Questioning the Policy Direction of the Draft Law on Indigenous Peoples without Conflict-Based Customary Rules in Indonesia

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Abstract. Adat laws without customary rules result in the social uneasiness of indigenous peoples and even tend to ignore their existence and the communal spatial planning regulated in the constitution, which is threatened with forms of criminalization. The purpose of this study is to explain why the government's seriousness about the tug-of-war over the passage of the Indigenous Peoples Bill caused social unease in the community. This research was conducted with *a conceptual approach, a statute approach, a philosophical approach,* and a literature review with descriptive analysis by considering the principles of special treatment in the UUPA. The results showed that the emergence of conflicts and discriminatory actions against indigenous peoples took the form of: (1) the anxiety of indigenous peoples in the face of prolonged conflicts; (2) the government's response has been slow in dealing with conflicts and its disregard for people's rights; and (3) the government's handling of certain cases has not been maximized without the equalization of the provisions in the Bylaws and the support of the ministry of home affairs. This research concludes that the government's lack of seriousness in providing legal protection to indigenous peoples has aggravated relations between indigenous groups and corporations, thereby increasing the potential for conflict and discriminatory actions in the territories of indigenous peoples. The need for a clear legal foundation in the passage of the bill to regulate space as a common space, so that people's anxiety about conflicts can be avoided.

Keywords: *Draft Law, Government Seriousness, Social Uneasiness, Indigenous Peoples.*

Abstrak. Hukum Adat tanpa aturan adat mengakibatkan terjadinya kegelisahan sosial berbasis konflik masyarakat adat dan bahkan cenderung abai terhadap keberadaan mereka dan tata ruang komunal yang di atur di dalam konstitusi dan terancam bentuk kriminalisasi. Tujuan dari penelitian ini adalah untuk menjelaskan bahwa ketidakseriusan pemerintah terhadap tarik ulur pengesahan RUU Masyarakat hukum adat menimbulkan kegelisahan sosial di masyarakat. Penelitian ini dilakukan dengan dengan pendekatan *conceptual approach, statute approach, philosophy approach* dan kajian pustaka dengan analisis deskriptif dengan mempertimbangkan prinsip-prinsip perlakuan khusus di UUPA. Hasil penelitian menunjukkan bahwa munculnya konflik dan tindakan diskriminatif terhadap masyarakat adat dalam bentuk; (1) adanya kegelisahan masyarakat adat dalam menghadapi konflik berkepanjangan; (2) Respon pemerintah lamban dalam menangani konflik dan abai terhadap hak-hak masyarakat; dan (3) penanganan pemerintah pada beberapa kasus tertentu belum maksimal tanpa penyamaan persepi dalam Perda dan bentuk dukungan dari kementerian dalam negeri. Penelitian ini menyimpulkan bahwa ketidakseriusan pemerintah dalam memberikan perlindungan hukum kepada masyarakat hukum adat telah memperparah hubungan antar kelompok masyarakat adat dan korporasi sehingga meningkatkan potensi konflik dan tindakan diskriminatif di wilayah masyarakat hukum adat. Perlunya payung hukum yang jelas dalam pengesahan RUU untuk mengatur ruang sebagai ruang bersama, sehingga kegelisahan masyarakat akan hal konflik dapat dihindari.

Kata Kunci: Rancangan Undang-Undang, Ketidakseriusan Pemerintah, kegelisahan sosial, Masyarakat Hukum Adat.

INTRODUCTION

Law enforcement agencies including the judiciary need documented customary laws. Thus Soepomo once said that in the positivistic approach of customary law, deductive reasoning is applied, namely considering the social bonding system and values maintained by the community in resolving disputes.[1]. Until now, there has been a lack of consistency from the government in passing the Indigenous Peoples Bill. [2]. In this case, it causes a form of social anxiety experienced by indigenous peoples, which is one of the most important phenomena during this country's freedom from colonization. In addition to the diverse territories of indigenous peoples and the impact on the problem of the development of the country's development that continues to accelerate, anxiety also occurs due to legal uncertainty in the form of legal protection for Indigenous Peoples.

The lack of legal certainty in the context of protecting the rights and recognition of individual and communal Indigenous Peoples has implications for the non-achievement of welfare for Indigenous Peoples and the emergence of potential conflicts in Indigenous Peoples that pose a threat to national security stability[3]. On the other hand, in order to enjoy their rights, which are mandated by the constitution, indigenous peoples can live safely, grow, and develop as a community group only as a mere imagination.

The anxiety of Indigenous Peoples is triggered by the rapidly increasing conflicts between communities and companies, all levels of society and groups experience it in various forms. Data from the Consortium for Agrarian Reform (KPA) revealed that the National Strategy Project (PSN) caused 38 agrarian conflicts throughout 2021. This number has increased by 123 percent from the previous year. Dewi explained that this agrarian conflict stems from the ambition to accelerate the execution of PSN. The government issued several regulations to accelerate the execution but ignored the rights of citizens to land. For example, Presidential Regulation Number 109 of 2020 concerning Acceleration of the Implementation of National Strategic Projects. After the issuance of the Perpres, many developments are in the name of 'public interest'[4]. The anxiety caused by the

[1] Budiyanto Budiyanto, "MODEL FUNGSIONALISASI NILAI-NILAI KEARIFAN LOKAL (LOCAL GENIUS) DALAM KEBIJAKAN HUKUM (LEGAL POLICY) DAERAH DI PROVINSI JAWA TENGAH (Kajian Konstitusional Penguatan Komunitas Adat Sedulur Sikep Pati Dalam Pengelolaan SDA & Pelestarian LH)," *Jurnal Pembaharuan Hukum* 3, no. 1 (2016): 69, https://doi.org/10.26532/jph.v3i1.1348.

