



Legal Protection of Indigenous Communities on Cultivation Rights Title in Bulukumba Regency

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Abstract

The purpose of this study is to analyze and describe the legal certainty of the ownership land for Ammatoa Kajang Indigenous Peoples which around published cultivation right for legal entity and to analyze and describe the implementation of regional regulations in providing legal protection Ammatoa Kajang Indigenous Peoples rights. This research is empirical legal research that was conducted in Tamatto Village, Ujungloe District, Bulukumba Regency, South Sulawesi. The data collection techniques are interview and literature study. Data obtained in the study were primary and secondary data, analyzed qualitatively and presented descriptively. The results of the study found that the ownership of the Ammatoa Kajang Customary Law Community which around published cultivation right for legal entity had not been fulfilled and had not provided legal certainty because the land was still in the status of PT. Lonsum. The legal certainty of customary community's cultivation rights title is exacerbated by the lack of evidence of ownership of land owned by customary law communities, which is only proven by natural evidence such as coconut wood so PT. Lonsum which is proof of legal certainty cannot be disrupted. The implementation of regional regulations in providing legal protection has not yet been fully realized. This is influenced by law enforcement factors, community factors, and cultural factors. Meanwhile, on the other hand, settlement through state law is often taken by means of repressive mediation so that the impact does not meet legal certainty for the Indigenous Peoples Law Community, even just swallowing victims and the emergence of many forms of violence.

Keywords: *Indigenous Law Community; Cultivation Rights; Bulukumba*

Introduction

Based on the 1945 Constitution of the Republic of Indonesia, which states that the State recognizes and respects the units of customary law communities along with their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law. The law provides for the recognition of the existence of customary rights of customary law communities "as long as" their existence still exists and is still in accordance with national, national and state interests, and does not conflict with the provisions of other laws and regulations. The criteria and

determination of the existence or absence of customary rights consist of 3 (three) elements, namely the existence of customary law communities, the existence of land which is the customary law area, and the existence of village heads and customary elders who are in fact recognized by their citizens (Harsono, 2008).

However, as has been stated that the existence of customary rights of indigenous peoples today needs attention because their existence lately has often drawn debates related to the conflict of interests between indigenous and tribal peoples over customary land and the interests of investors/business entities granted rights. Cultivation Rights Title (HGU) on customary land owned by the indigenous community. The emergence of various interest debates is due to polemic policies taken by the government with an orientation of economic growth and modernization in an empirical order not to recognize, respect and protect the rights of indigenous and tribal peoples on land (Ulfstein, 2004; Gilbert, 2016).

The government is more inclined to prioritize the interests of capital owners/entrepreneurs by giving more rights without prioritizing the interests of indigenous peoples so that it results in massive and multidimensional land conflicts and land disputes that result in fatalities. This difference in perception also causes 'prolonged suffering' for indigenous and tribal peoples who are always on the losing side (Pide, 2007).

One of them is the case that happened as experienced by the Ammatoa Kajang Customary Law Community. Although legal recognition has been applied by the local government through the Regional Regulation of Bulukumba District Number 9 of 2015 concerning the Inauguration, Strengthening and Protection of the Ammatoa Kajang Customary Community, some Ammatoa indigenous communities still feel that they have less certainty over their rights to land since the existence of PT. London Sumatra (Lonsum).

Legal uncertainty over land tenure and ownership should not occur if observing the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of National Land Agency Number 10 Year 2016 concerning Tara How to determine Cultivation Rights Title over Land of Customary Law Communities and Communities in Certain Regions (hereinafter abbreviated Permen ATR / BPN No. 10/2016), which is basically formed to provide legal protection guarantees for the legal rights of adat and communities in certain areas that control land for a long period of time.

