

The Right Protection of Indigenous People in the Spatial Planning Policy During the Regional Autonomy Era of North Halmahera Regency in North Maluku Province

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Abstract

The recognition and respect for the indigenous people along with their traditional rights is affirmed on the article 18B verse (2) of the 1945 Constitution of the Republic of Indonesia; that includes the indigenous people of Hibualamo in North Halmahera regency. The spatial planning context requires the involvement of the indigenous people to achieve a balance between development and tenure rights so that it will be in line with the local wisdom to support sustainable development.

Keyword: indigenous people, spatial planning

INTRODUCTION

The Second Amendment of 1945 Constitution of the Republic of Indonesia on article 18B verse (2) affirms that the State recognizes and respects the indigenous people along with their traditional rights for a lifetime; the situation of which must be in line with the community development and the principle of the Republic of Indonesia. The above statement means that the state still recognizes the tenure on land based on the customary law as long the people still exists. The recognition must be compatible with the community development and the principle of the Republic of Indonesia.

The recognition of the alliance of the indigenous people along with the *lebensraum* which still exists also stated on the Article 3 of the Law number 5 the year 1960 on the Agrarian Principles Law; the law which states that the implementation of the rights of indigenous people must be in accordance with the national interests.

The decentralization of regional autonomy in 2014 was through the function incorporation of self-governing community with the local self-government, especially in relation with the indigenous people. The policy is explicitly included in Regulation Number 23 the Year 2014 on the Regional Governance and the Regulation Number 6 the year 2014 on Village. In relation with the indigenous people, the Regulation

Number 23 the Year 2014 gives a great, real and responsible authority towards the autonomous which emphasizing on the Regency/ Municipality including to manage the land, especially the land tenure.

The Concept on Rights Occupation of the Country is integrated with the Spatial Planning implementation as regulated in Law Number 26 the Year 2007 on Spatial Planning especially the policy of planning, utilization, and control. The policy of Spatial Planning in the developmental system is implemented through the Regional Spatial Planning (RTRW) and the Detail Spatial Planning¹ as the development goal for the long run.

The North Maluku province is administratively established based on the Law Number 46 the Year 1999 and now consists of 10 (ten) regencies/municipalities. From the aspect of land law, the North Maluku was an autonomous region which consisted of 4 Sultanates, "*Moleku Kieraha*" who owned the land until the issuance of Law Number 5 the Year 1960 to take over the land as the State ownership through the '*landreform*'.

The Land Dispute, the conflict of forest resource management, environmental degradation, and the forest conversion are the examples of crisis that dereived from the government policy which focuses on the use of forest and land as the economic source in increasing the foreign exchange income for the country, especially the PAD. For the North Maluku, the mapping of AMAN of North Maluku shows that the policies focus more on the investors who exploit the customary land of Pagu tribe; the investors were PT. Nusa Halmahera Minerals, PT. Antam (PT. Harita as the subcontractor) who dominate the Tobelo Dalam tribe.²

Therefore, the application of spatial planning in the North Maluku province must be in harmony with the tenurial of customary land. The application must be according to Law number 6 the Year 2016 and its implementation so that it has synchronization with the regional development.

Therefore, the problems of the study are (1) The status of the indigenous people of North Halmahera regency in North Maluku province, (2) the implementation of the protection of the indigenous people within the Spatial Planning at North Halmahera regency in North Maluku province. On the other hand, after the Constitutional Justice Decree number 35/PUU-X/2012, the indigenous people in North Halmahera regency has marked the productive forest (the concenssions forest of the company) as the customary land. The practice is contra-productive towards the investment which is the implementation of the spatial planning.

RESEARCH METHOD

The research of "The Right Protection of Indigenous People in the Spatial Planning Policy during the Regional Autonomy Era (A Case Study in North Halmahera Regency of North Maluku province)" is an empirical law study (juridical empiric) whose purpose is to find out the prevailing law in the society based on social facts in the community.

