

Dilemma of customary land policy in Indonesia

Dilema kebijakan tanah ulayat di Indonesia

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Abstract

Indonesia's policy of customary land regulation does not eradicate the problems faced by indigenous people. Disputes over customary land proprietary rights continue to occur even in this current era of decentralization and democracy. Departing from empirical phenomena, this study aims to uncover customary land policy dilemmas and explore strategies to reconstruct customary land policies in Indonesia. This study uses a qualitative approach to literature study methods. This study was conducted in Indonesia and uses various cases of customary land policy from the provinces of Riau, East Kalimantan, and Papua. The data collected in this study is derived from books, documents, journals, research results, and news in electronic media. The results of the study show that Indonesia has a policy dilemma in the regulation of customary land for a number of reasons. First, customary land policies governed by customary law and national law often result in disputes. Second, in relation to natural resources management, there is no synchronization and harmony between sectoral laws and the Basic Principles of Agrarian Law (*UUPA*). Third, the government is yet to create policies at the local level regarding the protection and recognition of customary land. Therefore, the ideal strategy of policy reconstruction is to create a synergy between government institutions and all stakeholders in the policymaking process of customary land regulation. The conclusion of this study is that the policy dilemma of customary land in Indonesia will continue to occur if the government does not involve the participation of indigenous people and groups of interest in the policymaking process of customary land regulation.

Keywords: customary land; policy dilemma; policy reconstruction; indigenous peoples

Abstrak

Kebijakan tanah ulayat di Indonesia masih menyisakan persoalan bagi masyarakat adat. Konflik terhadap penguasaan tanah ulayat terus terjadi hingga era desentralisasi dan demokrasi saat ini. Berangkat dari fenomena empirik tersebut, maka studi ini bertujuan untuk mengungkap dilema kebijakan tanah ulayat dan mengeksplorasi strategi untuk merekonstruksi kebijakan tanah ulayat di Indonesia. Penelitian ini menggunakan pendekatan kualitatif dengan metode studi kepustakaan. Studi ini dilakukan di Indonesia dengan mengambil berbagai kasus tanah ulayat sebagian besar yang terjadi di Provinsi Riau, Kalimantan Timur, dan Papua. Data dalam penelitian ini dikumpulkan dari sumber-sumber yang berasal dari buku-buku, dokumen-dokumen, jurnal, hasil penelitian, dan berita di media elektronik. Hasil penelitian menunjukkan bahwa dilema kebijakan Dari penelitian ini diperoleh hasil bahwa di Indonesia mengalami dilema kebijakan dalam pengaturan tanah ulayat yaitu; Pertama, kebijakan tanah ulayat yang diatur oleh hukum adat dan hukum nasional sering dipertentangkan; Kedua, tidak sinkron dan disharmoni antara UUPA dengan Undang-Undang sektoral yang berkaitan dengan pengelolaan sumber daya alam; Ketiga, kebijakan pada tataran lokal yang masih belum dibuat dalam melindungi dan mengakui tanah ulayat. Oleh karena itu, strategi dalam merekonstruksi kebijakan adalah dengan sinergitas antar lembaga pemerintahan dan melibatkan seluruh stakeholders dalam penyusunan kebijakan yang berkaitan dengan pengaturan tanah ulayat. Simpulan dalam penelitian ini adalah dilema kebijakan tanah ulayat di Indonesia akan terus terjadi, apabila kebijakan yang dibuat hanya menitikberatkan pada pandangan pemerintah tanpa melibatkan partisipasi masyarakat adat dan kelompok kepentingan.

Kata kunci: tanah ulayat; dilema kebijakan; rekonstruksi kebijakan; masyarakat adat

Introduction

Customary land or “*Tanah Ulayat*” is a land with the residents of the customary law community concerned, which is not only known in Indonesia but also known internationally. The recognition of customary land law is explained in the Indigenous and Tribal Peoples Convention by ILO (27 June 1989). The existence of indigenous peoples was largely determined by the control of customary land. According to Kolers (2009:8), the land has an important meaning, namely the land as a place of life, the land as needed resources, and the land and above it as a part of the world system. Kolers’ opinion (2009) is not much different from Sumardjono’s statement (2008) that land can be seen from the perspective of economic, social, and cultural rights. Therefore, the issue of customary land is so complex that it encompasses multiple dimensions of life.

