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Abstract

Inauguration for the establishment of customary forests is a form of legal protection for the right management of indigenous people in Indonesia included in Jambi Province. The Forestry Law and government regulations as derivative products do not mention the legal form of establishing customary forests in Indonesia. While the Minister of Environment and Forestry's Regulation on Social Forestry, Forest Rights, Recognition and Protection of Local Wisdom in the Management of Natural Resources and the Environment confirms the legal form are called as the minister's decree. When it is associated with the nature of regional autonomy in accordance with the 1945 Constitution, this form of law creates legal problems. Hence, the question answered in this study was the right legal form of customary forest inauguration and its implications for the authority of the regional government, village government, and the legal community itself. In Bungo, Merangin, Sarolangun, and Kerinci Regencies of Jambi Province, the legal forms of customary forest gazettement are Regional Regulations, Regents of the Regents, and Customary Agreements. Finally, based on Minister of Environmental and Forestry Regulation No. 32 of 2015 concerning Forest Rights and Minister of Environmental and Forestry Regulation No. 83 of 2016 concerning Social Forestry, the legal form of inauguration for the establishment of existing forests is declared to remain valid. The results of this study, the right legal form was called as the regent's decree. Second, the implications of this form of law will strengthen regional autonomy and village autonomy as well as customary law communities in relation to the regional government system in Indonesia. Temporary recommendations are also provided such; first, to provide legal certainty for the legal community in the management of customary forests in Indonesia, the stipulation of customary forests is confirmed in the Environmental and Forestry Ministerial Regulation in the form of a regent's decree. Second, for this reason, it is necessary to make changes to the Minister of Environment and Forestry in the field of social forestry, particularly regarding the legal form of confirmation for the establishment of customary forests by legal communities in Indonesia.

Keywords: customary forests, legal protection, management rights of customary law communities

Introduction

The existence of customary forests as a form of social forestry in Indonesia is guaranteed by the 1945 Constitution as a resource utilized for people's welfare, including maintaining the sustainability of forest functions as an ecosystem. Article 33 paragraph (3) of the 1945 Constitution as a constitutional basis pointed that the earth, water, and natural resources contained should be controlled by the State and used for the greatest prosperity of

the people. In brief, it can be inferred that the implementation of forestry is always democratic, equitable and sustainable. Besides, processing of forest products may not result in the destruction of the forest ecosystem itself. In order to always maintain a balance between the ability to supply raw materials and the processing industry, the regulation and development of the upstream forest product processing industry is regulated by the minister in charge of forestry. Forests for welfare, the forest management regulations should also provide equal space for the people to benefit fairly. These benefits are not only economical, but also the sustainability of ecological functions. The space already exists in various regulations in Indonesia, starting from the 1945 Constitution, Laws, Government Regulations, and the Ministry of Environment and Forestry Regulations.

Space for people to manage customary forests is regulated by Law No. 41 of 1999 concerning Forestry, whereas has not guaranteed legal certainty, because it requires very difficult requirements to be fulfilled by indigenous law communities in Indonesia. Until the recognition of customary forest management rights by indigenous people is facing "complicated" legal issues, one side is recognition of customary forests and customary law communities. On the other hand, the confession was tied to a very difficult provision, the conception of customary forests in State forest. As a result, government / regional government determines directly on a forest area that has traditionally been the area of management of indigenous people.

On the above legal issues, the Constitutional Court judge on May 16, 2013 granted part of the judicial lawsuit by the Alliance of Indigenous People of the Archipelago (AMAN), the Indigenous People of *Kenegerian KuntuKepri*, and the Indigenous People of *Cisitu Banten Kesepuhan* regarding the provisions on customary forests in Law No. 41 of 1999 concerning Forestry. A great victory over the AMAN struggle and several legal communities in Indonesia for a dozen years. Based on the ruling, customary forests are no longer part of the State forest. Rather they are rights forests managed by the Customary Law Community.

Moreover, Article 1 number 6 originally stated that Customary Forests are state forests within the territory of indigenous people declared to be contrary to the 1945 Constitution and not binding insofar as they are not interpreted. They are forests within the territory of indigenous people. That is since customary forests are no longer part of the State forest while rights forests and legal communities are the subject of a single manager. Although this ruling does not apply retroactively, meanwhile the recognition of this constitutional interpretation, provides a strong foundation for indigenous people to restore their rights to customary forests. The existence of customary forests has a strong legal basis, but until 2015 there were no legal products or concrete actions to implement the decision.