¹ Rencana Tata Ruang Kawasan Strategis Provinsi/Kabupaten/Kota; Rencana Detail Tata Ruang

² <http://amanmalut.blogspot.com/> diakses 20 Mei 2017

RESULT AND DISCUSSION

1. The Status of Indigenous People in North Halmahera regency of North Maluku province

Based on historical study, in the 8th century. There were few great tribes of North Halmahera namely the tribe of Tobaru, Pagu, Madole, Boeng, and Towiliko. These tribes then agreed on zoning policy. Besides that, during that time, it was identified a new tribe which then known as Togutil/ inner Tobelo.

There are several kinship systems in North Halmahera. The tribe of Kao (4 kinship systems) and the tribe of Galela (2 kinship systems) have 4 Hoanas (*petuanan* area), while the tribe of Tobelo has 4 kinship systems namely *Hoana Lina*, *Hoana Huboto*, *Hoana Momulati*, and *Hoana Gura*.³

E. J Papilaya referred the tribe as *Hoana*. The term means communal alliance within particular region which then referred as *kampong*/ village. The alliance has the same root of kinships with their existing communal customs. Another term, *Soa*, refers to the root of one particular family. *Soa* tends to be in line with *marga* or *fam*. The coverage of *Hoana Ngimoi* entity includes: *Hoana Modole*, *Hoana Pagu*, *Hoana Boeng*, *Hoana Towiliko*, *Hoana Morodina/ Towara*, *Doitia*, *Hoana Morodai/Toweka*, *Hoana Lina*, *Hoana Gura*, *Hoana Mumulati*, and *Hoana Huboto*.

The adat/ tribal institution of Modole tribe still exists to the current time. Structurally, the highest leader of the tribe is called *Sangaji*, then the *Adat Leader* to manage the cultural institution in the village, *Himo* (elderly), *Mirino* (the vice of *Adat Leader*) and the *Kapita*. The tribe of Boeng occupies the coastal area of North Halmahera for ages. The Boeng tribe still has the tribal council through the prevailing customs and is lead by the *Sangaji*. The Pagu tribe settles in the North Halmahera wilderness, in the area of Maliput to be exact (now is known as Malifut). Their adat institution consists of *Tubolmalamok/Sangaji* as the tribal chief, *Fanyira* (chief of the village), *Kapita* (the warlord), *Let* (the adat/tribal priests), *Bobangu Madungu* (law enforcement), *Galihi Madungu* (religious leader), *Langasa* (protocol), *Mirino* (courier), and *Bonganamadadanu* (forest guards). The Kao tribe achieves special priviledge from the Sultanate of Ternate that their tribal chief is appointed as the *Jiko Makolano* (the leader of 4 tribes, namely Kao, Modole, Pagu, and Boeng). That means that *Sangaji Jiko Makolano* holds power to supervise and direct the four tribes eventhough each one of them has area and natural resource of their own. The Tobelo tribe has four kinship systems/ *Hoana* namely *Hoana Lina*, *Hoana Huboto*, *Hoana Momulati*, and *Hoana Gura*.

To achieve the protection from the country, the indigenous people must earn the de jure-recognition through the Decree of Regional Head as stipulated in the Minister of Home Affair Regulation Number 52 the Year 2014⁴. The recognition must be after the identification by the subdistrict head, after the verification and validation from the Committee of Indigenous People in the Regency/Municipality level. The material law values of the recognition on the people of adat law in this regulation formulates the cumulative indicators such as the historical value of the people of adat law, the

³ Jesaya Banari, Tribal leader, interview on October 27, 2017

⁴ Article 5 and 6 of Decision of Minister of Home Affair Number 52 the year 2014 on the Guidelines of Recognition and Protection of Indigenous People

adat/communal area, the adat law, the wealth and/or customs objects, and the adat government system which has been affected by the fluctuating political law.

In the North Halmahera regency, the Regional Government recognition towards the the indigenous people is identified through the Decree of the Regent of North Halmahera Number 189/133/HU/2015. The decree is on the Recognition and Protection of the indigenous people of Hibualamo as the adat law entity of the North Halmahera regency; the entity of which consists of the are of hoana Modole, Hoana Pagu, Hoana Towiliko, Hoana Boeng, Hoana Lina, Hoana Huboto, Hoana Mumulati, Hoana Gura, Hoana Morodina, Hoana Morodai, dan Hoana Loloda.

