

Authority of the Village in Maluku as Indigenous People in the Management of Natural Resources in the Sea Customary Rights

Nirahua Salmon E.M and S. Kuahaty

Faculty Of Law. Pattimura University, Ambon Indonesia

Abstract- Regulation Legislation in force in Indonesia only recognizes and respects the rights of indigenous people over land law, but the issue of rights and management authority concerned has not become a sea customary rights/willingness together. This study was conducted to seek recognition and respect for the rights of indigenous communities, including the authority to manage the natural resources in the sea customary rights. This research is helpful to the political Establishment Indonesian laws related to the existence of the community in the Constitution NRI 1945; The formulation of legal policy in the legislation governing the rights and responsibilities of indigenous communities in the management of natural resources in the sea customary rights; Type of normative legal research used in this study is a normative legal research which is also called the doctrinal study (Doctrinal Research). Doctrinal Research: Research roomates Provides a systematic exposition of the rules governing a particular legal category, analyzes the relationship between rules, explain areas of difficulty and perhaps, Predicts future development. Normative legal research conducted to assess the legal concepts related to the basic constitutionality of indigenous people in Maluku and regulation of natural resource management in the region sea customary rights the legislation in force. In addition, a normative legal research was also conducted to assess the authority of indigenous people in Maluku province in the management of natural resources in the sea customary rights. The target in this study relate to: basic indicators of the constitutionality of indigenous people in Indonesia according to Article 18B paragraph (2) of the 1945 Constitution; Setting the rights and authority of customary law communities in natural resource management in sea customary rights, and the rights and authority of customary communities in natural resource management in the legislation in force;

Index Terms- Authority, of Indigenous People, Sea customary rights, Natural Resources

I. INTRODUCTION

The second change of the Constitution of the Republic of Indonesia Year 1945 (hereinafter referred to as the Constitution NRI 1945) has provided a new paradigm in the implementation of regional autonomy, particularly with regard to the rights of indigenous peoples. Settings on the customary law community in the second amendment to the 1945 Constitution explicitly regulated in Article 18B paragraph (2) and Article 28, first paragraph (3). Customary law community settings in Article

18B paragraph (2) of the 1945 Constitution is part of the Regional Government, while the arrangement in Article 28 paragraph (3) of the 1945 Constitution is part of Human Rights. The formulation of Article 18B paragraph (2) of the 1945 Constitution is a new setting in the regional administration, especially settings in the constitution in which the recognition and respect of the state of the customary law communities along with their traditional rights. Recognition and respect for the existence of the community who were living there in different areas based on customary rights that customary rights (in Maluku known Sea customary rights). Giving recognition and respect of this does not mean lack of freedom and opportunities for indigenous people to live and thrive in the Republic of Indonesia. Recognition and respect given by the state to customary law communities along with their traditional rights in the 1945 Constitution under Article 18B paragraph (2) is set in a limited manner with certain conditions. This can be seen in the formulation of Article 18B paragraph (2), especially on the formulation of "all still alive and in accordance with the development of society and the principles of the Unitary Republic of Indonesia, which is regulated by law". This formulation is intended as a requirement that the customary community groups that actually exist and live, not live turn. In addition of course to a limitation which must not conflict with the principles of a unitary state. (Zakaria, R. Yando, 2004 : 74). Relating to restrictions on existence of the community as stipulated in Article 18 paragraph (2) of the 1945 Constitution, R. Yando Zakaria stated that :

"... The formulation of 'the state recognizes and respects units of indigenous communities (like villages, Nagari, Banua, huta etc., For example) along with their traditional rights (rights to manage their own household, such as 'before their countries)', as is often voiced by supporters of the indigenous movement and autonomy of the village over the years, there are still two other pitfalls. First, who will determine the customary law communities 'there' and 'in accordance with the development of indigenous people' it?; second, any measures that will be used to determine the customary law community was still there and are still appropriate or not in accordance with the development of society? (Zakaria, R. Yando, 2004 : 75). In relation to customary rights known as the term "sea customary rights", where management is done both on land and in the area of sea. Sea customary rights is indeed a topic that is not very well known, despite the fact that marine resource management systems traditionally are found mainly in the province of Maluku. When compared with sea customary rights over land, then it appears

that the sea customary rights as indigenous tradition that has lasted for generations and should be respected not widely known and widely used as a study and research materials.

During this time, various laws and regulations in force in Indonesia only recognizes and respects the rights of indigenous people on the land, but the sea customary rights issues have not been too much of a concern shared. Reality setting the rights of indigenous communities is constitutionally stipulated in Article 18 paragraph (2) of the 1945 Constitution, the constitutional rights of indigenous communities are not clear in the concept of recognition and respect by the state. Implementation arrangements in various sectoral laws have not been laying the basis for recognition and respect, even the restriction of the rights of customary law communities. In this case, on the one hand the opportunities and the opportunities presented by the recognition and respect for the existence of the community, but on the other hand to limit the state of indigenous communities and their constitutional rights.