Additionally, customary forest is one form of forest management by indigenous people in Indonesia. Other forms of community forest management are village forests, community forests, community plantations, and forestry partnerships. The forms of forest management by the community are referred to as social forestry in accordance with Minister of Environment and Forestry Regulation number 83 of 2016 concerning Social Forestry. In the period 1997-2006, various initiatives to realize community management rights over customary forests in Jambi Province were carried out by NGOs. Given the threat of the existence of customary forests over permits for oil palm plantations, coal mining, and industrial plantations. The community at present is not fully aware of the activities of these permits that threaten the sustainability of life and the preservation of environmental functions. While the awareness of the tallest community to obtain rights to customary forests, after the activities of these permits "penetrated" the areas of community management that have been handed down for mastered generations.

As the certain areas, forest areas are designated and determined by the government to maintain their existence as permanent forests. Forest areas need to be established to ensure legal certainty regarding the status of forest areas, the location of boundaries and the extent of

a certain area that has been designated as a forest area into a permanent forest area. This is in accordance with Minister of Environment and Forestry Regulation number 83 of 2016 concerning Social Forestry which emphasize that social Forestry is a system of sustainable forest management carried out in state forest areas or customary forest / forest rights carried out by local communities or customary law communities as the main actors to improve their welfare, environmental balance and socio-cultural dynamics in the form of Village Forests, Community Forests, Forests Folk Plants, Community Forests, Customary Forests and Forestry Partnerships. Moreover, the area of forest in Indonesia in 2017 was about 125.9 million hectares with details based on function 68, 8 million hectares are production forest areas, 27.4 million hectares are conservation forests, and 29.7 million hectares are protected forests.

The deforestation rate in Indonesia in 2016-2017 was 0.5 million hectares, less than 16, 67% from deforestation in 2015-2016. This amount obtained from gross deforestation is a change in the condition of the class of forested land closure being a class of non-forested land cover, reduced by changes in non-forested conditions with forest (reforestation). Improvement of forest cover and land has contributed to the index of forest and land cover. Of the seven major islands, Kalimantan contributes the highest deforestation rate (229.8 thousand ha), followed by Sumatra (127 thousand ha), Sulawesi (70.8 thousand ha), Papua (48.6 thousand ha), and Maluku (23 thousand ha).) Inverted conditions in the East Nusa Tenggara Province, reforestation that occurs in both countries is more than the deforestation. Closure of land forested in the year 2016 is answered plus an additional 5.5 thousand and Southeast Nusa Tenggara covering 14 thousand.

On the other hand, reforestation has been carried out in the form of planting and making means of soil and water conservation. Figures for 2017 were in the form of forest rehabilitation and 200,990 ha of land with 15,213 units of land and water conservation buildings. The community nursery is also encouraged to build community forests whose standing stock fluctuates during the harvest period. The figure in 2017 was 20.13 million m3. The pressure of deforestation and degradation by various interests of the economic sector of plantations, mines, HTI operates with approval and without the consent of the government. Additionally, there are still around 33,000 villages included in the forest area. Hence, potential conflicts will occur because the community considers them "entitled", dealing with the paradigm of the state that must expel the people who are in the region.

This problem occurs throughout Indonesia, including in Jambi Province which has 65% of production forest areas and protected forests. In these areas, there are conflicts between the community and the government and forestry and plantation companies with a background especially the reasons for customary management with various types of losses caused. In 2015-2017, there were tenurial conflicts involving 32 cases of forest land in Jambi Province with a conflict area of approximately 138,686.6 hectares. The typology of conflict occurs between the community and the company holding the permit.

The conflicts occurred have resulted in several consequences among others. First, the loss of access to customary law communities to land, territories and natural resources. Second, the damage to the social structure of customary law community units is due to unequal agrarian structures. Third, there is damage to ecological quality directly related to the quality derivative of humans whose lives depend on agrarian resources. In addition, the existence of customary law community units in various regions still exists, both those that strictly still apply the traditions inherited from them and have begun to follow developments coming from outside.

Besides, the community managed area in the form of customary forests covering an area of 10,134.93 hectares in Bungo, Sarolangun, Merangin and Kerinci Regencies still creates legal uncertainty. Parties outside the customary law community and accompanying NGOs consider the existence of customary forests precisely to be the cause of forest tenure conflicts.

The parties involved were companies holding permits around the customary forest area and the local government.

