Legal Principles Underlying The Rights Of Traditional Legal Communities In Marine Area Management

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Abstract : The aim of this study To find out, study, analyze and discover the legal principles that underlie the rights of customary law communities in managing marine areas. This research is Normative Juridical in nature . Where library materials are the basis (knowledge) of research which is classified as a secondary source of material. This research also examines positive legal provisions and legal principles. The research results show that The legal principles underlying the rights of customary law communities in managing marine areas are based on several principles including the Principle of State Control, the Principle of Citizenship, the Principle of Legal Certainty, the Principle of Community Participation, and the Principle of Sustainable Development. Customary law communities have not fully received the rights to manage marine areas properly. Legal regulations are clear that local governments can manage marine areas. While the Indonesian constitution recognizes the existence of indigenous peoples as long as they are still alive, so that indigenous peoples also have the right to manage marine areas, but in fact indigenous peoples are always ignored. Therefore, management of marine areas is only carried out by the state without regard to the rights of customary communities.

Keywords : customary law, maritime area

1. INTRODUCTION

The existence of traditional law communities in Indonesia has in fact existed since the time of our ancestors until today. A customary law community is a territorial or genealogical community unit that has its own wealth, has citizens who can be differentiated from members of other legal communities and can act internally or externally as a legal entity (subject of law) that is independent and governs itself. Indigenous communities must be distinguished from customary law communities. The concept of indigenous communities is an understanding to refer to certain communities with certain characteristics. Meanwhile, customary law community is a technical juridical definition that refers to a group of people who live in a certain area of residence and living environment, have wealth and leaders who are tasked with safeguarding the group's interests (outside and inside), and have a legal and governmental system (system).

Therefore, in every province in Indonesia there are customary law community units with their own characteristics that have existed for hundreds of years. The 1945 Constitution of the Republic of Indonesia as a result of the amendments has confirmed the existence of customary law communities. In Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia as a result of the second amendment states that:

"The state recognizes and respects customary law community units and 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 provisions of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia are strengthened by the provisions of Article 281 paragraph (3) of the 1945 Constitution that "cultural identities and traditional communities are respected in line with developments over time and civilization." Recognition and protection of the rights of customary law communities is indeed important, because it must be acknowledged that traditional customary law communities were born and existed long before the Unitary State of the Republic of Indonesia was formed. However, in their development these traditional rights must adapt to the principles and spirit of the Unitary State of the Republic of Indonesia through normative requirements in the legislation itself. In many ways, these normative requirements become obstacles to the existence of the rights of customary law communities, because:

a. In the practice of implementing development, the formulation of the phrase "as long as it is alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia" is interpreted to mean that the presence of the rights of customary law communities as a recognized institution as long as it does not conflict with the spirit of development, so that there is an impression that the government is
ignoring the rights of the community customary law. Meanwhile, in fact, there is a spirit in society to strengthen the rights of customary law communities.

b. The 1945 Constitution states that the traditional rights of customary law communities are respected 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 problem that arises is the authority regarding customary law communities as citizens who have the same position as other communities in terms of recognizing the rights of customary law communities. This means that the rights of customary law communities regarding the management of marine areas are still unclear. In providing an interpretation of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, according to Jimly Ashiddiqie, this provision states that it is necessary to note that this recognition is given by the state, namely:

1) To the existence of a customary law community and the traditional rights they have;
2) The recognized existence is the existence of customary law community units;
3) The customary law community is indeed alive (still alive);
4) In a certain environment (lebensraum);
5) This recognition and respect is given without ignoring the measures of suitability for humanity in accordance with the level of development of the nation's existence;
6) This recognition and respect must not reduce the meaning of Indonesia as a country in the form of the unitary state of the Republic of Indonesia.

This provision provides recognition and respect for customary law communities (adatrechtgemeenschappen) which is a basic concept or cornerstone of customary law. Various problems arise related to the weak recognition of customary law communities as legal subjects who have special and special rights. Thus, laws and development policies in Indonesia should pay special attention to the rights of indigenous peoples. The push for the government to immediately issue implementing policies for the recognition and protection of indigenous peoples continues to roll out.

Indigenous Peoples are a group of people who live based on their ancestral origins in a certain geographical area, have a unique value and socio-cultural system, are sovereign over their land and natural resources and regulate and manage the sustainability of their lives using customary laws and institutions. Indigenous Peoples collectively and their individual members have equal rights and freedoms with all people. They have the right to be free from all types of discrimination, especially based on their rights of origin. In his perspective, indigenous peoples have rights, one of which is to control, regulate, manage and utilize their living space or customary territory along with all the natural resources within it.