In the reality of what happened, in addition to the positive legal rules governing the management of marine and coastal natural resources, found also rules of customary law. Customary law is still alive and thriving in indigenous communities also regulate the management and utilization of natural resources in coastal areas and the sea. The real mastery over marine and coastal areas, by communities customary law related to relationships or relationships that they do to meet their needs over the area, is something that is passed down from ancestors. Within this region is actually *de jure*, there is the authority of tribal communities. The authority is meant here related to the management and utilization of natural resources, according to the principles of customary law to the particularities of each. In connection with the limits and the authority held by indigenous communities, then according to Law No. 32 of 2004 as amended by Act No. 23 of 2014 on Regional Government, the government determines the limit of authority in the ocean farthest 12 miles to the area Province (article 27 paragraph 3). It contains two meanings: (1) the existence of a waiver from the state; (2) common law as a social reality that is not regulated by the state, but the state looked at the customary law can be shifted through various policies within a certain time.

II. RESEARCH METHODS

This study will use a type of normative legal research. According to Terry Hutchinson (Hutchinson, Terry, 2002 : 9). A normative legal research which is also called the doctrinal study (Doctrinal Research). Doctrinal Research: Research roomates Provides a systematic exposition of the rules governing a particular legal category, analyzes the relationship between rules, explain areas of difficulty and perhaps, Predicts future development.

It is also appropriate to put forward by Peter Mahmud Marzuki (Marzuki, Peter Mahmud, 2007,; 35), that legal research is a process of finding the rule of law, principles of law, and the legal doctrines in order to address the legal issues at hand. Normative legal research conducted to assess the legal concepts related to the basic constitutionality of indigenous people in Maluku and regulation of natural resource management in the region sea customary rights the legislation in force. In addition,

a normative legal research was also conducted to assess the authority of indigenous people in Maluku province in the management of natural resources in the sea customary rights .

In this case the target in this study relates to :

a. Basic indicators constitutionality of indigenous people in Indonesia according to Article 18B paragraph (2) of the 1945 Constitution;

b. Setting the rights and authority of customary law communities in the management of natural resources in the sea customary rights ?

c. The rights and authority of customary communities in natural resource management in the legislation in force;

1. Approach Problems

The approach used is a matter which approach law-law (statute approach) and the conceptual approach (conceptual approach) Philip M. Hadjon (Philip M. Hadjon, 2007: 20).

2. Types and Sources of Legal Materials

Legal materials in this study consisted of primary legal materials (primary materials) and secondary law (secondary materials). Primary legal materials consist of various laws and regulations relevant to efforts to resolve the problem in this study. Secondary law in this study of literature, views, doctrines, research, dissertations, theses, journal articles, news and popular scientific articles.

3. Procedures and Materials Collection Law

Primary legal materials in the form of legislation are collected by the inventory and categorization methods. Secondary legal materials collected by the system note cards (card system), both with an overview card (include a summary in the original article, an outline and basic essay containing the original opinion of the author); quote card is used to load the record at issue), as well as card reviews (contains analysis and special notes writer).

4. Legal Materials Processing and Analysis

Primary legal materials and secondary legal materials that have been collected (inventory), then grouped. It is then studied law approach to obtain a level of synchronization of all the legal materials. Legal materials have been classified and the systematized studied, assessed and compared with the theory and principles of law put forward by the experts, to finally analyzed normative.

III. RESULTS AND DISCUSSION

a. Constitutional indicators of Indigenous People in Indonesia

Recognition of customary law community provided for in Article 18B paragraph (2) and Article 28 paragraph (3) Constitution NRI 1945. The regulation in Article 18B paragraph (2) of the 1945 Constitution states that: "The State recognizes and respects units indigenous peoples and rights - of traditional rights all still alive and in accordance with the development of society and the principles of the Unitary Republic of Indonesia, which is regulated by law ". It is also stipulated in Article 28

paragraph (3) NRI 1945 Constitution which states that: "The cultural identity and the rights of traditional communities be respected in line with the times and civilizations".

From the formulation of the provisions of Article 18B paragraph (2) and Article 28 paragraph (3) above 1945 Constitution NRI, customary law communities have a legal form of recognition and respect from the state. Recognition and respect of this matter with regard to the constitutional rights possessed by indigenous peoples. Talking about constitutional rights, then it is due to all the rights possessed by citizens stipulated in the Constitution NRI 1945. Similarly, customary law communities as part of the citizens also have constitutional rights stipulated in the Constitution NRI 1945.