2. The Implementation of the Protection of the Indigenous People in the Spatial Planning Policy in North Halmahera Regency of North Maluku Province

The policy of spatial plan is connected with the planning, usage and controlling on the land, sea, and space. In connection with the land, the indigenous people is their area of living in the form of the yard, plantation, and the holy shrine as the ancestor heritage. The suzerainty region of indigenous people is important so that the Constitution describes the recognition not only to the existent of the indigenous people but also to their traditional rights which are commonly known as the customary right/*beschikkingsrecht*.

The customary land as the mutual property of a certain indigenous people is a "blessing" from an unknown source which causes all individual rights to derive from their land. The land ownership of some tribes is still of mutual status, but there are also few that of the individuals. According to *Sangaji Boeng*, the land ownership for the people is the right of use, so the people do not have the land certificate. The land of Boeng belongs to customary land with collective ownership of the local people of adat law. For certain forests, the people of Pagu adat law still claims them as their area. The tribe of Kao collectively claims the customary communal land despite some of their people already own certificate of land ownership. The management of natural resource must attach to the local wisdom that inherited from the ancestor. Some existing local wisdom is the *Masiloloa* (asking permission to the forest guardian when people are about to enter the forest), *Dolabololo* it says "*gena tonyawa ya akun wa wa'ae*" which means prohibition in taking over other people's belonging, "*gena tonyawa omasingasusi ala odiai*" which means asking permit prior to asking something from other people.

The recognition of land ownership based on adat law is a consequence of autonomous people which regulate their legal relationships. In another word, the people of adat law has fixed social fields in creating the mechanism of a management plan and the usage of self-regulation along with permanent legal force through legal norms and recognized institution. At the same time, there is an interference from the state (external force) which causes the society and approved norms become semi-autonomous. The external factor causes law diversity which inter-affecting in a vibrant social attitude. That fact is in line with the theory of Semi-Autonomous Social Fields by Moore. Sodiki refers to this reality as an effect of the dynamic of internal and external law within the society.

B. F. Sihombing in term of communal land divides it into two types,; they are the law of communal land that occurred in the past and the law of communal land today. The

characteristics of communal land in the past⁵ is that it belongs to an individual or a group of the indigenous people, the land is cultivated in a fixed and non-fixed way, the owner live in the area from generation to generation, and/or it has physical symbols in the form of tombs, statues, traditional house, and tribal language based on regions in Indonesia. While the characteristics of current law of communal land ⁶ is as follow:

- a. There are people, government legal entity/ private legal entity.
- b. The people lives in the rural area or urban area.
- c. It is the heritage from the ancestor from generation to generation.
- d. There is an evidence of ownership in the form of customary title, Indonesian *verponding*, *patuk*, *ketitir*, certificate, heirship certificate, court order, deed of granting of land, conveyance letter, unnotarized agreement, etc..
- e. The people posses the physical forms of the land such as *Masjid*, Temple, Church, lake, statues, tombs, rice field, farm land, forest, traditional house, buildings, river, mountain, etc ⁷.

According to adat law on the land of Ternate sultanate, there are some traditional rights known as : (1) *Aha Kolano* (all area is still under the adat area and not distributed yet). *Aha Kolano* is the principle rights held by the Sultan; (2) *Aha Soa* (*Aha Soa* in the local language of Ternate means the Land of Soa. The word Soa itself means a group of small villages whose villagers come from certain clans or tribes); (3) *Aha Cocatu* (it is the right of land granted by the Sultan or the adat institution towards an individual or a particular clan).

The tribe Tobelo owns local wisdom in managing the natural resource. To minimize the conflict among local people, there is an adage (in local language: *dolabolo*) which controls strictly the interaction among them; the adage is called "*uha homadadi odidali mangutuku ha babu owowango gena ore'ehe deo hininga*" that means to avoid causing quarrel because life is a matter of physical and emotional balance. Besides, there is *dolabolo* that relates to the way people respect the universe "*akere tonaka hongana gena de maduhutu*" which means that the forest and land have their true master.