In general, the issue of customary land that occurs in several countries caused by two problems. The first problem is the absence of formal legality or policy as the recognition proof of customary land that causes frequent claims from various parties (Scholtz 2010:37-61, Scholtz 2013:397-418, Bauer 2015:627-645). Second, the acquisition of customary land was mainly carried out by the private sector which led to disputes over the land (Hristov 2005:88-117, Cooke 2012:240-253, Ng’ombe et al. 2014:1985-2007). Meanwhile, according to Sumardjono (2001:55), Indonesia as a country with a variety of ethnic groups and customs certainly has arrangements regarding customary land in their respective regions in accordance with the characteristics of customary law in the area, namely customary rights. However, Indonesia as a Unitary State also has a constitution and laws that govern the customary land. Recognition of the indigenous and tribal peoples’ law in Indonesia has been contained in the 1945 Constitution of the Republic of Indonesia, which has been amended in Article 18B paragraph two which reads “The State recognizes and respects units of indigenous and tribal peoples’ law along with their traditional rights as long as they live and in accordance with the social development and the principle of the Unitary State of the Republic of Indonesia, which is regulated by the law.” On the other side, the 1945 Constitution of the Republic of Indonesia implicitly states that the land is actually for the people and be used for the welfare of society, as explained in Article 33 paragraph three which reads “Earth, water, and natural resources therein contained controlled by the state and used for the greatest prosperity of the people”.

Recognition of customary land in Indonesia has been established through the Constitution of the Republic of Indonesia No. 5 of 1960 concerning the *Undang-Undang Pajak Agraria-UUPA* or Basic Principles of Agrarian Law. Article 3 of *UUPA* stated that “In view of the provisions of Articles 1 and 2 of the implementation of customary rights and similar rights from indigenous and tribal peoples, insofar as they are still exist, must be in accordance with national interests and The State, which based on national unity and must not be conflicted with laws and other higher rules.” Furthermore, in Article 5, it is also stated that “The agrarian law that applies to the earth, water and space is customary law, insofar as it does not conflict with national and state interests, which based on national unity, Indonesian socialism, and also the regulations contained in this law and the other laws, everything is according to the elements that rely on religious law”.

According to the legal basis, the existence of customary land has been acknowledged nationally. On the contrary, based on empirical data, the recognition of customary land in various regions in Indonesia cannot run properly. Government policies, especially in the New Order era, made the position of indigenous peoples increasingly difficult. There were many cases of dispute occurred between indigenous peoples and various stakeholders in relations to customary land in various regions. The governments, under the pretext of development, discriminate and seize the rights of indigenous peoples towards the land tenure and other resources so that the indigenous people become marginalized. In short, the New Order regime ignored the rights of indigenous peoples by intimidating them (Arizona 2010:1-2).

Furthermore, the annexation problem of land or customary land often occurred by the State and the owners of capital. This condition supported by the development of economic liberalization in

Indonesia, with the existence of industrialization in the oil palm and rubber plantation sector which emphasizes investment and has implications for the alienation of local communities (Urano 2014:6).

Research Method

This research used a qualitative method with literature studies. The study of literature according to George (2008:6) has a characteristic that is the identification of various sources that provide factual information or expert opinions on research questions. Therefore, to explain the policy dilemma of customary land in Indonesia, this study explored a number of cases of customary land that occurred in Riau Province, East Kalimantan Province, and Papua. Data collection conducted in this study uses literature reviews, and the sources were from the news in the mass and electronic media, reports, documentation, books, and research results that have been published in journals that relevant to the focus of the study. The data collected will be analyzed by textual analysis. The textual analysis involves the identification and interpretation of a set of verbal or nonverbal signs (VanderStoep & Johnson 2009:210). The stages of data analysis begin after the data collected, then analyzed in writing by using textual techniques and interpreted and described as a research result.