Based on Article 2 paragraph (1) juncto Article 3 paragraph (1) Minister Regulation No. 10/2016 determines that indigenous and tribal peoples who meet the requirements can be confirmed their land rights by being given in the form of communal rights. Furthermore, referring to Article 5 of the Regional Regulation of the Regency of Bulukumba No. 9/2015 that one of the objectives of the Regional Regulation of Bulukumba Regency No. 9/2015 is to provide legal certainty for the rights of the Kajang customary community. Seeing the problems that have occurred, until 2019, conflicts between the community and PT. Lonsum is a conflict that has been protracted without an optimal solution for both parties. Issuance of ATR / BPN Regulation No. 10/2016 and the Regional Regulation of the Regency of Bulukumba No. 9/2015 was supposed to provide protection and legal certainty of the rights of the Ammatoa Kajang customary community, but apparently despite the issuance of Perda Bulukumba No. 9/2015

cannot stop PT. Lonsum to continue to strive to control the land owned by local customary law communities.

Methodology

This research is empirical legal research. This research was conducted in T Amatto Village, Ujungloe District, Bulukumba Regency, South Sulawesi. Data collection techniques carried out by applying interviews and literature study. Data obtained in the study were primary and secondary data, analyzed qualitatively and presented descriptively. The qualitative method is a research method based on the philosophy of positivism, used to examine the condition of natural objects, (as opposed to being experiments) where the researcher is a key instrument.

Results and Discussion

A. Legal Certainty on Cultivation Rights Title of the Ammatoa Kajang Customary Law Community Surrounding Public Entitlement Rights Issue on Behalf of Legal Entities

Based on the results of research conducted by Bulukumba Regency, PT. Lonsum, which carries out rubber plantations business activities, has been criticized by various local customary law communities because their Cultivation Rights are also claimed as community-owned land. Land tenure carried out by PT. Lonsum which is questioned by the community basically exists in 3 (three) locations, namely Tamatto Village, Ujung Loe District, Bonto Maringi Village, Bulukumba District, Bontoa Batu Loe Village, where the most concrete problem is in Tamatto Village, Ujung Loe District.

Based on interviews with informants it is known that there is a lack of clarity about the ownership of land taken by PT. Lonsum, the whole community expects the local government to solve the problem correctly and that the community's lands be returned immediately as a form of recognition of the existence of indigenous and tribal peoples. Ammatoa explained that the acquisition of HGU land by PT. Lonsum is contrary to the principle of land tenure based on the customary law of Ammatoa Kajang, moreover, land acquisition by PT. Lonsum does not contribute to adat, that is, there is no profit sharing.

Indigenous peoples' rights to land that have been passed on for generations that have been guaranteed and confirmed based on the Regional Regulation of the Regency of Bulukumba Number 9 of 2015 concerning the Inauguration, Strengthening and Protection of Ammatoa Kajang Customary Law Community are neglected by the presence of PT. Lonsum. Recognition of indigenous peoples and their traditional rights must certainly be followed by granting exclusive rights to communities to control and manage the resources in their environment, such as land or forests which are the main source of livelihood for indigenous peoples (Patittingi, 2012).

The results of interviews with local KHA MHA (customary law community) who live in Tamatto Village, Ujung Loe District, do not all have strong evidence that shows the relationship with the land claimed as his property and has been obtained for generations. Most can only show

with natural evidence in the form of coconut wood and plants around the plantation area of PT. Lonsum.

The next process is identification, verification, and inspection in the field by the IP4T (Inventory, Ownership and Land Use Inventory) Team. If based on the results of the field inspection, the land submitted for application as a communal right is located in the Right to Cultivate Area, then IP4T will give a notification to the right holder and related parties and ask to relinquish a part of the land rights that have been controlled by the people in a certain area and return his land to the state. This was sourced from the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency Number 10 of 2016 concerning Procedures for Determining Communal Rights to Customary Law Communities and Communities Within Specific Areas.

Cultivation Rights Title which is proven in the form of natural evidence shows one of the characteristics of customary law, the unwritten legal instruments contained in the customs of the community that apply as law. Land that is subject to customary law does not register land, so it does not guarantee legal certainty. Thus, it can be concluded that Cultivation Rights Title claims by some local customary law communities which have not obtained results to date have been clouded by the absence of strong proof of ownership to show their relationship with the land concerned, so according to BPN, PT. Lonsum is proof of legal certainty.