Customary law communities have the same rights as other citizens, including the right to participate in the decision-making process, the right to regulate, manage, utilize and care for customary management areas within the Customary Territory, and the right to use, control, preserve and develop traditional knowledge possessed. Basically, in restoring relations between the state and indigenous peoples, indigenous peoples are positioned as equal citizens with other citizens. Therefore, indigenous peoples see their rights in marine area management as very large.

Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands as amended by Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands (hereinafter abbreviated as Law PWPPPK) is one of the laws related to natural resource management. The wealth of natural resources in the form of coastal areas and small islands is controlled and managed by the State for the greatest prosperity of the people. The direct link between natural resources and customary law communities is indeed stated in the law.

If we pay attention to the constitutional guarantee, Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which is then explained in sectoral laws, regarding the recognition and respect of customary law communities there appears to be an inconsistency in its explanation. The construction of legal norms in Article 18B paragraph (2) and Article 281 paragraph (3) is actually an imperative legal norm, but at the level of implementation in organic regulations some of its coercive power is lost, so that the nature of the legal norm is more facultative in nature. Especially those related to the traditional rights of indigenous peoples. As a result, the state's obligation to recognize and respect customary law communities does not have a strong binding force, so it is not easy to use as more concrete guidelines, procedures and mechanisms.

This means that groups of people who live in coastal areas are rich in marine resources such as fish, so it is appropriate for these marine resources to provide prosperity for coastal communities and it would be unfair for them if other parties enjoyed the abundant marine resources while they only as a spectator as a result of a legal rule. Based on this thinking, the State's recognition of the existence of customary law communities regarding natural resources is inconsistent. Seeing the magnitude of the threat due to the many rights of customary law communities which are still completely taken away by the government, especially in the natural resource environment, especially in coastal areas.

Article 61 paragraph (1) of the PWPPPK Law states that:

The government recognizes, respects and protects the rights of traditional communities and local wisdom over coastal areas and small islands which have been used for generations.

Traditional rights as regulated in several laws are actually constitutional rights because the recognition of traditional rights is stated in the constitution as confirmed in Article 18B paragraph (2) of the 1945 Constitution. Therefore, all traditional
rights of customary law communities. At the same time, it is a constitutional right. In its development, the existing traditional rights of customary law communities have the potential to be violated.

Coastal communities are included in traditional law communities located in traditional villages. Article 1 number 1 of Law Number 6 of 2014 concerning Villages as amended into Law Number 3 of 2024 concerning the Second Amendment to Law Number 6 of 2014 concerning Villages (hereinafter abbreviated to the Village Law) states that:

Villages are villages and traditional villages or referred to by other names, hereinafter referred to as Villages, are legal community units that have territorial boundaries that have the authority to regulate and administer government affairs, the interests of local communities based on community initiatives, rights of origin, and/or traditional rights. which is recognized and respected in the government system of the Unitary State of the Republic of Indonesia.

The arrangement of Traditional Villages as stated in Article 97 paragraph (1) of the Village Law can be carried out if a village has fulfilled three main requirements, namely:

a) The unity of the customary law community and its traditional rights are actually still alive, both territorial, genealogical and functional;

b) The unity of the customary law community and its traditional rights is seen as being in accordance with community development; and

c) The unity of the customary law community and its traditional rights is in accordance with the principles of the Unitary State of the Republic of Indonesia.

These three requirements serve as guidelines for Regency/City governments to identify and study a viable customary law community or not worthy of being designated as a traditional village. Article 98 paragraph (1) of the Village Law states that: “Traditional Villages are determined by Regency/City Regional Regulations.”

The arrangement of the traditional village must still be an initiative of the unity of the customary law community which is related to Article 7 paragraph (4) letter e, which states: “Village Determination”. The explanation of Article 7 paragraph (4) letter e, states that: “What is meant by determination of the Customary Village” is the determination of the unity of the legal community At and Customary Villages that have existed for the first time by the Regency/City have become Customary Villages with Regency/City Regional Regulations City.”