Results and Discussions

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The rights to land and natural resources are one of the most important rights for indigenous peoples because it measures the existence of an indigenous community. Nababan (2009) in Arizona (2010:51-51) mentioned that of the many categories of rights relating to indigenous peoples, there are at least four rights that often voiced by indigenous peoples. First, the right to "control" (owning, controlling) and managing (maintaining, utilizing) land and natural resources in their customary territories. Second, the right to self-regulation in accordance with customary law (including customary justice) and customary rules agreed upon by indigenous peoples. Third, the right to take care of themselves based on the customary management or institutional system. Fourth, the right to identity, culture, belief system (religion), knowledge system (traditional wisdom) and native language.

In relations to these customary rights, there are agrarian problems where one of them is the customary land dispute, which is also part of a political problem. Wiradi (2009: 44) stated that "land is at the heart of power". Thus, the issue of customary land is closely related to power and interests. The history of customary land in Indonesia, in general, has existed since the establishment of this country as it explained by Sirait et al. (2000:3) that long before Indonesia's independence, there were 19 indigenous territories namely: 1) Aceh, 2) Gayo, Alas, Batak, and Nias, 3) Minangkabau, Mentawai, 4) South Sumatra, Enggano, 5) Malays, 6) Bangka, Belitung, 7) Kalimantan, 8) Minahasa, 9) Gorontalo, 10) Toraja, 11) South Sulawesi, 12) Islands Ternate, 13) Maluku, 14) West Irian, 15) Timor Islands, 16) Bali, Lombok, 17) Central Java, East Java, Madura, 18) Solo, Yogyakarta, and 19) West Java, Jakarta.

Meanwhile, policies that provide recognition of customary land itself also exist at both international and national levels. At the international level, there are known conventions that recognize the rights of indigenous peoples, one of which is the Indigenous and Tribal Peoples Convention which established on June 27, 1989. It is explicitly stated in article 2 paragraph one of the convention that "the government has the responsibility to arrange, with the participation of indigenous and tribal peoples concerned, a coordinated and systematic action to protect the rights of these indigenous and tribal peoples and to ensure the respect of their integrity. Furthermore, this convention also specifically stated about the land in Articles 13 to 19. International policy regarding customary land indicates a joint commitment between countries in the world to recognize, respect, protect, and preserve the values of indigenous peoples including customary land.

The implementation of the Constitution of the Republic of Indonesia No. 5 of 1960 concerning the Basic Principles of Agrarian Law (*UUPA*) has become an important milestone in the history of

Indonesia's agrarian policy. The Basic Principles of Agrarian Law is very important because it is the first policy issued since the independent of Indonesia, to regulate customary rights in Indonesia as stated in Article 3 of the *UUPA* (Sembiring 2017:15). The laws of the Basic Principles of Agrarian Law can be interpreted that land must be treated as a means of production to create social justice and for the prosperity of the people, not for individual interests which can lead to a monopoly on ownership and exploitation of the weak by the strong. Therefore, even though individual property rights are a privilege, land cannot be traded without reasons that are socially strong and cannot be made into commodities. Ideally, the landowners and agrarian sources within the territory of Indonesia's sovereignty are Indonesian citizens. Foreigners are not given the permission to own land in Indonesia, but they can be given the right to use agrarian resources by following certain rules. As a form of "collective ownership," the state is the holder of a mandate to manage these resources for the purpose of social justice for all Indonesian citizens. For this reason, the *UUPA* prohibits the monopoly of agrarian sources, except by the state in accordance with its role as a representative of people's interests, which is also carefully regulated in the *UUPA* (Bachriadi & Wiradi 2011:3-4).