[2] M S W Sumardjono, "JALAN TENGAH PENGATURAN MASYARAKAT HUKUM ADAT1," *Meninjau Ulang Pengaturan Hak Adat*, 2019.

[3] Democrat National Party, "Urgensi Dan Pokok-Pokok Pengaturan Penyusunan Rancangan Undang-Undang Masyarakat Hukum Adat," 2019.

[4] yla, "Proyek Stranas Disebut Picu 38 Konflik Agraria Sepanjang 2021 Baca Artikel CNN Indonesia "Proyek Stranas Disebut Picu 38 Konflik Agraria Sepanjang 2021," CNN INDONESIA, 2022, https://www.cnnindonesia.com/nasional/20220107055037-20-743621/proyek-stranas-disebut-picu-38-konflik-agraria-sepanjang-2021.

facts of criminalization and violence has led to various misguided actions that make the situation worse.

So far, studies on the policy direction of the Indigenous Peoples Bill have tended to look at the preconditions that cause and the consequences of social unrest. Unrest is communicated and perceived by indigenous peoples. These two trends in the study of social anxiety of indigenous peoples may emphasize the lack of dimensionality of social reality. First, many studies pay attention to the role of the State in maintaining the existence of Indigenous peoples, which does not at all support the independence and recognition of Indigenous peoples. Second, studies pay attention to the implications of the existence of Indigenous unrest and dispute resolution, which does not lead to the disappearance of the unrest experienced by Indigenous peoples.

This research complements the shortcomings of existing studies by looking at how the anxiety of indigenous peoples about threats to themselves and their territories is immediately given legal certainty in the form of the ratification of the Indigenous Peoples Bill into a law that can be directly implemented in social practices that have implications for the ability of indigenous peoples to manage customary territories.

This research is based on the argument that anxiety is not only caused by the state's lack of seriousness in providing legal recognition and protection for indigenous peoples in the face of continuous conflicts, but also has adverse implications for problem solving caused by issues involving indigenous territories. The psychological trauma experienced by indigenous peoples has become the basis for the difficulty of problem solving.

Anxiety as part of psychological trauma can occur due to a poor democratic system in the formation of legislation that does not provide special treatment to Indigenous Peoples. At the same time, various drafts of laws and regulations that do not involve public participation occur as a result of limited knowledge. In addition, widespread dis-information also contributes to anxiety in the form of good knowledge being defeated by bad knowledge produced by massive media. Thus, the anxiety of indigenous peoples is something that is important homework for the state and citizens.

METHODS

Indigenous peoples who experience psychological and physical trauma, both directly and indirectly, in line with the prolonged conflict involving communities and corporations because of the unclear certainty in the form of legal protection that should exist in the Indigenous Peoples Bill are the unit of analysis of this research.

The writing of this article is a type of normative research or also known as doctrinal legal research. This type of research was chosen because the research goes through a series of processes to find legal rules, legal principles, and legal doctrines to answer the legal issues at hand, namely the chaotic performance of state institutions in the ratification of the Indigenous Peoples Bill which has an impact on the emergence of conflict and social unrest. The approach used (conceptual approach), statutory approach (statues approach), conceptual approach and philosophy approach (philosophy approach) Furthermore, the legal materials used are primary legal materials including: First, Law No. 5/1960 on the Basic Regulation of Agrarian Principles, Second, Law No. 6/2014 on Villages. Third, Constitutional Court Decision Number 35/PUU-IX/2012. Fourth, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 9 of 2015 concerning Procedures for Determining Communal Rights to Land of Customary Law Communities and Communities Located in Certain Areas (Permen ATR 9/2015). Fifth, the Draft Law on Indigenous Peoples.

In addition to these primary legal materials, several other secondary legal materials in the form of scientific articles, books, and other scientific publications that are still related to the title of this paper. The method of analysis used uses theoretical triangulation, namely comparing information from different theoretical perspectives, in this case the problems studied are analyzed using the perspective of more than one theory. In addition, the interpretation of primary legal materials is carried out using legal interpretation techniques, namely in the form of grammatical interpretation by paying attention to generally applicable language rules, systematic interpretation by connecting a statutory regulation with the entire legal system, and hermenetic or interpretation of the meaning in a text in interpreting the principles contained in the legislation in order to obtain valid research results.

RESULTS AND DISCUSSION

Unwillingness of the Government and Parliament

Indigenous conflict-based anxiety occurs due to the rejection and unwillingness of the government and DPR in the ratification of the Indigenous Peoples Bill. In a discussion in Jakarta, Chairman of the Working Committee on the Indigenous Peoples Bill Willy Aditya said that one of the things that made this bill never passed in the DPR plenary meeting was due to the absence of political will, both from the president and the DPR. Even though seven factions have agreed to continue this bill as the right of initiative of the DPR as a result of the plenary of the Legislative Body, while two factions refused. Those who refused seem to be haunted by the shadow that the

Indigenous Peoples Bill will become an obstacle to development and investment. Or it is feared that it will collide with the implementation of the Job Creation Law.