Amendment to Article 18B paragraph (2) Constitution NRI 1945 by the People's Consultative Assembly of the Republic of Indonesia (hereinafter referred to as MPR) background by government institutions at the village level as the country (in Ambon and Central Maluku), Fano / Fanuan (in the Aru Islands), Ohoi (in Kei Islands), Leta/Leke (in the Southwest Maluku), as well as various community groups in various areas of life based on customary rights that customary rights, but with the proviso that the customary community groups that actually exist and live, not forced-force there; not turned on. Therefore, in practice, the group should be further regulated by a regional law and must not conflict with the principles of a unitary state.

In connection with the formulation of the provisions of Article 18B paragraph (2) of the 1945 Constitution, (Asshiddiqie, 2006: 76), states that:

"The assertion of recognition by the State do (ma) the existence of a customary law communities and their traditional rights they possess; (B) the existence of recognized entities is the existence of indigenous communities; (C) the customary law community was indeed living (still alive); (D) in that particular environment as well; (E) recognition and honors to be given without prejudice to the size eligibility for humanity according to the level of civilization of the nation; and (f) the recognition and respect that should not diminish the meaning of Indonesia as a country that shaped the Republic of Indonesia".

In general, the recognition and respect for customary law communities along with their traditional rights is an opportunity and a chance for the community customary law itself. However, on the other hand, this arrangement provides essentially no restrictions in accordance with the recognition and respect for indigenous peoples.

The settings in Article 18B paragraph (2) NRI Constitution 1945 provides a starting point for their community customary law in the Republic of Indonesia. Their recognition and respect for customary law community is a form of legal protection provided by the state against the existence of the community itself.

Meanwhile, the formulation of the provisions of Article 18B paragraph (2) NRI 1945 Constitution also imposes limits which is a condition of recognition and respect for the existence of the community. It can be found in the words "all still alive and in accordance with the development of society and the principles of the Republic of Indonesia which is regulated by law". This formulation itself imposes limits on the existence of the community and their constitutional rights.

Regarding the formulation of Article 18B paragraph (2) of the 1945 Constitution, it is also a legal principle which is formulated with regard to the recognition of indigenous peoples. According to (Philip M. Hadjon, 2004 : 1), Article 18B paragraph (2) contains the principle of recognition of the existence and the traditional rights of indigenous peoples. Further according (Manan, Bagir., 2002: 12-13) is the principle recognize and respect the customary law communities along with their traditional rights.

Units of law society is not only recognized but respected, it means having the equal right to life and as important as any other government unity as counties and cities. This equality implies that a unit of community based on customary law are entitled to all the treatments and were given the opportunity to develop as a subsystem of the unitary state of the Republic of Indonesia advanced, prosperous, and modern. This is the essence that distinguishes the colonial recognition of the unity of indigenous peoples. The colonial administration did not intend to honor, but let that unity of indigenous people continue to live traditionally so it will not be a distraction to the colonial power. Recognition and respect as provided in Article 18B, it contains demands reform law community unit in accordance with its role as a subsystem of the unitary state of the Republic of Indonesia advanced and modern.

It is said that the recognition and honors to be given throughout the legal community and the rights of traditional real still exists and functions (live), and in accordance with the principles of a unitary state. This restriction is necessary to prevent the demands of a society as if the law is still there, whereas the reality has been completely changed, or remove, among others caused by absorption in other government units.

The enactment of Law No. 5 of 1979 have devastated the legal systems of indigenous people in Indonesia with their uniformity village administration system. This of course affects the existence of customary law community itself, because the loss of a variety of custom devices. When examined more deeply, the formulation of the provisions of Law No. 5 of 1979 is legislation based on Article 18 of the 1945 Constitution (before the change). But the substance of the law does not necessarily translate the aforementioned constitutional mandate.

For the livelihood of indigenous people in Indonesia, through the enactment of Law No. 5 of 1979 has restructured the governance system. This will certainly affect the function of customary law. In fact, that should be done is a description of the administrative aspects of the legislation.

Factually, the implementation of the system of government with regard to customary law community has been replaced with the centralized power of the New Order. This is certainly a form of law that characterizes the politics of indigenous peoples themselves in a centralized system. With the arrangement based on a formula "all still alive and in accordance with the development of society and the principles of the Unitary Republic of Indonesia stipulated in the law," then the legal facts of customary law communities in Maluku province have lost with the enactment of Law No. 5 Year 1979.

Thus, the existence of indigenous communities associated with the provision of Article 18B paragraph (2), especially on the formulation that gives the terms and limitations will restrict the position of indigenous peoples. It is clearly in the presence of

Law Number 22 Year 1999 on Regional Government (recent changes by Act No. 23 of 2014), the revival of the existence of indigenous peoples. By him that, if the existence of the community associated with the formulation of the provisions of Article 18B paragraph (2), then this is a requirement that can not be met by indigenous peoples. Of course, this also affects the constitutional rights of indigenous people who have lived and preserved for generations.