Judging from the basis of customary forest rights was initially owned in the form of mutual agreement with the community. Then formalized, some forest rights by Decree of the Regent are also through Regional Regulations, as well as in the form of Ministerial decrees. The lack of uniformity of the legal forms is still ongoing. Although the Minister of Environment and Forestry Regulation number 83 of 2016 on Social Forestry has been enacted and various supports from the Central Government realize management rights over customary forests in Indonesia, this condition showed that the legal protection of customary forests is still "weak". For this reason, it is necessary to conduct in-depth study and analysis on the legal form and its implications for the sustainability of the management rights of indigenous people in Jambi Province. The problems examined and analyzed in this study focused on the right form of law for the establishment of customary forests in Jambi Province and the implications of the legal form on the authority of regional governments, the government and customary law communities in the management of customary forests in Jambi Province, Indonesia.

Liteature Reviews

Conception of customary forests and customary law communities

There are some of the most influential doctrines on forests. First, the primacy timber doctrine finds ideological justification called as the "wake theory", it states that all other goods and services from the forest follow from behind wood products as the main result. The conceptual content of this theory is considered inadequate and does not provide options for the various benefits and practices of forest management. The theory is deemed not to provide an explanation of the various objectives of managing forests, which means that they do not appreciate the diversity of actors.

Second, the doctrine of sustained yield is considered as the core of forestry science based on "forestry ethics" which helps avoid the maximization of the side and exclusive benefits and respects forests that are important for human life. Such perception is influenced by the views of previous European societies. For example, in France, there is a kind of jargon "People without forests are dead people." Austrian poet, Ottokar Kernstock calls the forest as "the temple of God with priests as priests." Doctrin sustained yield obscures pubic goods and services and should be conserved, with forests that can be owned by private rights or groups (community rights), where decisions are made to choose forests or individuals. As a result, forest preservation tends to be forced on forest owners by various regulations, and for forest owners who refuse, it will convert the forest into non-forest.

Third, one of the distinctions of forestry is a long period of rotation. This forces the undergraduate forestry to consider the long-term consequences of its activities. Therefore, the forestry approach is rigid and tends not to be dynamic and is reluctant to accept other social interests in the forest. Long-term thinking, appreciation proven and mistrust of the present is part of the ideology of conservatism. Conservative establishment, is related to the search for stable and institutionalized social values. They want a durable social condition guaranteed by strong social and state authorities. Foresters generally want to refer to "common prosperity" or "public interest" with boundaries that they consider to be known. A result of conservative foresters' attitudes is their critical view of democracy and freedom (libertarianism). As "realist anthropologists", they do not believe in the nature of pluralism of interest. As a result, foresters tend to defend capitalism.

Fourth, the doctrine of absolute standard means understanding forests as objects of scientific knowledge, namely to study the natural laws of the forest. This doctrine includes the idea that knowledge of forests is the source of forest management management. Forestry

scholars or scholars who have knowledge of forests become mediator between forest and its owner or community. People are considered not to have different interests in the forest, but forests have different functions for the community. By using the term "forest function", people or communities are interpreted as subjects and forests are interpreted as objects. The importance of determining forest functions based on people's choices is reduced to technocratic levels and carried out by forestry scholars. They are considered to be most aware of the importance of forest functions and allocate the highest value to timber production functions. As a result, forestry policies tend to be reduced to silviculture (regulating forest stands). In accordance with conservative ideology, the state will hopefully establish knowledge into law.

The four doctrines briefly reinforce a discourse in forest management as follows; a) not recognizing the variety of objectives in managing forests, which means not appreciating the diversity of actors, on the contrary only provides an assessment of the existence of forests with the economic value of timber as the first order, b) strong conservative stance that is relatively reluctant to accept other social interests in the forest, the search for stable and institutionalized social values, wants the social conditions guaranteed by social authorities and strong role of the state, c) with the habit of studying the natural laws of the forest, people are considered not to have different interests in the forest, on the contrary the forest has a different function for the community, as a result people / communities are interpreted as subjects and forests are interpreted as objects. Tends to be critical of democracy and freedom, does not believe in the nature of pluralism of interests, and tends to defend capitalism, and d) forest preservation is uniformed as the function of the forest for public interests must exist, so that the decision to use the forest as an individual or group choice is ignored and forest conservation is forced on the forest owner by various regulations.