According to Lon L. Fuller, Customary Law is based on the process of interaction in society and then functions as a pattern to organize and facilitate the process of interaction so that Customary Law is referred to as "a system of stabilized interactional expectations". However, Fuller does not consider the doctrine of "opinion necessitates" which is a repetitive action because this doctrine does not apply when Customary Law is still in the process of formation. Fuller uses another approach from the American Law Institute's Restatements of Contracts. Where what determines the process of the formation of Customary Law is the ultimate goal of the act or event, namely creating a peace that is characterized by a harmony between order and tranquility in society.

In practice, said Willy, it is actually large corporations that are worried about the existence of the law. This can be seen from the annexation of customary land by certain companies. [5]. Agrarian Law and Customary Law expert Aartje Tehupeiory confirmed the need to pass the Customary Law Society Bill to preserve culture, customs and customary land. Indeed, so far there have been regulations that encourage local governments to issue regulations that recognize the existence of indigenous peoples, but according to him, these regulations clash with investment, especially after the existence of the Job Creation Law.

The existence of bills related to the existence of customary law is being discussed in the House of Representatives, such as the Indigenous Peoples Bill, the Land Bill, the Palm Oil Bill, the Criminal Code Bill. Hot discussions are taking place because some of these bills have several articles that clash with each other, contradict each other, cross paths with customary law, so it is predicted that they will harm the rights of indigenous peoples, especially with regard to natural resources or theagrarian rights of indigenous peoples.

On 1 August 2018, approximately 15 indigenous peoples' organizations led by aman gathered in Jakarta to encourage the government to review the indigenous peoples bill, which is currently being discussed in the DPR. There is a form of anxiety from observers of indigenous peoples towards the current legal politics related to the existence of customary law. Why is there such anxiety? Because since the existence of Law Number 5 of 1960 concerning Basic Agrarian Principles with the powers available to it has reduced the norms, principles and values of customary law as the original law of the Indonesian nation.

AMAN itself recorded 40 (forty) cases of criminalization and violence against Indigenous Peoples that occurred in 2020. Most of these cases were cases that had started in previous years, but

[5] Fathiyah Wardah, "Mengapa RUU Masyarakat Hukum Adat Tak Kunjung Disahkan?," voaindonesia, 2021, https://www.voaindonesia.com/a/mengapa-ruu-masyarakat-hukum-adat-tak-kunjung-disahkan-/6324774.html.

continued because they never received a resolution from the state. Given this situation, it is difficult to argue that the state has indeed been neglecting and discriminating against Indigenous Peoples. In detail, the forty cases can be categorized as followst[6]:

First, Indigenous Peoples vs Plantations: 10 cases. Second, Indigenous Peoples vs Mining : 5 cases. Third, Indigenous Peoples vs dams and hydropower plants : 6 cases. Fourth, Indigenous Peoples vs Government and Local Government: 5 cases, Fifth, Indigenous Peoples vs KPH: 6 cases. Sixth, Indigenous Peoples vs Industrial Plantation Forest: 3 cases. Seventh, Indigenous Peoples vs TNI: 1 case. Eighth, Environmental Pollution in Indigenous Territories : 4 cases.

Of the forty cases, 39,069 Indigenous Peoples divided into 18,372 households have suffered losses, including economic losses, social losses, and moral losses as a result of intimidative actions, violence, and criminalization. The total indigenous territory where the forty cases took place reached 31,632.67 hectares. This figure only represents the cases that have surfaced. The actual number is much higher, given the typology of conflicts, most of which are latent and do not always surface..

From the data above, quoting from the Chairman of the Laman Kinipan Indigenous Community Effendi Buhing was arrested by the Central Kalimantan Police. The arrest was allegedly related to a land conflict between the indigenous community and a palm oil company. Effendi Buhing was forcibly picked up by police at his home in Kinipan Village, Batang Kawa District, Lamandau Regency. The above incident was eventually resolved through deliberation, and in this case it has also not resolved the problems that occur between indigenous peoples and corporations. This is in line with observations of different locations as shown in Figure 1.

Figure 1. form of anxiety of wadas purworejo residents

Source: CNN indonesia

[6] Aliansi Masyarakat Adat Ausantara, "RESILIENSI MASYARAKAT ADAT DI TENGAH PANDEMI COVID-19: AGRESI PEMBANGUNAN DAN KRISIS HAK ASASI MANUSIA (HAM)" (Jakarta, 2020), file:///C:/Users/LENOVO/Downloads/DOC PDF/CATATAN-AKHIR-TAHUN-2020_AMAN_2.pdf.

Figure 1. Demonstrates a justification for the ongoing social unrest within Indigenous communities that can exacerbate the geographical conditions that are primary livelihoods and Indigenous fears of inadequate facilities are widespread.

There are three basic things faced by the community related to the poor geographical conditions that become livelihoods: the availability of land that is a place to make a living for families in daily activities, the overlapping and unclear rules of law in the context of benefiting large investors based on legal certainty, and the quality of natural resources that are reduced continuously..

The anxiety that occurs in various places illustrates the conditions to which indigenous peoples respond and the consequences of a response. Responses to the conditions experienced by indigenous peoples have also become the basis of anxiety as a result of experiences shared through discourse and social practices in the unwillingness of the DPR and the government to pass the indigenous peoples bill.