The essence of Article 18B paragraph (2) and Article 28 paragraph (3) of the 1945 Constitution can be interpreted as follows :

1. The State recognizes and respects units indigenous people and their traditional rights.
2. Recognition and respect entities indigenous people and their traditional rights must meet the requirements, namely:
 - a. All still alive (the requirements of existence);
 - b. In accordance with the development of society and the principles of the Republic of Indonesia;
 - c. In accordance with the times and civilization.
3. Recognition and respect for the units indigenous people and their traditional rights, eg customary rights, will be regulated by law.

If we analyze in depth, the provisions of Article 18B paragraph (2) of the 1945 Constitution is the formulation of "conditional recognition". On the one hand, customary law community will be recognized and respected within the unitary Republic of Indonesia, on the other hand if it meets the indicators "all are alive" as a condition of existence.

Of course, politics look like a constitutional law can not be removed from the law of Indonesia political journey since independence to the present. Indonesian legal development through Article 18 UUD 1945 (before the change) actually has space recognition and respect for the rights of indigenous communities (innate right) which existed before the Unitary Republic of Indonesia. This is Grundnorm in the political development of Indonesian law. The Law No. 5 of 1979 are incompatible with Article 18 of the 1945 Constitution by itself has a conflict of norms (at the time).

To resolve the conflict between the norms of Article 18 UUD 1945 by Law No. 5 of 1979 on the above, it is done with the principle of legal preference, either *lex superior*. In this regard, (Philip M. Hadjon, 2004 and Djatmiati, Tatiek Sri, 2004: 13) states that:

"In the face of a legal case, there can be no two or more laws, which jointly applied to the case. Problems arise when there is a conflict between the legal norms of the law. It is necessary to set a norm which must be applied. Steps to be taken is the norm conflict resolution.

There is a type of settlement with regard to the principle of preference laws (which include the principle of *lex superior*, the principle of *lex specialist*, and the principle of *lex posterior*), namely: 1) Denial (disavowal), 2) Reinterpretation, 3) Cancellation (invalidation), 4) Recovery (remedy) ,

In using the principle of *lex superior* legal preferences, the settings in Law No. 5 of 1979 which did the deletion of the existence of the community is contrary to Article 18 of the 1945 Constitution, therefore, customary law community who have

innate rights remain until today, due to Law No. 5 of 1979 does not actually exist as null and void. The existence of a legal fact that there has been an overhaul of the system and the existence of the community with the Law No. 5 of 1979 certainly can not be enforced.

That means, the meaning of the constitutionality of Article 18B paragraph (2) of the 1945 Constitution should remain as the law of life (living law), the conditions of existence of "all are alive" *mutatis mutandis* certainly not going to be the norm binding limit. If the existence of Act No. 5 of 1979 does not have the force of law as contrary to Article 18 of the 1945 Constitution (before the change), then surely this existential condition does not need to be included in the provisions of Article 18B paragraph (2) of the 1945 Constitution.

The imposition of Article 18B paragraph (2) of the 1945 Constitution was essentially an overhaul of the centralized system implemented by Act No. 5 of 1979 performed by the MPR by looking at their legal facts indigenous people in Indonesia. Thus, in the arrangement of Article 18B paragraph (2) of the 1945 Constitution is essentially an existential need not state requirements, because the legal politics New Order government have resulted in a lack of a system and the existence of the community. In this case, the legal community still exist and are still alive, but the Indonesian government system that resulted in such things happen.

b. Arrangements Rights and Privileges of Indigenous People in Natural Resource Management

Management of natural resources is the rights of indigenous people are more focused on customary rights (sea customary rights) itself. Constitutional basis as mentioned above have given recognition and respect for the rights of indigenous peoples. Recognition and respect is the basis of legality in the management of natural resources.

The following will put forward some legislation (especially laws) relating to customary communities in natural resource management.

a. Law No. 5 of 1960.

Some of the provisions that give legal recognition for the rights of indigenous people and their origin or traditional rights, among others :

1. Article 2 (4) states that:

"Rights of control of the countries listed above, implementation can be delegated to the regions and the autonomous communities customary law, a necessary and not contrary to the national interest, according to government regulations".

2. Article 3 states that:

"Subject to the provisions of Article 1 and Article 2 of the implementation of customary rights and similar rights from communities of indigenous, along by the fact still exist, must be such that in accordance with the national interests and the state, which is based on national unity and not be contrary to the laws and other regulations of higher "

b. Law No. 39 of 1999.

Article 6 states that:

- (1) In the framework of human rights, diversity and the needs of their communities customary law must be observed and protected by law, the public and the government.
- (2) The cultural identity of indigenous community, including customary land rights are protected, in tune with the times.

Explanation of article 6 paragraph (1) states that :

"Customary rights which obviously still valid and upheld within the community customary law must be respected and protected in the framework of the protection and promotion of human rights in a society concerned with due regard to the laws and regulations" and paragraph (2) which says " the enforcement of human rights, national cultural identity customary law communities, indigenous rights are still significantly firmly held by communities customary law, are respected and protected at all does not conflict with the principles of a constitutional state based on justice and the welfare of the people ", Law No. 41 of 1999.