As previously stated, forest regulation and utilization is affected by the paradigm of scientists about forests. The view that forest is as a source of economic resources occurs in all strata in the community. Government / Local government and entrepreneurs become wood as the main commodity increasing state / regional income and corporate profits . The result is a neglect of other subsystems that are part of the forest, such as animals, water and land that are closely related to the wood itself. The use of wood that ignores other elements in the forest, directly reduces and even eliminates the resilience of other elements which also depend heavily on the sustainability of the wood itself.

Forest regulation and utilization is influenced by the misinterpretation of the legal conception of the right to control the state. Based on the right to control the State, forests are natural resources controlled by the State and used as much as possible for the people's prosperity. In fact, the authority is misused by the government, such as community rights to customary forests.

In the Forestry Law and various other laws and regulations in the field of natural resources, forests are interpreted as part of State forests. However, including customary forests from State forests turn out to neglect the interests of the community which is very dependent on the sustainability of forest resources.

The government / local government tends to side with the interests of the company with reasons to realize people's welfare. Community management areas that should be customary forests, by the government through permit decisions are given to investors to be cultivated. Customary forest as a source of life, social activities, and even valuable history and religion are used as HGU land for a company. The existence of customary forests is blurred due to arrangements and patterns of use that favor economic interests rather than social and ecological interests.

Customary forest as part of State forest means giving very strong direct authority to the government to determine regulation and utilization. The interests of the community as those who also have rights to forest resources are less strong with government authority. The

community cannot do more, because it has been confirmed that customary forests are State forests.

Meanwhile, State Forest means forest located on land that is not burdened with land rights. Entering customary forest in State forest means that the community's interest in a customary area is not recognized as a right. This conception is a source of conflict between indigenous people and the government / regional government and company.

Historically, customary forests as a community management area existed before Indonesia became independent. The existence of customary forests weakened as the development of regulations regarding forestry. The recognition of forests also weakened due to changes in the government system based on customary law in the village government system through Law No. 5 of 1979. Based on this law, all regions of Indonesia are formed by villages. The system of governance by indigenous people is divided into villages as they are today.

Reformation opens opportunities for communities and non-governmental organizations to carry out various efforts to strengthen the existence of customary forests. In Jambi Province, particularly in the West parts, such as *Batanghari, Tebo, Bungo, Sarolangun, Bangko* and *Kerinci* Regencies, indigenous community-based forest management initiatives emerged.

The Indigenous People Alliance of the Archipelago (AMAN) accompanied the community to fight for their rights over customary forests in the entire West Jambi Province. Likewise with the Indonesian Conservation Community (KKI) WARSI succeeded in facilitating the communities in *Guguk* and *Batu Kerbau* villages getting their rights to manage customary forest. The WARSI initiative arrived at the Indonesian Ministry of Forestry for approval. The initiative was also carried out by WARSI and AMAN towards the *Suku Anak Dalam* (SAD) community which succeeded in making the *Bukit Dua Belas* area as a national park (*Bukit Dua Belas* National Park)

In *Tebo* district, the Cakrawala Foundation until 2006 succeeded in facilitating the community to develop village forests. While in *Pelepat Baru* Village, *Pelepat* Regency, *Bungo* Regency, CIFOR together with the Jambi Center for Regional Autonomy and Law Studies (PSHK-ODA) and the *Gita Buana* Foundation (YGB) in 2001-2006 also succeeded in facilitating local communities to manage customary forests.

Although the naming of social forestry is different, the community management system is based on local customary law. In these areas customary, rules are applied and still adhered to by the community in day-to-day life. The problem is that these initiatives are generally in production forest areas. These areas are ex-forest concession areas that have expired. That is, customary forests or other forms of choice are categorized as State forests.

Right to manage customary law communities

Customary forest management cannot be separated from the customary law community as a manager. Indonesian law affirms that customary forests are managed by customary law communities. Both of these aspects should simultaneously exist. Management of customary forests will return to the State if the existence of customary law communities cannot be proven anymore. Conversely, indigenous people without customary forests are tantamount to losing the main resources in their daily lives.

The term of customary law community is filled in Article 18B paragraph (2) of the 1945 Constitution. This article is a constitutional basis guaranteeing the rights of the community to grow and develop in the local order within the framework of the Indonesian State, as well as guaranteeing legal protection for the rights of local communities over forest resources. The customary law community as the subject of law is a legal entity that is "Gemeenschaap", which is a legal alliance formed naturally because of social, economic and political

developments, not "verenigingen" which is formed intentionally for the economic interests of its members. As a Legal Entity, customary law communities have public rights.