Article 98 paragraph (1) states that: “Traditional Villages are determined by Regency/City Regional Regulations.” As stated in the two articles above, the formation of villages is stipulated in the Regency/City Regional Regulations. Explanation of Article 98 paragraph (1) What is meant by “determination of a Traditional Village” is a determination for the first time.

The customary law community unit is a local entity, so the Regency/City Government certainly understands better the conditions and situation of existence of the community masters of customary law communities in their respective regions. Determination of Traditional Villages through Regency/City Regional Regulations is a good contribution to carrying out government in a traditional manner.

In line with this, the Government, through the Minister of Home Affairs, issued a policy, namely Permendagri Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Customary Law Communities. The aim of establishing Minister of Home Affairs Regulation Number 52 of 2014 is for a community to be recognized for its existence as a customary law community.

Article 1 number 1 of the Permendagri states that:

Customary Law Communities are Indonesian citizens who have unique characteristics, live in groups in harmony according to their customary law, have ties to ancestral origins and/or a common place of residence, have a strong relationship with the land and the environment, and have a value system that determines economic institutions, political, social, cultural, legal and utilizing a particular area for generations.

Furthermore, Article 4 of the Minister of Home Affairs Regulation states that:

The recognition and protection as intended is carried out through stages, namely: a. Identification of Indigenous Peoples; b. Verification and validation of Customary Law Communities; and c. Determination of Customary Law Communities

Based on the Ministry of Home Affairs, this is the basis for recognition and protection of the existence of customary law communities themselves. Therefore, related to customary law communities in traditional villages to manage marine areas, they have authority that is legally recognized as confirmed in the constitution. The presence of indigenous peoples is a historical reality that cannot be avoided by the government. Recognition of the existence of indigenous communities provides legitimacy for indigenous communities to manage their own territories, including maritime areas.

Coastal areas are transition areas between land and sea ecosystems which are influenced by changes in land and sea as well as small islands as islands with an area smaller than or equal to 2,000 km² (two thousand square kilometers) and their ecosystem unity. This must be managed sustainably as an important part of the development strategy to increase national competitiveness. One of the problems faced in efforts to manage marine areas is legal issues resulting from conflicts over authority and ownership of coastal and marine areas as well as uncertainty or overlapping coastal area management regulations.

This condition shows that there is a need regarding marine resources in coastal areas, especially the management of marine resources in coastal areas by indigenous communities. This is done to develop sustainable management of marine resources in coastal areas. For this reason, this is the authority of indigenous communities over marine resources in coastal areas. Therefore, the policy of utilizing marine areas has been implemented sectorally. So far, maritime areas have been managed by

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"Gabriela Theovilia Soukotta, " Local Wisdom of Sasi Lanompa in Managing Natural Resources in Coastal Areas and Small Islands in Haruku Village, Central Malaka Regency." PhD diss, Atma Jaya University Yogyakarta, 2022, p. 6"
several institutions that have not yet demonstrated policy direction that is in line with constitutional ideas as emphasized in Article 25A and Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

This can be seen from the various policies that are stated and said to be legal products, so that most of them are designed to regulate sectors in the utilization of marine resources. Law Number 26 of 2007 concerning Spatial Planning confirms that space consists of land space, sea space and air space. However, the law does not regulate marine space and is regulated in a separate law. This reality confronts Indonesia with the problem of an increasing tendency for potential conflicts of authority in the management of marine areas by customary law communities and the state itself.

Basically, marine area management is related to the use of government (central and regional) authority. This has an impact on efforts to organize marine spatial planning which requires firm and clear confirmation of management authority in marine areas. Currently, there are no provisions regarding marine spatial planning, including marine laws for regulating marine areas, so that most marine management areas do not yet have full legal certainty.

In principle, management of marine areas is the authority of the regional government, including environmental control and maintenance of marine resources which is carried out jointly by the regional government and the community. This authority relationship aims to improve coordination, supervision and guidance as well as to increase community participation in development. Article 27 of Law Number 23 of 2014 concerning Regional Government provides the authority to manage resources in the sea including exploration, exploitation, conservation and management of marine resources outside of oil and gas, administrative arrangements, spatial planning and participation in maintaining security at sea and help defend maritime sovereignty.

Law Number 31 of 2004 concerning Fisheries as amended into Law Number 45 of 2009, Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands as amended into Law Number 1 of 2014 and Law -Law Number 32 of 2014 concerning Maritime Affairs, where this Law still gives authority to Regency/City governments to manage marine and fisheries natural resources in their areas. The reality of this Regional Government Law has a big impact on the management of coastal areas and small islands.