Some of the provisions that provide juridical recognition of the rights of indigenous people and their origin or traditional rights, contained in Article 17, which states that :

"Implementation of the rights of indigenous peoples, customary law and a member of its members as well as individual rights for the benefit of the forest, either directly or indirectly based on something the rule of law, so far as the reality is still there, should not interfere with achievement of the objectives in question in this law ". Article 67 paragraph (1) states that :

Customary law communities along by the fact still there and acknowledged, entitled:

- a) collecting forest products to meet the everyday needs of the indigenous peoples concerned;
- b) conduct forest management activities based on customary law and not contrary to law; and
- c) and empowered in order to improve their welfare.

Elucidation of Article 67 paragraph (1) it suggests that indigenous people be recognized if, in fact, meet the elements, among others :

- a) people still in the form of community;
- b) there is institutional in the form of the customary authorities;
- c) there is a clear area of customary law;
- d) there are institutions and legal instruments, in particular traditional justice, which is still adhered to; and
- e) still hold a harvest forest products in the region surrounding forest to meet the needs of everyday life.

d. Act No. 7 of 2004.

Article 6 Paragraph (2) states that :

"The control of water resources as referred to in paragraph (1) shall be organized by the government and / or local government while recognizing the customary rights of indigenous and local communities rights similar to it, to the extent not contrary to the national interest and legislation".

While in paragraph (3) states that: "Traditional right of indigenous people on the water resources as referred to in

paragraph (2) continues to be recognized throughout the reality still exists and has been confirmed by the local regulations".

e. Law No. 23 of 2014.

Article 1 paragraph 43 which states that :

"The village is a village and rural indigenous or called by other names, hereinafter called the Village, is a legal community unit which has borders with the authority to regulate and manage the affairs of government, from local interests, based on community initiatives, the right origin and / or rights traditionally recognized and respected in the governance system of the Republic of Indonesia ".

Article 372 which states that:

(1) The Central Government, Provincial Government and the City District Government may designate part of government affairs under its authority to village.

f. Law No. 6 of 2014 concerning the Village :

Article 1 paragraph 1 states that :

"The village is a village and rural indigenous or called by other names, hereinafter called the Village, is a legal community unit which has borders with the authority to regulate and manage the administration, the interests of the local community, based on community initiatives, the right origin and / or traditional rights recognized and respected in the governance system of the Republic of Indonesia ".

Article 19 states that: "The authority of the village include :
What.

- a. The authority of origin based rights;
- b. Village-scale local authority;
- c. Assigned authority, local government or the City District Government, and
- d. Other powers assigned by the Government, Provincial Government or Local Government of Regency / City in accordance with the provisions of the legislation.

g. Law No. 27 of 2007

Article 1 number 33, number 35 and number 36 states that:

"Indigenous people are a group of Coastal Communities are hereditary living in a particular geographical area because of their ties to the ancestral origin, the strong links with the Coastal Resources and Small Islands, as well as their value system which determines the economic system, political , social, and legal". "Traditional society is a society that is still recognized traditional fishing rights of their traditional fishing activities or other lawful activity in specific areas that are within the archipelagic waters in accordance with the rules of international maritime law".

"Local Wisdom is a virtue that is still valid in the governance of public life"

Article 18 states that :
HP-3 can be given to :
a. Indonesian citizen individuals;
b. Legal entities established under the laws of Indonesia; or
c. Culture.

The above arrangement would not imply harmony and synchronization of setting the rights of indigenous communities in the management of natural resources associated with Article 18B paragraph (2) of the 1945 Constitution is in itself has caused

a conflict of norms. Thus, the rights of indigenous communities in the management of natural resources that are not expressly provided in the legislation in force and has a conflict of norms must be completed using the legal principle of *lex SUPERIORI preference derogat legi inferior*. This means, legislation governing the rights of indigenous people in the management of natural resources must be declared void as contrary to Article 18B paragraph (2) of the 1945 Constitution.

Of course, the cancellation of the law should be made by testing the law to the Constitutional Court of the Republic of Indonesia (judicial review). Legal subjects involved in the petition for this law is customary law community unit itself as regulated in Law Number 24 of 2003.

If the assessment is done, of course, customary law community has the authority in the management of natural resources in the region sea customary rights, for this right is the right of a default based on the origin of the rights guaranteed in the constitution. Of course, the rights and responsibilities of indigenous communities in the management of natural resources in the area of sea customary rights an attribution authority derived from the Constitution NRI 1945, both Article 18 (before amendment) and Article 18B (2) (after amendment).