In layman's terms, indigenous people are considered to be the same as tribes, for example *Padang / Minang*, *Punan, Kenyah, Melayu, Orang Rimba*. Meanwhile, what distinguishes it from other communities?, the Indigenous People Alliance of the Archipelago (AMAN) defines indigenous people as groups of people who have ancestral origins in a particular geographical area and have their own values, ideology, economy, politics, culture, social and territory. More simply, we can say that indigenous people are bound by customary law, descent and place of residence. Engagement of customary law means that customary law is still alive and adhered to and customary institutions that are still functioning include monitoring that customary law is obeyed. Although in many places, the rules applied are not written, while remember by most of the people.

Moreover, the awareness of the founders of the statem the existence of indigenous people was crystallized in Article 18 of the 1945 Constitution (prior to the amendment) which states that the division of Indonesian territory on the basis of large and small, with the form of the government set by law, by looking at and remembering the basis of consultation in the system of state governance, and the rights of origin in special regions. Furthermore in the explanation II of the article, in the territory of the Indonesian state there are approximately 250 *zelfbesturende landschappen*, and *volksgemeenschappen* such as villages in Java and Bali, *Nagari* in *Minangkabau, hamlet and Marga* in Palembang, etc. These regions have their original structures, and therefore can be considered as special regions. A further explanation of the article states the Republic of Indonesia respects the position of these special regions and all state regulations concerning the area will remember the right of origin of the area.

Recognition and respect for the customary law community unit means recognition and respect for its existence as a community group with a set of originating rights including rights to land and natural resources including forests as well as recognition and respect for the ability of indigenous people within regulate social relations and the ability to regulate the management of land and natural resources including the forest itself.

That the recognition and respect for indigenous people as autonomous community groups is recognized by the world as evidenced by the provisions contained in the United Nations Declaration on the Rights of Indigenous People. In Article 3 of the declaration, it was stated that indigenous people have the right to enter their own lives. Based on these rights, they freely enter into their political status and freely pursue their economic, social and cultural progress. Furthermore in Article 4, it is stated that indigenous people, in exercising the right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, and also in ways and means for funding autonomous functions that have objects from the rights of indigenous people to their customary territories (communal rights) which include water, plants (trees), and animals, rocks having economic value (in the soil), minerals, the coast, the surface of the water, in the water, as well as the part of the land as its depth.

Vollenhoven and Haar note that the existence of indigenous people and their rights, including rights to communal land as attributes and property of collective or communal property of an indigenous community unit, was recognized by the Dutch East Indies colonial government. These two pioneers of customary law discipline also suggest for indigenous people, ulayat land is not only as an economic object, but also as part of their entire life, and considered to have a sacred, magical, and religious nature. Thus, if the colonial government or large companies want to use customary land owned by indigenous people, this is not carried out by revoking rights (onteigening), while by direct leasing agreements.

However, automatic and unconditional recognition of indigenous people was severely interrupted in 1960, when Law No. 5/1960 on Basic Regulations, more specifically on Agrarian Affairs entered into a requirement for state recognition of the existence of this

indigenous community unit. Theoretically, it can be questioned, what the background for holding the conditionality, which means that at some points, based on the discretion of the government, an indigenous community unit can be declared no longer existent or no longer meets the requirements of indigenous people' units. The establishment of these requirements is an oddity, because the process of forming indigenous people is different from the formation of institutions or other legal entities. It never occurred to the intention that at one time the indigenous community unit would dissolve or be dissolved.

There are several criteria for customary law communities. First, a group of people who are due to genealogical or territorial ties, or a combination of genealogists, live for generations and for many years, and generations in a particular region with clear boundaries according to their boundary concept (not using the BPN / boundary concept) from BPN. Second, customary law communities have their own system of customary governance and dispute resolution institutions. Third, customary law communities have customary legal norms that govern the lives of their citizens. Fourth, customary law communities have a religious and belief system, and a certain place that is sacred.

However, there are many opinions from experts who state the existence of customary law communities in Indonesia. Simply, the practice is not simple. Regulations give conditions of existence such as community institutional structures, customary territories, and dependence on natural resource forests that should be proven in real terms where the law raises its own problems.

In Jambi Province, there has been a number of initiatives to identify the existence of customary law communities. As in Batanghari Regency, there are indigenous customary law communities IX. In Bungo Regency, there is the *Pelepat Ulu* indigenous customary law community and *Marga Pembarap* indigenous customary law community in Merangin and *Bathin Lapan* in Sarolangun Regency. The results of identification carried out by WARSI, CAPPA, AMAN, and Jambi PSHK-ODA found several related activities of the legal community. First, the institutional structure of the community still adhered to the governmental system before the village uniformity, although formally they were village. Second, it also adhered to the system of problem solving through customary justice by their leaders. Third, there are certain areas declared as customary forests and their customary territories.