Legal certainty is something that is desired based on Perda Bulukumba District No. 9 of 2015. Article 5 of the Regional Regulation of the Regency of Bulukumba No. 9/2015 that one of the objectives of the Regional Regulation of the Bulukumba Regency No. 9/2015 is to provide legal certainty for the rights of the Kajang customary law community so that they can live safely, grow and develop as a community group following their dignity and human dignity and are protected from acts of discrimination, as well as to provide certainty for the implementation of Bulukumba district government responsibilities in the field of respect, fulfillment of the protection and empowerment of Ammatoa Kajang customary law communities and their rights.

The doctrine of legal certainty comes from Juridical-Dogmatic teachings which are based on the positivistic school of thought in the world of law, which tends to see the law as something autonomous, independent because adherents of this thought, the law is nothing but a collection of rules. For adherents of this school, the purpose of the law is nothing but guaranteeing the realization of legal certainty. Legal certainty is realized by the law by its nature which only makes a general rule of law. The general nature of the rule of law proves that the law does not aim to bring about justice or expediency, but merely for certainty (Ali, 2002).

the condition of the Kajang Customary Community, which generally has no means of proof of land in the form of written evidence. This provision is considered as a provision that is rooted in the values of justice, which provides space for someone who controls the hereditary land to obtain recognition as the party entitled to the land.

The Ammatoa Kajang Customary Law community's Cultivation Rights Title around which the rights to operate on behalf of the legal entity are issued have not been fulfilled and have not provided legal certainty because the land is still in the status of PT. Lonsum. The policy taken by the government is to mediate with the local community where the conflict resolution

will only be resolved in 2023 when PT. Lonsum is over. The legal certainty of customary community Cultivation Rights Title is exacerbated by the lack of evidence of ownership of land owned by customary law communities, which is only proven by natural evidence such as coconut wood so PT. Lonsum which is proof of legal certainty cannot be disrupted.

B. Implementation of Regional Regulations in Providing Legal Protection for the Rights of Ammatoa Kajang Customary Community

In the land sector, Law Number 32 of 2004 concerning the Regional Government provides regulations on the land sector and grants the regulatory authority to provincial and district/city regional governments, while the control rights in the name remain based on the agrarian basic law (UUPA). As discussed in the previous discussion, the existence of provisions relating to the Ammatoa Kajang customary community is clear and expressly regulated in Regional Regulation No. 9 of 2019 concerning Inauguration, Recognition of Rights, and Protection of the Rights of Ammatoa Kajang Customary Law Community which is in Article 15 paragraph (1) The regional regulation explains that the Ammatoa Kajang Customary Law Community has the right to the lands, territories and natural resources that they have owned or occupied for generations and / or were obtained through other mechanisms.

In the context of the Regional Government, in addition to the Regent and Deputy Regent who have overall responsibility related to all problems in the region, there is also a Regional Work Unit (SKPD) that has been formed and has the role and responsibility directly to carry out local government affairs in specific fields (Raja, 2019). Including agrarian affairs or land matters in the context of Bulukumba Regency being the duties and functions of the Regional Government of Bulukumba Regency, especially in this case the Dispute Handling Team, which has been stated in Article 1 Number 19 of the Regional Regulation of Bulukumba Number 9 of 2015 concerning Inauguration, Rights Recognition, and Protection of Ammatoa Kajang Customary Community Rights. This also relates to the steps taken by the government in regulating land tenure as a tribute to the provisions of Article 3 of the UUPA.

As for certain restrictions issued by the government related to the granting of business licenses / granting of land rights to business entities in the Ammatoa Kajang area, they are of the type of Cultivation Rights Title (HGU). Furthermore, the term of HGU in Article 29 paragraphs (1), (2) and (3) of the UUPA is a maximum of 85 (eighty-five) years, but in reality PT. Lonsum currently operates on the Ammatoa Kajang customary land, even if it is carefully calculated by PT. Lonsum has been around for about 100 (one hundred) years. PT. Lonsum itself has existed since 1919 with the status of erfpacht rights through the decision of the Dutch East Indies General. In 1961 it was converted to HGU.