Therefore, the authority held an attribution authority, the settings in the legislation that does not guarantee the rights and responsibilities of indigenous communities in the management of natural resources in the sea customary rights should be declared unenforceable as contrary to the Constitution 1945. As such, customary law community have the right and authority in the management of natural resources in the region sea customary rights.

3. Management of Natural Resources in the Moluccas Sea Customary Rights

It is inevitable that natural resources anywhere, always acknowledged is critical to the survival of mankind, including in Maluku. Such a view is justified, however, because humans are entirely dependent on the preservation of natural resources and the ability to adequately. In contrast, human existence will be threatened if natural resources have depleted and destruction. From various historical experiences in several countries, including Indonesia, the availability of natural resources seem to have been very limited, even been depleted and the destruction of serious concern, therefore no longer be used optimally for the benefit of society. This state of the disruption to the realization of the right to natural resources.

On the other hand, is also acknowledged that the weak legal instruments in providing protection against natural resources, allows the protection of the rights of the people are not a lot of support, eventually generalize here the exploitation and exploration of unplanned and harm the community owner. The results of this study indicate that in the Moluccas, the potential of natural resources, both on land and at sea need to be managed and used as rationally as possible taking into account local interests, namely the ownership of indigenous peoples. Especially in the context of regional autonomy that allows community participation (indigenous) and their rights in the stages of planning, implementation and evaluation of development in the region.

Central Maluku in Ambon and hereditary implementation of regulations to protect sea customary rights between magical balance in the environment continue to be followed, even though they do not know the exact reasons of the regulations on which they run. They are more viewed as rules that have been given by Upu Lanito (lord of the sky), Ina Ume (ruler of the Earth) or the limits that have been set by Nitu safe (village guardian spirit) and Nitu Upu (guardian spirit of the family).

To maintain a balance between human and natural resources in this case the natural resources of the sea and coastal areas in Central Maluku Maluku province, known local knowledge in natural resource management sea customary rights that such provision contains a prohibition to take on and manage the natural resources of the sea and coastal areas during a period certain so-called SASI.

In order "SASI" regulations can be enforced, the traditional institutions that have authority in the management of natural resources and environmental conservation are still there and still perform its function is is "Kewang Organization" (stewards of the environment). "Kewang" as one of the traditional institutions whose function is to preserve the natural resources and has the duty and authority as follows :

1. Securing the implementation of all the norm of SASI.
2. Implement sanctions to citizens who violate the rules SASI.
3. Determine and check limits - limits of land, forests, rivers and seas are included in the SASI.
4. Installing a sign - a sign of SASI.
5. Holding meetings related to the implementation of SASI.

Generally SASI in Maluku have the same mechanism, namely Open Close SASI and SASI. Close SASI is a sign of the enactment of SASI (ban), meaning that from that moment no one is allowed to take the natural resources imposed SASI freely. SASI violations of rules will be subject to the law in accordance with customary law.

Similarly, in Ambon and Maluku Tengah, Maluku southeast / islands Kei also to recognize and enforce the instrument NATURAL marine resources conservation, known as "SASI".

To control the management and utilization of natural resources of this land until now maih known control systems through the application of the law SASI (called yot Islands Kei Besar, while Kei Islands Small-called yutut), the provisions of the law regarding the prohibition of entering, take or do something in a specific area and within a certain period (Rahail, 1993: 22) the SASI provision applies both to public and to private individuals.

SASI law application is based on the principle of sustainability and balance of the human relationship with the natural (ecosystems) as well as the philosophical content of *Itdok fo fo ohoi itmian Nuhu*, where the relationship between man and nature are inseparable. Nature is an integral part of human beings. Destruction of nature means also the destruction of the human and indigenous peoples. Therefore, the control system through the management and utilization is done as a form of prevention, ie, preventing malice, greed and selfishness. Within indigenous communities in Kei Islands, known to some kind of legal SASI, such as (Rahail, 1993: 22-24) :

1. Sasi Tetauw, the SASI which aims to protect the sago trees. SASI types apply individually.
2. Walut Sasi, the SASI imposed for a village (department) to keep the sago forests thrive, and in time will be hoed. Type SASI also still Personal.
3. Sasi Mitu, SASI is divided into two parts, namely (a) SASI mounted to mark a place sacred offerings; and (b) posted signs to forbid the taking and destructive things, such as fruits or other natural products.

Likewise, in the sea area, for example, only a breach above sea customary rights territory recognized indigenous peoples over the years. Habits and practices of management and use long marine Kei Islands are also grounded in philosophical *Itdok fo ohoi itmian fo Nuhu*, where the sea area covering most of the land and parts of the sea, and by indigenous peoples Kei archipelago call Nuhu-meth (Nuhu = means land and meth means tidal areas)

With a philosophical Thus, indigenous peoples are required to maintain and preserve the ability of their natural resources for the benefit of the future of the next generation. On the basis of philosophical so, then naturally arises rights for all indigenous children to keep and enjoy the fruits (am mam = we had).