In UPPA, there are important rules which recognize and regulate the rights of indigenous peoples including customary land. Nevertheless, a conflict between the implementation of customary law and national law still occurs. The first policy dilemma of customary land in Indonesia is the pluralism of law (legal pluralism). Legal pluralism referred to the enforcement of customary law and national law in regulating customary land. The issue of customary land occurs when there is an effort to contradict both laws in the management and ownership of customary land in Indonesia. Urano (2014) studied customary land in East Kalimantan wherein the area, the farmers who own customary land have been marginalized due to the takeover of their rights to customary land by the oil palm plantation company. Thus, national agrarian law is practically not capable of protecting the rights of indigenous peoples since there is an abuse of power by the local elite.

Furthermore, economic development with increasing industrialization, especially in the plantation sector resulted in the widespread occurrence of customary land annexation in Riau Province. Records from the 2017 Agrarian Reform Consortium or *Konsorium Pembaruan Agraria-KPA* show that Riau Province is among the five regions that contributing to the agrarian dispute caused by the expansion of oil palm plantations and Industrial Plantation Forests or *Hutan Tanaman Industri-HTI*. This dispute is caused by erroneous licensing by government officials who granted a large concession permit that overlaps with customary territories or customary lands of indigenous peoples or local communities to entrepreneurs and corporations (KPA 2017:15). Zubir's research (2017:137-138) shows that rulers and entrepreneurs do not recognize the existence of regional customary law and customary land in acquiring the land for oil palm plantations. The owner of capital considers customary land as land that has no owner and is owned by the state. If there is a demand for the customary land tenure from the indigenous peoples, then they have to prove their rights of the land with official certificates in accordance with the positive law (law of the state), meanwhile, indigenous peoples have adhered to customary law all this time so that disputes like this cannot be avoided.

In addition to the cases that occurred in Indragiri Hulu Regency, indigenous peoples in Kampar District also experienced a similar case. Indigenous peoples in Senama Nenek Kampar Regency involve in dispute with one of the State-Owned Enterprises or *Badan Usaha Milik Negara-BUMN* that engaged in plantations, namely PTPN V, which has taken over approximately 2800 hectares of indigenous peoples' customary land since 1989. The resolution of this dispute has been repeatedly sought, one of which is facilitated by the DPD RI and resulted in the decision that the BUMN was not allowed to manage the customary land before the dispute resolved. Thus, PTPN V obliged to find replacement land for the residents of Senama Nenek Kampar Regency no later than the end of 2013, and recommendations to the National Land Agency of the Republic of Indonesia to be more careful in checking land tenure, both juridical and physically (Yunus 2013:30).

Another case in Papua about customary land dispute shows that the existence of a special autonomy through Special Local Regulation or *Peraturan Daerah yang Bersifat Khusus-PERDASUS* No. 23 of

2008 concerning Customary Rights of the Indigenous Peoples and Individual Rights of Indigenous Peoples of the land does not directly solve the problem of customary land in Papua. Indigenous peoples in Papua experienced the problem of customary land tenure due to several reasons, those are the lack of commitment from the Government in recognition of customary land existence, forced takeover of customary land ownership by the state, and unclear customary land boundaries (Yoafifi 2015:160).

The second policy dilemma is about natural resources management, where there is no synchronization and harmony between sectoral laws (such as the Forestry Law and Mining Law) and the Basic Principles of Agrarian Law (*UUPA*). According to Sumardjono (2010), *UUPA* is legal protection for the same level of rules and below it, hence, it causes the inconsistencies to occur between these laws and regulations (<https://nasional.kompas.com/read/2010/09/24/03504295> / twitter.com, accessed on 4 February 2019). There are contradictions between forest management and mining exploitation regulations with rights of land tenure in *UUPA*. The conflict arises due to the substantial difference between *UUPA* and Forestry Law, where substantially, *UUPA* more appreciative toward customary rights of indigenous people compared to Forestry Law. This conflict can be observed from the conception of indigenous peoples and their natural resource rights (Arizona 2010:81).