The researcher assessed that the granting of the HGU permit if seen further, in fact, did not necessarily provide legal certainty for the owners of the customary land of Ammatoa Kajang, whereas in Article 5 Letter C of Regional Regulation Number 5 of 2015 had stipulated that with the existence of the Regional Regulation of Bulukumba Regency, it was hoped that Legal Certainty could be created. for the Ammatoa Kajang Customary Law Community in order to be able to live safely, grow and develop as a group of people following their dignity and human dignity and most importantly protect them from acts of discrimination.

The researcher assessed that with the scope stipulated in Article 6 letter e above, the handling of Ammatoa Kajang land rights was able to be handled by the Regional Government, but from the interviews of researchers, there was a difference in the results where the regional government claimed that the land rights issue was internal while the scope of local regulations in Bulukumba regency regulates the handling of external disputes as happened to the Ammatoa Kajang Customary Law Community with PT. Lonsum.

As discussed above, the answer is obtained that the implementation of regional regulations in providing legal protection to the rights of the Ammatoa Kajang customary community has not been carried out properly. Based on this, the researcher relates to Soerjono Soekanto's opinion, that there are 5 (five) factors that influence law enforcement/compliance, namely legal factors, law enforcement factors, facilities and infrastructure factors, community factors, and cultural factors.

One indicator of the rule of law is its success in law enforcement, which is carried out and obeyed by all elements of society (Skolnick, 2011; Nonet et al., 2017). Related speakers explained which law enforcement agencies were involved by the local government in optimizing legal protection for the Ammatoa Kajang Customary Law Community, having appointed the Regional Government as a legal entity, as well as involving the Regional Work Unit (SKPD) that had been formed and had a role and responsibility directly responsible for carrying out regional government affairs.

Legal protection that should be given by the government to prevent preventive in creating things that are detrimental to the interests of indigenous and tribal peoples (Anaya, 2003; Ulfstein, 2004). This can be observed in the large-scale land tenure as carried out by PT. Lonsum to the Customary Law Community to the customary rights of Ammatoa Kajang only takes a way out by means of PT. Lonsum can not change the nature of ownership of its rights other than only with the Cultivation Rights Title (HGU).

Preventive prevention involves local government not only the only way but also a form of repressive legal protection concerning land tenure (Ndulo, 2011). Based on the results of interviews the researchers argued that the conflict between indigenous and tribal peoples against companies could not only be resolved by forming a regional regulation, in which the local government, in this case, was only as a facilitator and mediator so that its role could not be unilateral and protect third parties. The implementation of regional regulations in providing legal protection has not yet been fully realized. Issues of Ammatoa Kajang Customary Law Community is difficult to find a solution where adat issues use adat mechanisms such as prioritizing the principles of local wisdom, social justice, and human rights principles. Whereas on the other hand, settlement through state law is often pursued by means of repressive mediation. So that the impact does not meet the legal certainty for the Customary Law Community, it only takes its toll and forms a form of violence. Besides solving problems through adat mechanisms is only seen as an alternative in the settlement of customary rights.

Conclusion

The Ammatoa Kajang Customary Law community's Cultivation Rights Title around which the rights to operate on behalf of the legal entity are issued have not been fulfilled and have not provided legal certainty because the land is still in the status of PT. Lonsum. The policy taken by the government is to mediate with the local community, whose conflict resolution will only be resolved in 2023 when PT. Lonsum is over. The implementation of regional regulations in providing legal protection has not yet been fully realized. This is influenced by law enforcement factors, community factors, and cultural factors. Issues of Ammatoa Kajang Customary Law Community is difficult to find a solution where legal issues exist, especially customary land using adat mechanisms such as prioritizing the principles of local wisdom, social justice, and human rights principles. Meanwhile, on the other hand, settlement through state law is often taken by means of repressive mediation. So that the impact does not meet legal certainty for the Customary Law Community, instead it only takes its toll and forms a form of violence.

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