The management system through legal SASI this sea has a unique, namely that part of the region SASI (100%) closed to the public, and therefore not allowed the natural resources of the sea SASI (50%), the rest can be used by the people in the form of taking fish in the area "meti" fish small, take snails and "bia" special purposes daily meals, so too can use the nets, nets and plant traps (WUF) or sero (Wean), while marine species other prohibited as lola, batulaga, sea cucumbers and japing-japing. Some uniqueness encountered in the management and utilization of marine resources in South East Maluku comparison to be some areas in Maluku, such as :

1. Results of SASI can be used for personal, family or communion (Ohoi, Village or Ratschap).
2. The results are intended for communion Ohoi, village or Ratschap done via auction to the buyer wins the auction, and the public is not allowed to sell to anyone other than the winner of the auction;
3. Although every member of society has the right to enjoy the fruits of the sea, but there are habits that fam or certain clans in certain sections and has particularly enjoyed, but when SASI underway, all subject to the areas affected by SASI. Therefore, if the results of the sea, then the required permission from the family that owns it;
4. The right to eat together on a sea area that is owned by every member of society is communal, although not derived from a Ohoi or the same village, Brazilians absolute right that can not be prevented by anyone. This right arises because the historical background of the rights attached to any indigenous peoples.
5. A Ohoi or village or Ratschap can have a meal right through its territory, if there is a historical connection services such as war, the fraternity (tea-bell), such as Debut with Ten Island (small islands located to the west of Kei Kecil)

In connection with the rights and responsibilities of indigenous people on territory sea customary rights sea, the Maluku province known as sea customary rights, both in the region sea customary rights land and sea customary rights region. An understanding of the customary rights of the sea (marine tenure) when linked with customary rights sea in Maluku province, the concept of ownership is reflected in the "sea sea customary rights region" which aspects of the concept of boundaries (boundaries) shows the boundaries sea customary rights unclear. In other words that the right sea customary rights sea as a concept of community ownership of customary law clearly does exist and be recognized. However, differences in perceptions about the boundaries of sea customary rights which is based on a different understanding between the peoples of each State is a matter that can not be denied.

Regarding the boundary between sea customary rights land (sea state) to the sea of public property (public property) or marine common property (common property) that the people of Maluku called the high seas is an imaginary line that is between the shallow sea (in Nolloth, Haruku (Central Maluku), Kei called White sea also called Tohor, while in Ambon called Saaro) and sea (in Nolloth, Haruku (Central Maluku and Latuhalat (Ambon) called blue sea). the word Saaro in Ambon and Tohor in Central Maluku itself, often said to be the country with the northwest boundary sea customary rights ".

Sea customary rights in Maluku region recognized by customary law community in each State. Sea customary rights region is an area determined by the ownership of certain limits. In connection with this sea borders sea customary rights , A.Wahyono, states that: "If the boundaries between land sea customary rights one village to another village contiguous form natural boundaries (rivers, hills, headlands, caves) or artificial boundaries (trees planted , stakes), opposite the sea customary rights boundary is an imaginary line drawn from the boundary of land sea customary rights straight towards the sea. Therefore, the boundary line sea customary rights between the village / State one with the State of the other is an imaginary which would tend subjectively, because the imagination of people who each other are not the same, then where exactly the boundary sea customary rights this sea can not be determined with certainty at the time were in sea, but only based on estimates. So that the sea customary rights limit is flexible in the form of the area around the specified place ". (Wahyono, 2000: 55).

If the assessment is done, of course, customary law community has the authority in the management of natural resources in the region sea customary rights, for this right is the right of a default based on the origin of the rights guaranteed in the constitution. Of course, the rights and responsibilities of indigenous communities in the management of natural resources in the area of marine sea customary rights an attribution of authority that comes from 1945, both Article 18 (before amendment) and Article 18B (2) (after amendment).

Therefore, the authority held an attribution authority, the settings in the legislation that does not guarantee the rights and responsibilities of indigenous communities in the management of natural resources in the sea customary rights should be declared unenforceable as contrary to the Constitution 1945. As such, customary law community have the right and authority in the

management of natural resources in the region sea customary rights.

The rights of indigenous people on the northwest region sea customary rights exclusive rights. This exclusivity rights certainly can not be managed by other people who are not part of the State itself.

IV. CONCLUSION

Based on the results of research and discussion above, we can conclude matters are as follows :

1. Recognition of the existence of the community Pasal18B as set forth in paragraph (2) of the 1945 Constitution is conditional recognition by the state. This existential requirement does not need to be included in Article 18B paragraph (2) of the 1945 Constitution, because of the legal political formation of this chapter as reforms to Law No. 5 of 1979. In essence, setting in Act No. 5 of 1979 is contrary to Article 18 UUD 1945 (before amendment), because it does not recognize the rights of indigenous peoples.
2. Setting the rights and authority of customary communities in various laws do not accommodate their rights and privileges of indigenous communities in the management of natural resources at sea customary rights . Customary law community who have an innate right course will be harmed in the arrangement. In fact, the rights and responsibilities of indigenous communities is an innate right recognized in 1945, because it was customary law community still has the right and authority in the management of natural resources in the region sea customary rights.
3. Limit. authority of indigenous communities in the management of natural resources in the area of coastal sea customary rights up to the boundary between the water depth and the shallow sea called the black sea water with quicklime and /or saaro.