The inadequacy of the political argument that is the basis for the formation of the Law on Indigenous Peoples and the poor policy on behalf of legal protection of indigenous peoples, which until now has not existed massively, shows concern based on the phenomenon of oppressed indigenous peoples, which has become the observation and experience of the community as the basis for the birth of fear and doubt. Thus, the form of anxiety of indigenous peoples is not caused by economic factors but rather by experiences that are shared and perceived with group values over the government's lack of seriousness in terms of legal protection to indigenous peoples in the form of certainty regulated in the Law.

Government Response to Various Cases Involving Indigenous Peoples and Corporations

Indigenous peoples in various countries experience the same problems, namely conflicts over the struggle for rights to land or residence, because of these problems then made the United Nations respond by issuing a declaration to restore the rights and protect indigenous peoples. The Unitary State of the Republic of Indonesia is one of the countries that signed the declaration. Participation in the agreement on the rights of indigenous peoples obliges Indonesia to implement the regulations in the UN regarding the rights of indigenous peoples[7].

[7] Sefriansyah Guspin, "KEBIJAKAN PEMERINTAH INDONESIA TERHADAP MASYARAKAT ADAT Dalam BAB III Ini , Penulis Akan Menjelaskan Mengenai Kebijakan Pemerintah Pusat Untuk Melindungi Hak-Hak Masyarakat Adat Di Seluruh Nusantara Dengan Mengacu Pada Deklarasi Yang Di Keluarkan Oleh Per," n.d., 52–89.

The existence of indigenous peoples depicted on the face of the constitution is still not seen in the form of a rule of law with certainty seems to still cause a variety of varied responses from various government circles, both from the legislative and executive institutions as the spearhead of the ratification of the MHA Bill to local governments and the general public.

The government's response to the existence of indigenous peoples ranges from conflict-based responses in socio-economic activities to legal protection practices that have not protected the rights of indigenous peoples. In terms of the implementation of regulations on behalf of "Adat", many activities carried out are considered to have fulfilled existing procedures and policies. The existence of the Constitution and the Land Law is actually a form of response from the central government to maintain harmony and the rights that must be owned by indigenous peoples and further strengthen the principle of state control rights.

For example, the granting of concessions by the government to investors has led to many land conflicts between concession-holding investors and indigenous peoples. Conflict data recorded by the National Human Rights Commission, the Indigenous Peoples Alliance of the Archipelago and Sawit Watch has reached 500-800 cases of land conflicts between these investors and indigenous peoples.[8]. In-depth attention to coastal areas is still lacking compared to other mainland areas. Often the implementation of government programs does not accommodate the interests of the community. Equitable planning, including coastal areas in spatial planning, can certainly accelerate and reduce the potential for conflict[9]. Therefore, there is a lack of government response regarding the mapping of potential conflicts in order to connect parties to the problem and with other parties.

Furthermore, a concession is an agreement between a private party and the Government to do some government work, or the private party is authorized under certain conditions, it can also be interpreted as a license to do a certain extent of work, by not allowing other parties to participate. The work performed is related to the public interest performed by the company, which is not possible for the Government to do. A concession is also said to be a stipulation that allows the concessionaire to obtain dispensations, permits, licenses and also a kind of Government authority that allows him to, for example, build roads, overpasses and so on. The conditions for granting this concession must be carried out by the Government with great care and careful calculation.[10].

[8] Joesoef, "PEMBERIAN KONSESI KEPADA INVESTOR DI ATAS TANAH ADAT DAN EKSISTENSI HUKUM ADAT."
[9] Rahmat Datau and Hairan Hairan, "ASPEK HUKUM DALAM PENGELOLAAN WILAYAH PESISIR DALAM PERSPEKTIF OTONOMI DAERAH," *Gorontalo Law Review*, 2019, https://doi.org/10.32662/golrev.v2i2.700.
[10] Joesoef, "PEMBERIAN KONSESI KEPADA INVESTOR DI ATAS TANAH ADAT DAN EKSISTENSI HUKUM ADAT."

Land policy at this time still refers to the work creation law should be aimed at integrating a number of Sectoral Laws so as to change from first, the Act as a stand-alone law to a legal system with Sectoral Law as its elements, Second, egosectoral law leads to the harmony of inter-sectoral laws, Third, the substance of inter-sectoral laws that deny each other to inter-sectoral laws that strengthen each other, Fourth Inconsistency of inter-sectoral laws that cause legal uncertainty to inter-sectoral laws that guarantee legal certainty and justice[11]

As outlined in the Job Creation Bill will cause : Land policy will be further away from the principles and objectives of the UUPA; The spirit of the UUPA to harmonize the objectives of economic growth through capitalistic land policies with the objectives of equity through Agrarian Reform will be increasingly difficult to realize because in essence between the two contains a conflicting spirit.

On the one hand, UUPA provides equal opportunities for anyone to have land rights in Indonesia and compete with each other to utilize land productively and optimally (Article 4 paragraph (1) jo. Article 4 paragraph (1) jo. Article 10 paragraph (1) and Article 15), but on the other hand UUPA also gives special treatment to Indonesian citizens to have all kinds of land rights and for Indonesian citizens who do not have land or have land that is not suitable to be given priority to obtain land[12]. In fact, the spirit of the State's position tends to be neglected as in the Job Creation Law.