⁵ The Law of Land of Adat in the past means the ownership of a piece of land during the colonial time of Dutch and Japan in Indonesia, and after the independence of Indonesia in 1945, the ownership did not have any legal evidence expect the common recognition. The characteristics of communal land in the past is that it belongs to an individual or a group of the indigenous people, the land is cultivated in a fixed and non-fixed way, the owner live in the area from generation to generation, and/or it has physical symbols in the form of tombs, statues, traditional house, and tribal language based on regions in Indonesia.. B.F. Sihombing, *op cit*, Hlm. 67

⁶ The current Law of Land of Adat means the ownership of a piece land after the independence of Indonesia in 1945 to current time in the form of with authentic evidence in the form of girik, tax collections, pipil, agrarianche eigendom rights, legal property, rights to druwe or rights to village druwe, pesini, Grant Sultan. Landerijenbezitrecht, altijddurende erfpacht business rights to ex-owner land, fatwa inheritance, transitional deeds, and seals under the hands and even some have obtained certificates, as well as tax returns (Indonesian *verponding*), and other rights in accordance with the area of entry into force of the customary law, and is still recognized internally and externally. B.F. Sihombing, *Ibit*, Hlm. 68

⁷ B.F. Sihombing, *Ibid*, Hlm. 70

In practice, the development that has consequences towards the space utilization has denied the needs of people of adat law and will have a negative impact on the order of social, economic, and religious values. The policy of new districts creation has impelled the Regional Government of related region to build a new facility and develop the strategic area. On the other hand, the demographic problems appear as the consequences of population increase and other social economic activities has put the land aspect as a part of capital asset instead of social one. This situation causes the people of adat law to become the commodification object through the spatial plan of the strategic area, corporate permit on mining/forestry sector, and the establishment and management of State forests in the form of protected forest and National Park with a zoning system.

The spatial planning policy of North Halmahera regency refers to the Regional Regulation Number 9 the Year 2012 on RTRW of North Halhamera regency for the year 2012-2032. The regulation stipulates the arrangement of RTRW in North Halmahera regency based on spatial plan regulation in the Law Number 26 the Year 2007 and the Guidelines of the RTRW drafting on regency level. From the substantial point of view, the RTRW drafting of North Halmahera Regency refers to the province level and other higher regulation, and also considers the RTR of Maluku island and the RTRQW of other surrounding regencies, as well as the regional development plan.

In the law making, the general spatial plan drafting must involve the society, including the indigenous people. This is in accordance with Article 65 of Law Number 26 the Year 2007 that states:

- (1) The spatial plan must be the work of government which involves local society.
- (2) The role of local society in the spatial planning in verse (1) are:
 - a. to participate in the spatial plan drafting;
 - b. to participate in the space utilization, and
 - c. to participate in the space utilization control.

In the practice, the drafting of RTRW of North Halmahera regency tends to be exclusive and excludes the society; that is proven by a research showing 98% of respondents did not participate in the drafting process of RTRW in the year 2012 and the year before. The similar statement goes from Elfrida Ngato, the *Sangaji* of Pagu:

“the drafting of RTRW is supposed to accommodate the aspiration of local people to avoid overlapping. So far no one has been included in the process, not even myself”.⁸

There is another opinion from Jesaya Banari, one of the adat leader of Tobelo:

“RTRW is a strategic document of spatial planning in the long term by the expert. The drafting stage requires ideas submission as the main topic of the RTRW discussion within a very exclusively limited forum because people are not familiar with the topic. I believe that the indigenous people need to be a part in the drafting because it is for the prosperity of the country through modernity and professionalism.”⁹

Article 3 of Regional Regulation Number 9 the Year 2012 on the Spatial Plan Policy of North Halmahera regency consists of:

- a. The development of urban areas in a harmonious, comfortable and efficient

⁸ Elfrida Ngato, Sangaji Pagu, interview on November 7, 2017

⁹ Jesaya Banari, tokoh adat Tobelo, interview on October 23, 2017

- urban system by paying attention on the sustainable development principles;
- b. the improvement of network quality and scope of transportation, telecommunication, energy and clean water as an integrated and equal resource for all region;
 - c. the maintenance and manifestation of function sustainability of the environment;
 - d. the improvement and implementation of excellent cultivation products (agriculture, mining, and marine) that are capable of increasing the regent's economy by paying attention to the environment support and capacity; and
 - e. the improvement of regional function for the state defense and security.

