. The Regional Regulation of the Province of East Nusa Tenggara is still valid, although this is contrary to Law Number 15 of 2019.

The above regulation, on the one hand, can cause problems in different interpretations of the existence of indigenous and tribal peoples and their traditional rights. On the other hand the customary law community is in a position that is always defeated when dealing with the authorities because the Basic Agrarian Law itself in Article 8 gives authority to the state to take natural resources contained in the earth, water and space and also Article 18 which gives the authority to revoke land rights in the public interest, including the interests of the nation and state as well as the common interests of the people, by providing appropriate compensation and in ways that are regulated by law.

Another factor that can also make the position of indigenous peoples weaker is that although the 1945 Constitution, the LoGA and also Law Number 39 of 1999 have given recognition but have not been followed up nationally the regulation of the existence of indigenous peoples and their traditional rights. In certain cases the state's dominance is very strong by referring to Article 33 paragraph (3) of the 1945 Constitution, Article 2 and Article 18 of the BAL.

According to Paul Djara Liwe. Customary rights still exist as a De Facto, but De Jure does not exist or has not been legally recognized. Based on the legal opinion put forward by Paul Djara Liwe, it can be concluded that legal recognition has not been regulated according to applicable laws both at the provincial and regional levels of East Sumba Regency, but in essence that the customary rights still exist and still exist in the life of indigenous people in East Sumba Regency.

Huna Marambajawa's opinion also emphasized that the Government acknowledged the physical and factual existence in the East Sumba area regarding the existence of the customary land rights of indigenous peoples in East Sumba. Customary land exists with a variety of activities. The government continues to support the positive activities that communities carry out on the customary land and the need for socialization of community-related regulations and customary law, so that the community's understanding of law increases.

According to Tehu Terawalangu, that customary sanctions still exist, even though only an oral regulation is submitted but still exists, such sanctions such as: indigenous peoples may not

make certificates on the land, namely ulayat land and may not carry out activities that violate the highest legal rules.

The rule of law both in the form of laws and unwritten laws, thus, contains general rules that serve as guidelines for individuals behaving in social life, both in relationships with others and in relations with the community. These rules become a limit for society in burdening or taking action against individuals. The existence of such rules and the implementation of these rules give rise to legal certainty.

Thus, legal certainty contains two meanings, namely, first, the existence of general rules that make individuals know what actions may or may not be done and two, in the form of legal security for individuals from government arbitrariness because with the existence of general rules that individuals can know what may be charged or done by the State to individuals. Legal certainty is not only in the form of articles in the law, but also the consistency in the decisions of judges between the decisions of one judge and the decisions of other judges for similar cases that have been decided.

The right to control indigenous and tribal peoples, land issues are not only related to economic and welfare aspects, but also involve social, political, cultural psychological, and religious (religious) issues. Therefore, in solving various problems relating to land must heed the principles of law (Juridical), the principle of welfare (propriority), hope order security (security), and humanity (Humanity). As stated earlier, between the Customary Law community and mystical-religious land, economic, and social.

On May 16, 2013, the Constitutional Court issued a decision on case No. 35/PUU-X/2012 concerning testing of Law Number 41 of 1999 concerning Forestry. Petitioners in this case are the Indigenous Peoples Alliance of the Archipelago (Aman), the Kuntu indigenous peoples of Kuntu, Kampar Regency, Riau Provindi and the Kasepuhan Cisitu indigenous people, Lebak Regency, Banten Province.

Decision of the Constitutional Court No. 35/PUU-IX/2012 is an important decision because it overturns the classical understanding in Indonesia about forests, forest areas and the position of customary forests. In essence, the Constitutional Court's decision concerns two constitutional issues, first about customary forests and second about conditional recognition of the existence of indigenous peoples, but rejects a request to abolish the conditions for recognizing the existence of indigenous peoples contained in the Forestry Law MK No.35/PUU-X/2012 contains several points including:

The Constitutional Court's statement that the Forestry Law which has included customary forests as part of the State's forests is a form of

neglect of indigenous peoples' rights and constitutes a violation of the constitution. The constitutional court in its decision stated: therefore, placing customary forests as part of State forests is a neglect of the rights of indigenous and tribal peoples.

The statement that negligence has occurred so far should make the government more aware of restoring the customary rights of the customary law community itself. Namely by inviting indigenous peoples to manage each customary forest as a source of meeting the needs and income of these indigenous peoples, so that the achievement of welfare for indigenous peoples themselves.

The customary forest was excluded from being previously part of the State forest and then included as part of the customary forest category. This is a consequence of the amendment to article 1 number 6 of Law Number 41 of 1999 concerning Forestry, which states that customary forests are State forests that are within the territory of indigenous peoples, so that by issuing a ruling from the Constitutional Court No. 35/PUU-X/2012, it is permissible for customary forests controlled by the government, to be returned to indigenous peoples to be managed by the indigenous people themselves.

Indigenous groups welcomed the decision. Dozens of communities took the initiative to make signposts and plant them in customary forests. In the sign written sentence: based on the decision of the Constitutional Court No. 35/PUU-X/2012, our customary forests are no longer State forests. What is done by the indigenous community is a form of self-implementing to reduce the decision of the Constitutional Court to reach the field. This is reasonable considering that the decision of the Constitutional Court does not automatically change administrative decisions regarding the status of forest areas. The community's claim to plant a signpost should be appreciated as a concrete manifestation that indigenous peoples do indeed have an inseparable relationship with the forest that has become part of their identity.[14]

The decision of the Constitutional Court has a huge impact on the entire adat structure, where indigenous peoples are located. Where indigenous peoples come together to claim their rights that have been taken by the government, namely in the control of customary forests. So it takes time for indigenous peoples to adjust to follow all decisions of the Constitutional Court itself.

IV. CONCLUSION

1. The existence of customary rights of indigenous peoples in East Sumba Regency still exists and continues to be used according to its designation. On the other hand the existence of customary rights is no longer in the pure sense

- of recognition and protection tends to weaken, due to economic factors. This happens because the customary law community does not yet know how to protect customary rights in accordance with applicable laws and regulations.
2. The legal protection of the customary rights of indigenous and tribal peoples in East Sumba Regency constitutionally remains in force with recognition of the existence of indigenous peoples and their traditional rights. The 1945 Constitution, article 18 b, Article 3 of the BAL, and various laws and regulations still provide recognition of this existence. This protection is also reinforced by the Constitutional Court's decision No. 35/PUU-X/2012.

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