Building a Model for Problem Solving in the Indigenous Peoples Bill

The indigenous peoples bill has come a long way in the legislative process. For the first time, this bill was discussed in the Special Committee in 2014 under the name of the Bill on Recognition and Protection of the Rights of Indigenous Peoples (PPHMHA), which unfortunately until the end of the period, the DPR was unable to complete this bill. Throughout 2017-2018, the Indigenous Peoples Bill was discussed within the House of Representatives together with related parties such as the Indigenous Peoples Alliance of Indonesia (AMAN) and the Indonesian Civil Society Coalition to improve the substance of this bill. This bill has also gone through the Harmonization process and was discussed by the Legislation Body. However, despite a Working Meeting between the Legislation Body and the Government, until the end of the 2014-2019 term of

[11] nur hasan Ismail, "RANCANGAN UNDANG-UNDANG CIPTA KERJA : Pengabaian Prinsip-Prinsip UUPA," ed. Tarmizi (Sinar Grafika, 2020), https://www.google.co.id/books/edition/Pengantar_Hukum_Perdata_Tertulis_BW/uzZCEAAAQBAJ?hl=id&gbpv=1&dq=Pengantar+hukum+perdata+tertulis&printsec=frontcover.
[12] Ismail.

office of the House of Representatives, this bill still cannot be enacted. The latest development shows that this bill has become a Priority Prolegnas in 2022 with serial number 24 through DRP RI Decree Number 8/DPR RI/II/2021-2022.

The Indigenous Peoples Bill consists of 16 chapters and 57 articles. In this bill, the point that is emphasized is the recognition of indigenous peoples by the state. Article 1 letter (2) of the bill states that recognition is a form of acceptance and respect for the existence of Indigenous Peoples and all the rights and identities attached to them. Recognition in the Indigenous Peoples Bill is the door to obtaining protection, empowerment, and a series of rights such as Indigenous Peoples have Rights to Customary Territory, Rights to Natural Resources, Rights to Development, Rights to Spirituality and Culture, Rights to the Environment; which are regulated in this Bill.

The tug-of-war over the discussion and enactment of the Indigenous Peoples Bill tends to be caused by political aspects that have the potential to clash with the spirit of investment and capital investment being promoted by the government. The government's reluctance to submit the manuscript of the Problem Inventory List (DIM) in the process of discussing this bill is evidence that the government is more pro-investment than the recognition and protection of indigenous peoples, which has long been discussed in the legislative process.

Conflict of interest in indigenous peoples' disputes with capital owners is not a new problem. The antinomy in Law No. 39 of 2014 is one example that indigenous peoples have an unequal position when confronted with capital owners and the government. In the Plantation Law, Article 1 paragraph (5) and paragraph (6) do cover Masyarakat Hukum Adat and Hak Ulayat, but Article 13 of the same law also states that Masyarakat Hukum Adat must be determined in accordance with the provisions of laws and regulations. Meanwhile, the legal umbrella to gain recognition as a customary law community from the Government has not yet been passed and promulgated. This fact further sharpens the chances of conflict that will be faced by indigenous peoples.

Indeed, in the Indigenous Peoples Bill, especially chapter II, it is stated that the State recognizes Indigenous Peoples that are still alive and developing in the community in accordance with the principles of the Unitary State of the Republic of Indonesia. However, the procedures that must be followed involve many parties and take a long time. The stages in Article 6 include: identification, verification, validation, and determination. The results of a series of procedures will be outlined in the Decree of the Regional Head.

The experience of conflicts or disputes experienced by indigenous peoples with all the problems that have not been resolved and are actually repeated should bring understanding to the

government on the problem-solving model in dealing with these prolonged conflicts directly from the main cause of the conflict. Overlapping laws that create counter-productivity, long procedures for legality and recognition of indigenous peoples, and models for resolving prolonged conflicts deserve the Government's attention in drafting the Indigenous Peoples Bill.

Customary law communities have their own characteristics that are communal in nature [13], and has a different origin principle, which is also alluded to by Law No. 6/2014 on Villages. This specificity, of course, has an impact on the non-uniformity of efforts that can be made to at least provide recognition of the rights of indigenous peoples in order to minimize conflicts and handling conflicts that are increasingly tapered, or at least cut down the process of recognition of indigenous peoples that are not complicated. Unfortunately, this concern is not comprehensively addressed in the Indigenous Peoples Bill.

So far, the recognition of indigenous peoples has been done through Regional Regulations issued by the heads of the relevant regions. This refers to the Decision of the Constitutional Court (MK) Number 35/PUU-IX/2012 which basically contains the separation of customary forests from state forests. However, in practice, even before the Constitutional Court Decision was issued, there were still inconsistencies between Regional Regulations or Decrees that had been issued regarding the recognition of indigenous peoples and other public policies. For example, the Decree of the Regent of North Luwu No. 3/2004 on the Recognition of Seko Indigenous Peoples was merely a public policy because it ignored the views of the community who rejected the presence of a hydroelectric power plant in Seko.