Constitution of the Republic of Indonesia No. 41 of 1999 concerning Forestry, in Article 5 paragraph three stated that the determination of forest status is carried out by the government. The government means the central government (Article 1 No. 14, of the Constitution of the Republic of Indonesia No. 41 of 1999). In Government Regulations No. 44 of 2004 concerning Forestry Planning in Article 15, it stated that the inauguration of forest areas organized by the Minister of Forestry. With this provision, the authority to determine forest areas is only in the hands of the Minister of Forestry, not the Government. Compared to the Constitution of the Republic of Indonesia No. 5 of 1960 concerning the Basic Principles of Agrarian Law, it contradicts the Article 19 which explained that land registration is carried out by the National Land Agency or *Badan Pertanahan Nasional-BPN*. It happens due to the viewpoint that permits issued to forest areas are considered as different permits for land use, even though the forest is on land which is a single entity (Mongabay 2019).

The demands toward the Forestry Law regarding the customary rights of indigenous peoples were carried out by the Alliance of Indigenous Peoples of the Archipelago or *Aliansi Masyarakat Adat Nusantara-AMAN*, indigenous people unity of Kenegerian Kuntu in Kampar Regency of Riau Province, and indigenous people of Kasepuhan C situ in Lebak Regency of Banten Province. As a result of this demand, the Constitutional Court issued a decree No. 35/PUU-X/2012. The important part of this Constitutional Court Decree was, basically, removing customary forests from state forests and changes that forest's status as one of the private forests. Thus, the customary forest did not include in a special category that differentiates it from private forests (Arizona et al. 2014:39).

Furthermore, this Constitutional Court Decree stated that the landowner has the right to both the land and the forest. Therefore, it can be interpreted that the indigenous peoples have the rights to customary land while at the same time also have the rights to customary forests. Individuals or legal entities that own the rights of land also own the rights to private forests. Thus, the existence of customary forests must be preceded by the existence of customary land from indigenous peoples since the customary forests are above the customary land. The implication of the Decree is that the indigenous peoples have the authority to regulate the allocation, function, and utilization of customary land and customary forests in their territory. Therefore, the authority of the Ministry of Forestry to regulate, determine the function, and supervise the distribution of forest product from customary forests can only be implemented if there is a determination of customary forests (Kristianto 2014:24).

Related to the contradiction between *UUPA* and Mining Law, philosophically, *UUPA* was arranged for the protection purpose by the State to the indigenous peoples' rights. However, the implementation of *UUPA* resulted in a different situation since the existence of the Mineral and Coal Mining Law causes paradox toward the philosophical grounds of the *UUPA*. In fact, mining land clearing is often conducted without the consent of local indigenous people. In addition to it, the economic conditions

of the people in the mining area are close to poverty. This situation leads to higher conflict potential in the mining area. For instance, a conflict occurred with the Dayak indigenous people who complained that inland tribe of East Kalimantan has continued to lose their main livelihoods since the presence of mineral and coal mining, the oil and gas industry, and also the oil palm plantations (Julius 2014).

Concerning Mineral and Coal Mining, Constitution of the Republic of Indonesia No. 4 of 2009 stated in Article 135, “Holders of Exploration Mining License (IUP) or Exploration Special Mining License (IUPK) can only conduct their activities after obtaining approval from the landowner”. Article 136 explained more details in paragraph one that “IUP or IUPK holders are obliged to settle the land rights with the landowner in accordance with statutory provisions,” and paragraph two that “Settlement of land rights as referred in paragraph one can be done in stages according to the needs of the land by the IUP or IUPK holders”. The regulation explicitly orders every mining entrepreneur to seek approval from the local community. However, according to Sondakh (2017), mining companies rarely fulfilled the rights of indigenous peoples to the land.

The third policy dilemma is that customary land policy at the local level are not yet fully established and still in favor of corporate interests. The following table will show the Province and District or City that have been identified having Local Regulations on Customary Land (Table 1.).