The problem faced is the recognition of the existence of the community legally carried out through local regulations. Until now, only the existence of the *Baru Pelepat* Village legal community in *Pelepat Ulu* has been recognized through Bungo District Regulation. Additionally, customary forests can only be managed by customary law communities. Therefore, the existence of a customary law community is one of the absolute requirements to get the legality of customary forest management rights. Forests will not exist if the existence of customary law communities cannot be proven. Such evidence needs to be carried out carefully in connection with the development of the organization's structure, customary rules, and customary territories. Likewise with the pattern of life of indigenous people who daily show dependence on customary forests.

Research Method

Research design, data types, and sources

The research was conducted in villages that have customary forest areas in Bungo, Merangin and Sarolangun districts with an empirical juridical approach identified, understood and analyzed. The first legal form appropriate for the establishment of customary forests in Jambi Province. Secondly, the implication of the legal form is the authority of the regional

government, village government, and customary law communities in the management of customary forests in Jambi Province.

According to the type, the data in this study are primary data and secondary data. Primary data is obtained through research in the field having traditional forest areas in *Bungo, Merangin* and *Sarolangun* Districts. While secondary data is obtained through searching official documents, scientific books, and journals regarding customary forests.

Sampling

The population in this study were all indigenous forest areas in Bungo, Merangin and Sarolangun Districts. The sample was determined by "purposive sampling" of each 2 (two) customary forests in the 3 (three) districts. Hence, the number of samples was 2 (two) customary forests in Bungo Regency, 2 (two) customary forests in Moerang Regency, and 2 (two) customary forests in Sarolangun Regency.

Data Collection and Analysis

The data collection tool used in this study was an in-depth interview conducted directly by the researcher. The presentation of the data was firstly carried out by using the Interactive Analysis Method, collecting field data from the document (Judge's Decision), the results of the interview, presented in a descriptive and reflective manner. Second, data reduction was then sharpened, classified, and organized.

Findings

Form of legal administration law and its implications on authority of local government and governmental village of indigenous law community

In accordance with Law No. 12 in 2011 concerning the Formation of Laws and Regulations in Indonesia, Article 7 paragraph (1), form of legal regulations such the 1945 Constitution, decree of the people's consultative assembly, substitute governmental laws, government regulations, presidential regulation, provincial regulation, and regency/ city regional regulations.

In addition to the form above, Article 8 of this Law also has other forms recognized as regulations as follows. First, types of legislation other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, House of Representatives, Regional Representative Council, Supreme Court, Constitutional Court, Supreme Audit Agency, Judicial Commission, Bank Indonesia , Ministers, agencies, institutions, or commissions established by the Act or Government at the behest of the Law, Provincial Regional Representatives, Governors, Regency/ City Regional Representatives, Regents / Mayors, Village Heads or equivalent. Second, the legislation as referred in paragraph is recognized and has binding legal force insofar as it is ordered by higher legislation or established based on authority.

Based on the forming institutions, there are regulations formed jointly by the legislative "institutions" with the government, for instance Laws and Regional Regulations. Whereas the regulations established by the government or regional government such Governmental Regulation, Presidential Regulation, Ministerial Regulations, and Regional Head Regulations included the Village Regulation or other types of regulations which are not jointly formed with the House of Representatives (DPR) or Regional People's Representative Assembly (DPRD).

Apart from in the form of regulations, there are "decisions" as a form of legal product to implement regulations. Decisions are instruments for the government or regional government

that are concrete, individual, final and cause legal consequences for certain people or legal entities. For example, if the regulations regulate authority regarding forest gazettement by the President or Minister of Environment and Forestry. Provisions for inauguration can be realized in the form of a decree from the President or Minister. Based on the Presidential Decree, a forest area is designated as customary forest.

Inauguration of customary forests as a form of recognition of the existence of legal communities is also the existence of customary forests themselves. This has been regulated in Law No. 41 in 1999 concerning Forestry, Governmental Regulations and the Minister of Environment and Forestry Regulations. Customary forest as one of the rights inherent in customary law community is a communal right to use forest resources in a fair and sustainable manner.