Technically, the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 9 of 2015 concerning Procedures for Determining Communal Rights to Land of Indigenous Peoples and Communities Located in Certain Areas (Permen ATR 9/2015) is considered as one of the operational options to recognize indigenous peoples. However, Permen ATR 9/15 regulates that the subject of communal rights is not only indigenous peoples, but also applies to other communities, which in Permen ATR 9/15 are termed communities in certain areas, namely communities in forest or plantation areas [14]. Whereas the concept of customary rights of indigenous peoples and communal rights to land are different things because both have different characteristics from one another [15]. Looking at the

[13] Wimba Roofi Hutama, "Eksistensi Hak Ulayat Pasca Berlakunya Peraturan Menteri Agraria Nomor 18 Tahun 2019," *Notaire*, 2021, https://doi.org/10.20473/ntr.v4i3.28036.
[14] Nurul Firmansyah, "Menyoal Subjek Hak Komunal," *Hukumonline*, 2015.
[15] Mariska Yostina, "HAK KOMUNAL ATAS TANAH MASYARAKAT HUKUM ADAT DI INDONESIA (Analisi Peraturan Menteri Agraria Dan Tata Ruang Nomor 9 Tahun 2015 Tentang Tata Cara Penetapan Hak Komunal Atas Tanah Masyarakat Hukum Adat Dan Masyarakat Yang Berada Dalam Kawasan Tertentu)," 2015, 1–26.

efforts to recognize indigenous peoples so far, the legal logic of formalizing recognition into a series of legislative procedures is ineffective. It is almost impossible for a law to accommodate technical arrangements for the recognition of indigenous peoples' rights to their social, economic, political and cultural rights at the same time [16].

While in some contexts formalizing ownership means little more than endorsing existing practices, this process formally recognizes individual or collective rights not only to use and profit from but in some cases also dispose of land in much the same way as de Soto envisioned in Admos Chimhowu's journal [17]. At the same time, quoting from Chimhowu, that there are substantial changes in the law of indigenous peoples in Kenya, more details are explained in table 1. following;

Fitur	Old Type of Customary Law	New Type of Customary Law
Customary Rights in Legislation	Not recognized as property rights	ownership and recognition of customary law in recognizing customary rights as property under statutory law (see Kenya Community Land Act 2016) also Uganda, Mozambique, Tanzania, and Burkina Faso
Authority over land	The state has delegated authority to traditional chiefs, clan chiefs or family elders.	State authorizes customary or reformed institutions (a combination of elected and appointed customary chiefs)
Independence from state institutions	Most state independence in terms of licensing	Increasingly integrated and co-opted in statutory law. Increasing standardization of practice across indigenous communities.
Land administration and recording	verbal and informal written agreements	Statutory land registration; group and individual boundaries through the use of new technologies.
Cadastre	Still manual without any technology	Land registration based on survey work done by professionals using new,

[16] R Yando Zakaria, "Strategi Pengakuan Dan Perlindungan Hak-Hak Masyarakat (Hukum) Adat: Sebuah Pendekatan Sosio-Antropologis," *BHUMI: Jurnal Agraria Dan Pertanahan*, 2016, https://doi.org/10.31292/jb.v2i2.66.
[17] Admos Chimhowu, "The 'New' African Customary Land Tenure. Characteristic, Features and Policy Implications of a New Paradigm," *Land Use Policy* 81, no. August 2017 (2019): 897–903, https://doi.org/10.1016/j.landusepol.2018.04.014.

		cheaper technology.
Dispute Resolution	Locally embedded grievance and dispute resolution mechanisms	Formal integration into the national justice system where statutory law is supreme but some scope for adat dispute resolution is privileged, the state should not intervene.
Land commodities	Most land sales and leases are granted on the basis of need rather than ability to pay for those with eligible rights	Sale and lease of land is possible for all persons with rights and qualified investors. Taking into account the principle of special treatment for indigenous nationals [18].

Substance that can be adopted in the Kenyan indigenous peoples law, there is significant in that the sale and leasing of land is possible for all persons with rights and qualified investors. Taking into account the principle of special treatment for indigenous nationals. Basically, the principle is recognized in the UUPA giving special treatment to Indonesian citizens and is supported by the Principle of Nationality and the Principle of Equitable Land Ownership and this is only natural because the State was built to ensure the interests of its citizens. If other regulations are preoccupied with giving foreign nationals the same land rights as Indonesian citizens, it is unnatural and contrary to the principles of the UUPA.

Looking at the conflicts of indigenous peoples so far that have arisen due to the lack of recognition of the rights of indigenous peoples, it is necessary to have an initial understanding in advance of who and what can be referred to as the subjects and objects of the rights of indigenous peoples in the social and cultural order concerned that will be recognized in the district / city concerned [19] , and Recognition of the rights of indigenous peoples by the State can be carried out based on the values of local wisdom of indigenous peoples [20].