This of course shifts the similar authority specified in Article 18 of Law Number 32 of 2004 concerning Regional Government which divides the Province and Regency/City regions. Thus, Article 27 paragraph (1) of Law Number 23 of 2014 revokes the authority of Regencies/Cities in managing marine resources. The provincial authority to manage resources in sea areas is a maximum of 12 (twelve) nautical miles measured from the baseline towards the open sea and/or towards archipelagic waters as seen in Article 27 paragraph (3) of Law Number 23 of 2014.

In 2021, Government Regulation (PP) Number 21 of 2021 concerning the Implementation of Spatial Planning was issued. This regulation becomes a reference, so that from this Government Regulation, the Ministry of Maritime Affairs and Fisheries (KKP) issued Regulation of the Minister of Maritime Affairs and Fisheries (Permen KP) Number 28 of 2021 concerning the Implementation of Marine Spatial Planning which regulates planning, utilization, utilization control, supervision and guidance. marine spatial planning which includes coastal waters, territorial waters and jurisdictional areas. KP Ministerial Regulation Number 28 of 2021 is the basis for all marine spatial planning activities carried out by the Government, Regional Government, community, business actors and other marine space users. The implementation of spatial planning as regulated in this regulation includes marine spatial planning, marine spatial utilization, control of marine spatial utilization, supervision of marine spatial planning and guidance of marine spatial planning.

Starting from that, traditional villages have the authority to manage all resources within a certain village area. But basically this authority is limited, considering that the state has a big role. Basically, the authority given by the state is very small, so traditional villages cannot manage everything well. Thus, the authority of traditional villages in managing marine areas by indigenous communities must be recognized and seen as a perspective of the rights of indigenous communities themselves.

2. RESEARCH METHODS

This research is Normative Juridical in nature. Where library materials are the basis (knowledge) of research which is classified as a secondary source of material. The secondary material sources intended for the research used are books, official documents, literature, scientific works and statutory regulations to complete this research. This research also examines positive legal provisions and legal principles.

3. RESULTS AND DISCUSSION

A. Legal Principles Underlying the Rights of Indigenous Peoples in Marine Area Management

1. Legal Principles for Customary Law Communities
a. Principle of State Control

The meaning of the right to dominate the country from colonial times to post-reformation continues to be questioned. The state's position in the view of the right to dominate the country is to dominate (beheeren) and supervise (toezichthouden) and not as an owner (algewater). In relation to the relationship between the right to control the state and communal rights, especially the rights of ulayat, there is also a view that concludes that the right to control the state is a contextualization of ulayat rights in the

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8 Ibid, p. 24
9 Philipus M. Hadjon, Legal Studies, Paper, Training on Normative Legal Research Methods, Airlangga University, Surabaya, 1997, p. 20
larger framework of territorial sovereignty. The right to control the country is considered to be a hereditary right attached to the Indonesian nation as a nation.10

The right to control the country should guarantee the rights of local communities in participation, management and protection of natural resources. The state is not perceived as the ruler in determining the management and control of natural resources, but must also involve the community, especially local communities in the determination of natural resource policies. However, the right to dominate the country, whose spirit also shifted after the reformation, turned out not to be able to fully escape from a capitalistic and centralistic orientation. The issue of control of land and natural resources after the reform did not provide justice for the small people.

The meaning of post-reform state control rights is still understood in its context as a private right. As an inherent right of the state to own land and natural resources like individual rights. The orientation of the right to control the state is still within the framework of infrastructure and economic development efforts by the state. Several pieces of legislation in the field of natural resources that emerged after reform show this trend, including: Law Number 41 of 1999 concerning Forestry, Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, Law Number 18 of 2004 concerning Plantations; Law Number 20 of 2002 concerning Electricity, Law Number 4 of 2009 concerning Mineral and Coal Mining and Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands.

The earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.”

This article regulates “state control” over the earth, water and natural resources contained therein. The birth of Article 33 paragraph (3) of the 1945 Constitution became a political milestone in the legal management of Indonesia’s natural resources. As Ibnu Sutowo said:

"Since we proclaimed independence in Indonesia in 1945, we have known that we must control over natural resources as written in our constitution." 11Control of Indonesia’s natural resources is a written law in the Indonesian Constitution.