The purpose of the development of urban areas in a harmonious, comfortable and efficient urban system by paying attention on the sustainable development principles includes:

- 1) to support the establishment of Tobelo urban area as the center of the region (PKW);
- 2) to support the appointment of Galela, Malifut, and Kao urban areas as the environment centre (PKL) and the North Lolodo urban area as the preparation area of PKL;
- 3) to appoint the sub-regency urban areas as the centre of the region to provide service for the area in the form of sub-regency Central and PPL;
- 4) to develop a new growth center in an area that has not received any service from the centre area;
- 5) to maintain the relation between urban areas, between urban and rural areas, and between urban areas and its surrounding area.
- 6) to support the urban areas and centre of regions to be more competitive and more effective in developing the surrounding areas;
- 7) to control the development of coastal area.

The purpose of the development of quality and scope of transportation, telecommunication, energy and water source which are integrated and equal for all regions includes:

- a) to improve the quality of infrastructure of network and to achieve the integration of transportation on land, sea and air transport;
- b) to provide the access among center of activities and marketing;
- c) to support the development of telecommunication infrastructure especially in isolated area;
- d) to improve the energy supply and people accessibility towards the energy;
- e) to provide the energy network to utilize the renewable and unrenewable energy to maximum extent and to achieve an integrated electricity supply;
- f) to improve the quality of infrastructure network and to achieve the integrated water resource network system.

The explanation above shows that the urban area development requires an

infrastructure network system in the urban spatial planning to provide the infrastructure development such as market, roads, transportation and supporting infrastructure, telecommunication and other at the area of Modole, Pagu, Boeng, Lina and others.

The development of infrastructure as a part of public purpose development according to Law Number 2 the Year 2012 on the Land Acquisition for the Public Interest must be based on the agreement and treaty with the local people even if it is for the local people interest. It is in accordance with the Article 3 jo Article 9 :

“The land acquisition for the public interest aims at providing land for the development and the prosperity of the nation and people by ensuring the legal rights of related parties. The land acquisition must consider the balance of the development interest and local people by providing proper compensation.”¹⁰

The regulation means that the development for the public interest has been established and must follow the land acquisition procedure. The Land Acquisition for Public Interest must be in accordance with:

- a. Spatial Zoning Plan;
- b. National/ Regional Level of Spatial Plan;
- c. Strategic Plan; and
- d. Institutional Work Plan which is in need of land.

According to Bernard Hoata, one of the local people from the village of Wangeotak of Kao sub-district who come from Pagu tribe,

“...we are an obedience citizen, the State supposed to respect us, our land, our forest, and our sea. Yet, we think that they consider us as dumb because they never consult us about any development they make.”¹¹

Another opinion comes from Jeremiyah Laraga, the resident of Daru village from North Kao sub-district:

“I have never heard about RTRW, but at least the government must responsible toward any development plan. Kao is blessed with abundant gold and forests, but all we know is that the Government only allows powerful people to cultivate this land, lets say the NHM who has restricted us to pass by their land to reach our plantation to harvest liquid resin. Until now the NHM has improved and developed but not with our people. Only few people of us that taste it because they work for the company.”¹²

The description above shows that the community members themselves have a view regarding how to manage the given resources as their ancestral heritage, but for a long time living space, especially land which has become a social asset, has a function as a capital asset and tends to be commodified by the State, for example the investment by PT. Nusa Halmahera Mineral. Even though the Central Government's moratorium policy weakens the mining sector, NHM continues to survive and carry out mining activities.