Pengakuan ini dapat dialasi oleh produk hukum tingkat daerah baik itu Peraturan Daerah maupun Surat Keputusan Kepala Daerah setempat yang berisi kategori-kategori dan atau bentuk-bentuk pengelompokan sosial yang dapat disebut sebagai wujud lapangan dari apa yang disebut

[18] National Council for Law Reporting, "LAWS OF KENYA, Land Act," no. 6 (2016).
[19] Zakaria, "Strategi Pengakuan Dan Perlindungan Hak-Hak Masyarakat (Hukum) Adat: Sebuah Pendekatan Sosio-Antropologis."
[20] Hidayat Hidayat, "PENGAKUAN HUKUM TERHADAP HAK ULAYAT MASYARAKAT HUKUM ADAT," *To-Ra*, 2016, https://doi.org/10.33541/tora.v1i3.1140.

sebagai 'masyarakat hukum adat' di daerah itu; bentuk-bentuk penggunaan sumber daya alam apa saja yang dapat dikategorikan sebagai obyek hak masing-masing subyek hak; dan juga berbagai jenis hak yang dikenal dalam kehidupan sehari-hari komunitas yang bersangkutan [21]. Dengan pengaturan hukum yang demikian, masing-masing masyarakat hukum adat perlu melakukan self assesment diri untuk memperoleh pengakuan, sementara instansi terkait yang perlu lebih berperan aktif untuk melakukan penetapan terhadap hak-hak publik masyarakat hukum adat.

The state has constitutionally recognized the entity of indigenous peoples who are part of the citizens who should also give respect to the identity of indigenous peoples as legal subjects, namely the same rights to live prosperously as the goal of national development [22]. The philosophy of protection of indigenous peoples is in line with Satijipto Raharjo's view that it is intended to provide protection for human rights (HAM) that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law in order to obtain social justice.[23].

CONCLUSION

From the description above, it turns out that social unrest that occurs due to prolonged conflicts is a result of the experience of indigenous peoples trying to defend customary rights as a result of the unwillingness and tug of war between the DPR and the government regarding the ratification of a bill that has an impact on the concession of indigenous territories between the government and the private sector and unrest has become a common experience that arises from the government's inability to handle conflicts between communities and corporations. Thus, this study provides a perspective in looking at social unrest not on static causal factors but on the dynamic process of how indigenous peoples' unrest about customary territories that have no legal certainty

This paper has limitations in data sources that only rely on literature and online media so that it cannot be used as a strong and comprehensive basis for policy formulation. Policy formulation requires extensive surveys and in-depth informant interviews to be used as a basis for policy formulation, interviews with informants on affected experiences. Follow-up studies that accommodate a wider sample and diverse sources of information can be a source of knowledge for a deeper understanding and better social structuring of indigenous peoples.

REFERENCES

[21] Zakaria, "Strategi Pengakuan Dan Perlindungan Hak-Hak Masyarakat (Hukum) Adat: Sebuah Pendekatan Sosio-Antropologis."
[22] Siti Barora, "Perlindungan Masyarakat Hukum Adat Dalam Konstitusi Sebagai Perwujudan Asas Equality Before The Law," *De Jure Jurnal Ilmiah Ilmu Hukum*, 2020, https://doi.org/10.33387/dejure.v1i2.2022.
[23] Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2000).

JOURNALS

Aliansi Masyarakat Adat Ausantara. "RESILIENSI MASYARAKAT ADAT DI TENGAH PANDEMI COVID-19: AGRESI PEMBANGUNAN DAN KRISIS HAK ASASI MANUSIA (HAM)." Jakarta, 2020. file:///C:/Users/LENOVO/Downloads/DOC PDF/CATATAN-AKHIR-TAHUN-2020_AMAN_2.pdf.

Barora, Siti. "Perlindungan Masyarakat Hukum Adat Dalam Konstitusi Sebagai Perwujudan Asas Equality Before The Law." *De Jure Jurnal Ilmiah Ilmu Hukum*, 2020. https://doi.org/10.33387/dejure.v1i2.2022.

Budiyanto, Budiyanto. "MODEL FUNGSIONALISASI NILAI-NILAI KEARIFAN LOKAL (LOCAL GENIUS) DALAM KEBIJAKAN HUKUM (LEGAL POLICY) DAERAH DI PROVINSI JAWA TENGAH (Kajian Konstitusional Penguatan Komunitas Adat Sedulur Sikep Pati Dalam Pengelolaan SDA & Pelestarian LH)." *Jurnal Pembaharuan Hukum* 3, no. 1 (2016): 69. https://doi.org/10.26532/jph.v3i1.1348.

Chimhowu, Admos. "The 'New' African Customary Land Tenure. Characteristic, Features and Policy Implications of a New Paradigm." *Land Use Policy* 81, no. August 2017 (2019): 897–903. https://doi.org/10.1016/j.landusepol.2018.04.014.

Datau, Rahmat, and Hairan Hairan. "ASPEK HUKUM DALAM PENGELOLAAN WILAYAH PESISIR DALAM PERSPEKTIF OTONOMI DAERAH." *Gorontalo Law Review*, 2019. https://doi.org/10.32662/golrev.v2i2.700.

Democrat National Party. "Urgensi Dan Pokok-Pokok Pengaturan Penyusunan Rancangan Undang-Undang Masyarakat Hukum Adat," 2019.

Fathiyah Wardah. "Mengapa RUU Masyarakat Hukum Adat Tak Kunjung Disahkan?" voaindonesia, 2021. https://www.voaindonesia.com/a/mengapa-ruu-masyarakat-hukum-adat-tak-kunjung-disahkan-/6324774.html.

Firmansyah, Nurul. "Menyoal Subjek Hak Komunal." *Hukumonline*, 2015.