In Jambi Province, various customary law community initiatives were encouraged by third parties such as NGOs and universities to re-establish customary forests. There are customary law community that have high commitment to maintaining customary forests. In Bungo Regency, there is the customary forest of *Datuk Sinaro Putih* in *Baru Pelepat* and the customary forest of *Batu Kerbau* in *Batu Kerbau* Village, *Pelepat Bungo* District. Likewise in Tebo, Sarolangun and Bangko, there are NGO initiatives, especially WARSI, which are supported by the Ministry of Environment and Forestry, the Department of Environment and Forestry, and local government.

Efforts to legalize customary forests in Jambi Province have also been carried out by the Regional Autonomy Policy and Policy Study Center (PSHK-ODA) with the Gita Buana Foundation and CIFOR in Bungo District, called as customary forests of *Datuk Sinaro Putih*. Legalization for recognition is obtained in various legal forms such as Regional Regulations for Pelepat Bungo customary forest (Bungo District Regulation No. 3 in 2006), Lengeh Hill's Indigenous Forests, Traditional Sigi Hill Forest, *Kemantan* Customary Forest, *Bukit Teluh* Regency Customary Forest Kerinci (Perda RTRWPERDA No 24/2012).

In addition to the legal forms, the inauguration of the customary forest area was also in the form of Custom Agreement such as in Merangin District such *Renah Alai* Customary Forest, *Renah Alai* Village, *Jangkat* District and *Rantau Kremas* Customary Forest, *Jangkat* Sub-District.

Observing the 3 (three) legal forms of customary forest inauguration in Jambi Province, legally formal inauguration through the Regional Regulations and legal regents' decrees, as well as in the form of custom agreements. This is based on the principle of state administrative law, every legal product is declared to remain valid, before there is a judge's decision or other legal product that states it is valid or invalid.

However, based on regulations applied to the forestry sector in Indonesia, the three forms of recognition are not in accordance with the higher regulations, Law No. 41 of 1999 concerning Forestry, Minister of Environment and Forestry Regulation (PerMen-LHK) Number 32 in 2015 concerning on Forest Rights, PerMenLHK No. 83 in 2016 concerning Social Forestry, Minister of Environment and Forestry Regulation No. 34 of 2017 concerning on Recognition and Protection of Local Wisdom in the Management of Natural Resources and the Environment.

The Forestry Law does not mention the legal form of customary forest gazettement, as well as its derivative stated in governmental regulation No. 6 in 2007 concerning Forest Arrangement and Preparation of Forest Management Plans, and Hut Utilization and PP No. 3 of 2008 changes to governmental regulation No. 6 in 2007. Even in the implementation, the Forestry Law raises legal certainty regarding the existence of customary forests. Article 1 Number 4 of the Forestry Law mentioned that state forests are forests that are located on land that is not burdened with land rights". Then, Article 1 Number 6, "Customary forests are state forests that are within the territory of indigenous people."

Moreover, on the legal issue, the Constitutional Court judge on Decision No. 35 / PUU-X / 2012 on May 16, 2013 granted part of the material test lawsuit by the Alliance of Indigenous People of the Archipelago (AMAN), Indigenous People of Kenegerian Kuntu Kepri, and the Cisitu Banten Kesepuhan Indigenous People for provisions concerning customary forests in Law No. 41 in 1999 concerning on Forestry. Based on this ruling, customary forests are no longer part of the State forest. Rather they are rights forests managed by the Customary Law Community. Based on this Constitutional Court Decision, the Government through the Minister of Environment and Forestry imposed a ministerial regulation on social forestry and two regulations that support the existence of customary forests by indigenous people in Indonesia.

Besides, article 50 Minister of Environment and Forestry Regulation No. 83 in 2017 covered; first, customary law communities can submit applications for rights forests to be designated as rights forest areas to the Minister. Second, submission of customary forest as referred to in paragraph (1) refers to the Minister of Environment and Forestry Regulation Number P.32 / Menlhk-Secretariat / 2015 concerning on Private Forests. Third, procedures for verification and validation of forest rights are regulated by the regulations of the Director General.

Based on *PerMen-LHK* No. 32 in 2015 concerning on Forest Rights, that forests consist of state forests, customary forests, and rights forests (Article 3 paragraph (1)). Then, paragraph (2) of this article noted that Forest rights as referred in paragraph (1) consist of customary forests and individual forests/ legal entities). Even though there is a mistake in paragraph (2), the intended forest actually means one of them is customary forest.