REFERENCES

- [1] Act No. 6 of 2014 About Village (State Gazette of the Republic of Indonesia Number 7 of 2014, Supplement to the State Gazette of the Republic of Indonesia Number 5495).
- [2] Act No. 7 of 2004 on Water Resources (State Gazette of the Republic of Indonesia Year 2004 Number 32, Supplement to the State Gazette of the Republic of Indonesia Number 4377).
- [3] Asshiddiqie, Jimly, 2006, Hukum Acara Pengujian Undang-Undang, Konstitusi Press, Jakarta.
- [4] Djatmiati, Tatiek Sri, 2004, Prinsip Izin Usaha Industri Di Indonesia, Disertasi, Program Pascasarjana Universitas Airlangga, Surabaya.

- [5] Hadjon, Philipus M. 2004, Kedudukan Undang-Undang Pemerintahan Daerah Dalam Sistem Pemerintahan, disampaikan dalam Seminar Sistem Pemerintahan Indonesia Pasca Amandemen UUD 1945 diselenggarakan oleh Badan Pembinaan Hukum Nasional Departemen Kehakiman dan Hak Asasi Manusia R.I. bekerjasama dengan Fakultas Hukum Universitas Airlangga dan Kantor Wilayah Departemen Kehakiman dan Hak Asasi Manusia Provinsi Jawa Timur, Surabaya, 9-10 Juni 2004.
- [6] Hutchinson, Terry, 2002, Researching and Writing in Law, Lawbook Co; Pymont NSW.
- [7] Law No. 39 of 1999 on Human Rights (State Gazette of the Republic of Indonesia Year 1999 Number 165, Supplement to the State Gazette of the Republic of Indonesia Number 3886).
- [8] Law No. 41 of 1999 on Forestry (State Gazette of the Republic of Indonesia Year 1999 Number 167, Supplement to the State Gazette of the Republic of Indonesia Number 3888) as amended by Act No. 19 of 2004 on Stipulation of Government Regulation in Lieu of Law No. 1 Year 2004 on the Amendment of Act No. 41 of 1999 on Forestry (State Gazette of the Republic of Indonesia Year 2004 Number 29, Supplement to the State Gazette of the Republic of Indonesia Number 4412).
- [9] Law No. 5 of 1960 (State Gazette of the Republic of Indonesia Year 1960 Number 104, Supplement to the State Gazette of the Republic of Indonesia Number 2043).
- [10] Law Number 23 Year 2014 (State Gazette of the Republic of Indonesia Year 2014 Number 244, Supplement to the State Gazette of the Republic of Indonesia Number 5587).
- [11] Law Number 24 Year 2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316).
- [12] Law Number 27 Year 2003 regarding Geothermal (State Gazette of the Republic of Indonesia Year 2003 Number 115, Supplement to the State Gazette of the Republic of Indonesia Number 4327).
- [13] Law Number 27 Year 2007 on the Management of Coastal Areas and Small Islands (State Gazette of the Republic of Indonesia Year 2007 Number 84, Supplement to the State Gazette of the Republic of Indonesia Number 4739).
- [14] Manan, Bagir, 2002, Menyongsong Fajar Otonomi Daerah, Pusat Studi Hukum Fakultas Hukum UII, Cetakan II, Yogyakarta.
- [15] Marzuki, Peter Mahmud, 2007, Penelitian Hukum, Kencana Prenada Media Group, Jakarta.
- [16] Rahail, J. P.1993. Larwul Ngabal: Hukum Adat Kei, (Jakarta : Yayasan Sejati, 1993).
- [17] The Constitution of the Republic of Indonesia Year 1945.
- [18] Wahyono, A., 2000, Hak Ulayat Laut Di Kawasan Timur Indonesia, Media Pressindo, 2000, Jakarta.
- [19] Zakaria, R. Yando, 2004, Merebut Negara, Beberapa Catatan Reflektif Tentang Upaya-Upaya Pengakuan, Pengembalian dan Pemulihan Otonomi Desa, LAPERA Pustaka Utama bekerjasama dengan KARSA, Yogyakarta.

AUTHORS

First Author – Nirahua Salmon E.M, Faculty Of Law. Pattimura University, Ambon Indonesia, Email : salmon_nirahua@yahoo.co.id
Second Author – S. Kuahaty : Faculty Of Law. Pattimura University, Ambon Indonesia