Table 1.
The list of province, district, and city that has customary land policies

Province/District/City	Policy
Bali Province	Regional Regulation of Bali Province No. 3 of 2003
West Sumatera Province	Regional Regulation of West Sumatera Province No. 2 of 2007, Regional Regulation of West Sumatera Province No. 16 of 2008, Regional Regulation of West Sumatera Province No. 21 of 2012
Central Kalimantan Province	Regional Regulation of Central Kalimantan Province No. 16 of 2008, Governor Regulation of Central Kalimantan Province No. 13 of 2009
Papua Province	Special Regional Regulation of Papua Province No. 23 of 2008
Riau Province	Regional Regulation of Riau province No. 10 of 2015
Lebak District	Regional Regulation of Lebak District No. 32 of 2001
Nunukan District	Regional Regulation of Nunukan District No. 34 of 2003
Malinau District	Regional Regulation of Malinau District No. 4 of 2001
Gunung Mas District	Regional Regulation of Gunung Mas District No. 33 of 2011
Muara Enim District	Regional Regulation of Muara Enim District No. 2 of 2007
Kampar District	Regional Regulation of Kampar District No. 12 of 2009
Ternate City	Regional Regulation of Ternate City No. 13 of 2009

Source: Managed by Researcher from the Data of Ministry of National Development Planning (PPN/BAPPENAS) 2017

Decentralization and regional autonomy make regional governments have a more important role in the recognition and protection of indigenous peoples. McWilliam (2006) in his study of the history of customary land in Indonesia proved that the existence of decentralization, democracy, and regional autonomy had an impact on the strengthening of local aspirations for the recognition and protection of customary land. However, it was further explained that it was rather difficult to change informal recognition to formal recognition due to the political influence and influence of the indigenous peoples both in decision making and policy making at the Central Government level and at the regional level.

From the politics of national law point of view, the Central Government has given emphasis on regional governments by making Law on Regional Government which is explicitly regulated through the Constitution of the Republic of Indonesia No. 32 of 2004 and the Constitution of the Republic of Indonesia No. 23 of 2014 as amended into Constitution of the Republic of Indonesia No. 9 of 2015.

For instance, in the Constitution of the Republic of Indonesia No. 32 of 2004 concerning Regional Government, stipulated in Article 2 paragraph nine that "The state recognizes and respects indigenous peoples unity along with its traditional rights as long as they are still alive and in accordance with the development of society and the principle of the Unitary State of the Republic of Indonesia".

Strategy for reconstructing customary land policy

Based on the policy dilemma of the customary land, a customary land policy reconstruction strategy in Indonesia is needed. The first is the involvement of indigenous peoples and interest groups in law or policy-making process which relate to the use of customary land. Erni & Marut (2015) show that indigenous peoples together with *AMAN* actively participated in law or policy-making, such as conducting judicial review of the Forestry Law, advocating for Nawacita policies within the Constitution and Presidential Regulation No. 2 of 2015, involved in the discussion of the Bill on Protection and Recognition of the Indigenous Peoples, and advocating policy at the local level to recognize indigenous peoples' rights and local wisdom (Erni & Marut 2015:5). Previously, the report from the Directorate of Politics and Communication of the Ministry of National Development Planning or *Badan Perencanaan dan Pembangunan Nasional-BAPPENAS* (2012) also explained that the involvement of indigenous peoples and interest groups was greatly needed in the making of customary land policies such as in East Kalimantan, West Nusa Tenggara, Jambi, and Central Sulawesi.

The second strategy is to establish institutional synergy between all part of the National Government, including the Central, Provincial, City, and District Governments. The disharmony of customary land policies is due to the lack of communication and coordination between institutions at the Ministry level (such as the Ministry of Forestry, Ministry of Internal Affairs, National Land Agency, Directorate General of Plantation of the Ministry of Agriculture, Ministry of Law and Human Rights), House of Representatives of Republic of Indonesia or *Dewan Perwakilan Rakyat Republik Indonesia-DPR RI*, and the Regional Government (executive and legislative branch). According to Susetio (2013:136), the disharmony of customary land policies in Indonesia caused by weak coordination that involves various institutions and legal discipline in the process of establishing legislation.