The Minister of Environment and Forestry Regulation concerning Indigenous Forests in article (4) confirms the authority and mechanism for determining customary forests are managed by customary law communities which noted, first, the customary law community, individually or jointly in a group or legal entity submits a request for stipulation of the right forest area to the Minister. Second, the legal entity as referred in paragraph (1) is in the form of a cooperative formed by the local community. Third, based on the application as referred in paragraph (1) and paragraph (2), the Minister carries out verification and validation. Fourth, verification and validation as referred in paragraph (3) should be carried out by referring to the guidelines prepared and determined by the Director General by involving stakeholders. Fifth. based on the results of verification and validation as referred in paragraph (4), the Director General on behalf of the Minister within 14 (fourteen) working days specifies the right forest in accordance with its function. Sixth, the designated forest area as referred in paragraph (5) is included in the map of the forest area. Seventh, in the event that the community does not submit an application for the stipulation of the right forest as referred in paragraph (1), the Minister together with the regional government should identify and verify indigenous people and their territories inside the forest area to obtain customary and customary forest communities.

This ministerial regulation on the one hand provides a "very" wide opportunity for the indigenous and tribal people, both individuals and legal entities, to propose and obtain management rights to areas of customary forest management for community welfare. Nevertheless, there is still confusion over arrangements regarding customary forests such as Article 4.

Confusion referred in paragraph (1) in the words "individual and joint" to submit an application for the determination of the right forest area. In fact, specifically customary forests are communal rights which should only be reserved for customary law communities. This is related to Article 6 as follows.

Terms of application for the establishment of customary forests include; customary law communities or customary rights recognized by local governments through regional legal product, indigenous territories that are partially or entirely in the form of forests, and a

statement from the customary law community to determine their customary territory as customary forest. Guarantees for customary forest management rights are also affirmed in the transitional provisions, Article 15 on Customary Forests stipulated by Regional Regulations or Decrees of Regional Heads is declared to remain valid and stipulated as rights forests as stipulated in this Ministerial Regulation.

The legal form of customary forest gazettement reported that there is 1 (one) form, the minister's decision. However, the ministerial regulation also acknowledges the existence of confirmation in the form of regional regulations and decisions of regional heads. Inauguration in the form of regional regulations and regional head decisions is an exception (policy for recognition) for sharing initiatives that have been carried out so far. Hence, whether it is based on social forestry rules, then the confirmation of customary forests can only be done in the form of a ministerial decree. Inauguration through a ministerial decree for the establishment of customary forests is intended to provide a stronger assurance of the right to manage indigenous and tribal people in Indonesia. However, if it is associated with regional autonomy and even village autonomy, this form of law is not appropriate. The right legal form in this context should be the Regent's Decree.

The implications of legal form: The authority of the local government, village government and indigenous people in the management of customary forests in Jambi Province

The legal form of decision for the establishment of customary forests will have implications for several matters relating to authority. This implication is linked to the mandate of regional autonomy and village autonomy and the autonomy of the customary law community itself. First, for regional governments, it will be difficult to carry out maximum guidance and supervision. Although it can be overcome by delegating this authority through policy to the local government, it will cause confusion, because in the legal system of government, those who supervise the activities resulting from a decision are the issuing official or agency.

Second, the village government is also the same as the regional government that has no authority over customary forests. Moreover, the customary law community is a prerequisite for the existence of different customary forests or even not part of the village administration. While the forest area is in accordance with Law No. 6 of 2014 concerning villages as one of the sources of village opinion.

Third, for customary communities, the establishment of customary forests through ministerial decrees is considered to provide a stronger guarantee of legal certainty. Other parties including district, city or provincial governments will certainly respect the existence of customary forests established in the form of ministerial decrees.

Conclusion

Based on the information previously mentioned, we can say that the appropriate legal form of confirmation for the establishment of customary forests is the Regent's Decree with consideration if the ministerial decree requires a long "range" of bureaucracy starting from the village, district, provincial to ministry levels. The implication is that if it is determined by a regent's decree, it strengthens regional authority in terms of regional autonomy, village autonomy, and customary law communities as part of each district's area.

Recommendations given in this study are; to provide legal certainty for the legal community in the management of customary forests in Indonesia, the establishment of customary forests is confirmed in the LHK Minister's Regulation in the form of a regent's decree. For this reason, it is necessary to make changes to the Minister of Environment and

Forestry in the field of social forestry, especially regarding the legal form of confirmation for the establishment of customary forests by legal communities in Indonesia.

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