Guspin, Sefriansyah. "KEBIJAKAN PEMERINTAH INDONESIA TERHADAP MASYARAKAT ADAT Dalam BAB III Ini , Penulis Akan Menjelaskan Mengenai Kebijakan Pemerintah Pusat Untuk Melindungi Hak-Hak Masyarakat Adat Di Seluruh Nusantara Dengan Mengacu Pada Deklarasi Yang Di Keluarkan Oleh Per," n.d., 52–89.

Hidayat, Hidayat. "PENGAKUAN HUKUM TERHADAP HAK ULAYAT MASYARAKAT HUKUM ADAT." *To-Ra*, 2016. https://doi.org/10.33541/tora.v1i3.1140.

Hutama, Wimba Roofi. "Eksistensi Hak Ulayat Pasca Berlakunya Peraturan Menteri Agraria Nomor 18 Tahun 2019." *Notaire*, 2021. https://doi.org/10.20473/ntr.v4i3.28036.

I GUSTI AGUNG SUM. "Pendekatan Formalistik Dalam Memahami Validitas Hukum Adat Dari Kacamata Yurisprudensi," 2021, 4.

Ismail, nur hasan. "RANCANGAN UNDANG-UNDANG CIPTA KERJA : Pengabaian Prinsip-Prinsip UUPA." edited by Tarmizi. Sinar Grafika, 2020.

https://www.google.co.id/books/edition/Pengantar_Hukum_Perdata_Tertulis_BW/uzZCEAAAQBAJ?hl=id&gbpv=1&dq=Pengantar+hukum+perdata+tertulis&printsec=frontcover.

Joesoef, Iwan Erar. "PEMBERIAN KONSESI KEPADA INVESTOR DI ATAS TANAH ADAT DAN EKSISTENSI HUKUM ADAT." *Jurnal Hukum Dan Peradilan*, 2021. https://doi.org/10.25216/jhp.10.3.2021.361-379.

Reporting, National Council for Law. "LAWS OF KENYA, Land Act," no. 6 (2016).

Sabar, Bhubaneswar. "Culture, Gender and Inequality: Narratives from a Particularly Vulnerable Tribal Group in Odisha, India." *Journal of Asian and African Studies*, 2021. https://doi.org/10.1177/00219096211059818.

Sumardjono, M S W. "JALAN TENGAH PENGATURAN MASYARAKAT HUKUM ADAT1." *Meninjau Ulang Pengaturan Hak Adat*, 2019.

yla. "Proyek Stranas Disebut Picu 38 Konflik Agraria Sepanjang 2021 Baca Artikel CNN Indonesia "Proyek Stranas Disebut Picu 38 Konflik Agraria Sepanjang 2021." CNN INDONESIA, 2022. https://www.cnnindonesia.com/nasional/20220107055037-20-743621/proyek-stranas-disebut-picu-38-konflik-agraria-sepanjang-2021.

yoa/wis. "Kronologi Ketua Adat Kinipan Diseret Dan Ditangkap Polisi." CNN INDONESIA, 2020. https://www.cnnindonesia.com/nasional/20200827015212-12-539719/kronologi-ketua-adat-kinipan-diseret-dan-ditangkap-polisi.

Yostina, Mariska. "HAK KOMUNAL ATAS TANAH MASYARAKAT HUKUM ADAT DI INDONESIA (Analisi Peraturan Menteri Agraria Dan Tata Ruang Nomor 9 Tahun 2015 Tentang Tata Cara Penetapan Hak Komunal Atas Tanah Masyarakat Hukum Adat Dan Masyarakat Yang Berada Dalam Kawasan Tertentu)," 2015, 1–26.

Zakaria, R Yando. "Strategi Pengakuan Dan Perlindungan Hak-Hak Masyarakat (Hukum) Adat: Sebuah Pendekatan Sosio-Antropologis." *BHUMI: Jurnal Agraria Dan Pertanahan*, 2016. https://doi.org/10.31292/jb.v2i2.66.

Books

Rahardjo, Satjipto. *Ilmu Hukum*. Bandung: Citra Aditya Bakti, 2000.

Regulations

Undang-Undang Republik Indonesia Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria

The Republic of Kenya, Laws Of Kenya The Community Land Act No. 27 oF 2016

Others

Aliansi Masyarakat Adat Ausantara. "RESILIENSI MASYARAKAT ADAT DI TENGAH PANDEMI COVID-19: AGRESI PEMBANGUNAN DAN KRISIS HAK ASASI MANUSIA

(HAM).” Jakarta, 2020. file:///C:/Users/LENOVO/Downloads/DOC PDF/CATATAN-AKHIR-TAHUN-2020_AMAN_2.pdf.

yoa/wis. “Kronologi Ketua Adat Kinipan Diseret Dan Ditangkap Polisi.” CNN INDONESIA, 2020. https://www.cnnindonesia.com/nasional/20200827015212-12-539719/kronologi-ketua-adat-kinipan-diseret-dan-ditangkap-polisi.

yla. “Proyek Stranas Disebut Picu 38 Konflik Agraria Sepanjang 2021 Baca Artikel CNN Indonesia "Proyek Stranas Disebut Picu 38 Konflik Agraria Sepanjang 2021.” CNN INDONESIA, 2022. https://www.cnnindonesia.com/nasional/20220107055037-20-743621/proyek-stranas-disebut-picu-38-konflik-agraria-sepanjang-2021.

Reporting, National Council for Law. “LAWS OF KENYA, Land Act,” no. 6 (2016).