¹⁰ Article 9 of Law Number 2 the Year 2012 on the Land Acquisition for the Development of Public Interest

¹¹ Bernard Hoata, from Wangeotak tribe, interview on October 27, 2017

¹² Jeremiyah Laraga, warga desa Daru, interview on October 28, 2017

The local wisdom relating to the management of natural resources, especially forests, has become a problem until now, especially after the entry of investment both domestic investment and foreign investment. This makes the the people of adat law increasingly marginalized over the mastery of living space even in line with the implementation of Law Number 6 the Year 2014 concerning Villages carried out by several national projects including printing paddy fields even though the the people of adat law also have hamlets of sago and kasbi kobong for daily food.

The maintenance and preservation policy of the environment must be in harmony with the policy of the spatial pattern policy such as:

- a. to establish protection areas;
to realize a protection area in a region with watershed (DAS) and island with at least 30% of the area is in accordance with the natural condition of the ecosystem;
- b. to restore and improve the function of protection area which has declined due to the cultivation to achieve and maintain the balance of regional ecosystem;
- c. to protect the environment ability towards the change stress and or the negative impact from a particular activity so that it is still able to support the human lives and other living creatures;
- d. to protect the ability of the environment to absorb the substance, energy and or other thrown components;
- e. to prevent the direct or indirect action that causes the physical change on the environment which eventually makes it unable to support the sustainable development;
- f. to wisely control the utilization of natural resource to ensure the current and future generation;
- g. to wisely manage the unrenowable and renewable natural resource to ensure their sustainability by maintaining and improving the value quality and variant.

From the description above, it can be concluded that although the people of adat law of Hibualamo in North Halmahera Regency has a legal standing recognized by the Regional Government, spatial practices tend to be less involved in the spatial planning policy formulation even though spatial planning in the district touches the living space of the people of adat laws

Regarding the community's expectations of spatial planning policies in North Halmahera regency based on the results of research, the people of adat laws have their own expectations of the Government in spatial planning policies starting from the involvement of the people of adat law in district spatial planning, integration of indigenous territorial spatial policies with the Regency RTRW , carry out technical guidance on indigenous communities that are structurally marginalized so that they are more sovereign over land, water and lebensraum to the idea of compiling spatial plans for indigenous territories that are separate from regional spatial plans (both general plans and detailed plans).

The above description shows that the people of Pagu, Kao, and Tobelo wish that the renewal of a responsive regional spatial plan towards the people of adat law will be through involving the people of adat laws in planning and implementation of the

RTRW, providing technical assistance to improve the capacity of the people of adat laws in regional spatial planning and integrating indigenous territorial spatial planning in the RTRW.

To achieve the goal, the Regional Government with its authority in the spatial plan must include a responsive RTRW drafting rule towards the people's interest which has economical, political, and cultural values.

Accommodative steps that can be taken to encourage the involvement of the people of adat laws in spatial planning are to provide recognition to the customary law community entities by decree of the Regional Head, establish regional regulations for the protection of the people of adat laws' rights, and review general plans and detailed spatial plans with involve stakeholders in this case the customary law community so that they can get protection from the beginning of the regional spatial planning.

CONCLUSION

The government committed to provide recognition towards the indigenous people through the Regent's decree of North Halmahera Number 189/133/HU/2015 on the Recognition and Protection on the indigenous people Hibualamo as the entity of indigenous people in the North Halmahera province that consists of hoana Modole, Hoana Pagu, Hoana Towiliko, Hoana Boeng, Hoana Lina, Hoana Huboto, Hoana Mumulati, Hoana Gura, Hoana Morodina, Hoana Morodai, and Hoana Loloda.

Even after the recognition of the indigenous people of Hibualamo, the spatial plan still tends to exclude this people in the stage of policy drafting eventhough it touches the area of indigenous people.

The indigenous people law has different expectations towards the government in relation with the spatial planning which includes the involvement of the people in the drafting process in regency level, the integration of spatial plan policy with the regent's RTRW, provision of technical supervision structurally to be more integrated with the land, water and *lebensraum* to the idea of drafting the separate spatial plan of communal land (both in the general and detail plans).

In term of protection towards the indigenous people, the spatial plan policy is as follow:

- 1) to give recognition towards the indigenous people through the decree of Regional Head, providing regional regulation on protection towards the indigenous people;
- 2) to make a review toward general and detail plans by involving the stake holders including the indigenous people to achieve the protection since the drafting of the spatial plan.

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