The synergy between government institutions is not only limited to holding a joint forum for discussing the problems and the future of customary land in Indonesia, but also the synergy of policies. Eliminating the sectoral ego can help to achieve the synergy since the customary land issue is very complex and holistic. According to Sukirno (2010:25-26), the sectoral ego of government institutions creates a conflict of interest in the regulation of customary land in Indonesia. In this regard, the Central and Regional Governments, Indigenous Peoples, and Indigenous Experts must discuss and resolve the customary land problems together. They must start by evaluating, synchronizing, and harmonizing policies. Furthermore, the regulation draft of Law on Indigenous Peoples must be a common concern because the Central Government has initiated it.

Lastly, to reconstruct customary land policies, a systematic effort for data collection and re-registration of the customary land is required. According to De Soto (2000), indigenous peoples have lost many of their assets due to the lack of asset registration. Therefore, registration of customary land is very important as proof of legal ownership whenever the dispute occurs. Legalization of customary land in Indonesia, in fact, has been regulated through Regulation of the Minister of Agrarian Affairs/Head of National Land Agency No. 5 of 1999 concerning the Guidelines for Resolving Customary Rights Problems of Indigenous Peoples in Article 5, which essentially states that data collection of customary land required the involvement of all interested parties and customary law experts. The result of data collection must be projected in a map, and the customary land must be registered officially. In order to implement the provision, the regional government must establish a Regional Regulation as the legal basis for regulating customary land, which in accordance with the provisions in Article 6 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency of the Republic of Indonesia No. 5 of 1999.

However, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency of the Republic of Indonesia No. 5 of 1999 has been revoked and amended by the latest

amendments through the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency No. 10 of 2016 concerning Procedures for Determining Communal Rights of Indigenous Peoples' land and Other Communities in Certain Area. This policy is still controversial and debatable due to criticism from various parties. One of the critics is from Sumardjono (2016) who states that communal rights and customary rights are two different things. Thus, it cannot be equated in Ministry Regulation. Communal rights only concern the civil aspect, while customary rights are related to the private and public aspects (Sumardjono 2016:5).

Apart from the controversy over the customary land policy, the important part is mapping and recognition of customary land in regional policies. It is very necessary to protect the existence of indigenous peoples. There are Civil Society Organizations (CSOs) that have already made efforts to map and recognize the customary territories and forest rights. Those CSOs are the Alliance of Indigenous Peoples of the Archipelago (*AMAN*), Association of Legal Reform of Ecological and Community-Based (HuMa), Epistema, Sajogyo Institute, Association of Indigenous Peoples' Rights Defenders or *Jaringan Pembelaan Hak-hak Masyarakat Adat-JAPHAMA*, and Indigenous Territory Registration Agency or *Badan Registrasi Wilayah Adat-BRWA* (Erni & Marut 2015:66). Based on the *BRWA*, there are 17 indigenous territories and customary land forests that have been certified. Those areas are in Riau Province, Banten Province, South Sulawesi Province, Central Sulawesi Province, Aceh Province, Central Kalimantan Province, and North Kalimantan Province (Badan Registrasi Wilayah Adat 2018).

Conclusion

Based on the previous discussion, it can be concluded that the policy dilemma of customary land in Indonesia consists of three aspects. First, the occurrence of legal pluralism in Indonesia that resulted in a contradiction between customary law and national law. Second, there is no synchronization and harmony between sectoral laws (such as the Forestry Law and Mining Law) and the Basic Principles of Agrarian Law. Third, the policy that regulates customary land at the local level is still not fully established. The implications of the policy dilemma of customary land have caused the indigenous peoples in Indonesia to lose their interests from corporate interests and the economic interests of the state.

The policy dilemma of customary land can be solved by reconstructing the policy through the following strategies. First, the involvement of indigenous peoples and interest groups in law or policy-making process which relate to the use of customary land. Second, the establishment of institutional synergy between all part of the National Government, including the Central, Provincial, City, and District Governments. The last is the need for systematic effort for data collection and re-registration of the customary land as the legal protection for indigenous peoples' customary asset. By using these strategies, the customary land policy dilemma in Indonesia can be solved, and the dispute of customary land can be minimized.

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