According to Soepomo, the phrase "controlled by the state" in Article 33 paragraph (3) of the 1945 Constitution means that "controlled" means regulating and/or organizing, especially to improve and consider production. Likewise, Mohammad Hatta stated:12

"...The government builds from the top, carries out big things such as building electricity, drinking water supplies, organizing various kinds of production that affect the lives of many people..."

Furthermore, Mohammad Hatta formulated the notion that being controlled by the state does not mean that the state itself becomes an entrepreneur and entrepreneur.13 It is more accurate to say that the power of the state lies in making regulations for the smooth running of the economy, regulations that also prohibit the exploitation of weak people by people with capital. 14According to Bagir Manan, the meaning of being controlled by the state or state control rights is as follows:15

"(1) Control of a kind of ownership by the state, meaning that the state through the Government is the sole authority to determine authority rights over it, including here the earth, water and the wealth contained therein, (2) Regulate and supervise the use and utilization, (3) Capital participation in the form of state companies for certain businesses"

Control by the state as contained in Article 33 of the 1945 Constitution of the Republic of Indonesia cannot be interpreted specifically in its explanation. So the meaning of "mastery" if interpreted etymologically is the process, method, act of controlling or trying. Considering that the word control is broader in scope than the word control, if it is connected to the context of the right to control the state, it means that the state controls and exploits natural resources with all the potential they contain. Rights are interests protected by law. Meanwhile, interests are individual or group demands that are expected to be fulfilled.16

If the meaning of rights is linked to the meaning of control, then it can be said that the right to control the state is the allocation of power given by law to the state to act in order to carry out its interests.

a. Principles of Citizenship

One of the requirements for acceptance by a state is the existence of elements of citizenship which are regulated according to certain legal provisions, so that the citizens concerned can be differentiated from citizens of other countries.17Muhammad Tahir Azhary believes that a country usually must have three main elements, namely:18

1) People or a number of people
2) Certain regions and
3) Authoritative and sovereign government. As a complementary element, recognition by the international community or other countries can be added.

There are 4 (four) conditions that must be met for the establishment of a state, namely:19

a) People, which consists of a collection of people, men and women who live in a society even though they come from different ethnicities/ancestry and have different skin colors.

b) Area/territory, no matter how large it is or where people live

c) The government, which consists of people who represent the people and governs based on the laws of the area/region

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11Anderson G Bartlett, Pertamina: Indonesia national Oil, New York: Tulsa Amerasian Ltd. 1972, p. 6
12Mohammad Hatta, Explanation of Article 33 of the 1945 Constitution, Mutiara, Jakarta, 1977, p. 27
13Ibid. , p. 28
14Ibid., p. 29
16Shidarta, Characteristics of Legal Reasoning in the Indonesian Context, CV. Utomo, Bandung, 2006, p. 26
17Jimly Asshiddiqie, Constitutional Law and the Pillars of Democracy, Sinar Grafa, Jakarta, 2015, p. 278
18M. Tahir Azhary, State of Law, a study of its principles from the perspective of Islamic law, its implementation in the Madinah period and the present, Cet. First, Bulan Bintang, Jakarta, 2010, p. 11-12
19Ibid., p. 13

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d) A ruling government that is not subject to any power over the world either inside or outside its territory.

The people are one of the elements for the formation of a country, in addition to the territorial elements and elements of government. A country will not be formed without the people even though it has a certain territory and a sovereign government, likewise if the people live in a certain area but do not have their own government which is sovereign inside and out, then that country will clearly not exist. So these three elements are very necessary for the requirements for the formation of a country.

b. Principle of Legal Certainty

Normative legal certainty is seen when a regulation is made and promulgated with certainty because it regulates clearly and logically, so that it does not give rise to doubt (multiple interpretations), is logical and has predictability. Legal certainty is a situation where human behavior, whether individuals, groups or organizations, is bound and within the corridors outlined by legal rules.

Legal certainty is needed in the creation of legislative regulations because legal certainty is the main principle of various kinds of principles of legal supremacy which according to M. Kordela that "The legal certainty as the superior principle of the system of formal principles of the rule of law justifies the legal validity of a defined group of values." Then, according to Maxeiner, legal certainty has two functions, namely guiding society to obey the law and protecting society against arbitrary actions by the government which can use its power to make and enforce legal rules. Starting from that, legal certainty is the main principle in implementing a clean and authoritative government system. The principle of legal certainty in a rule of law is a principle that prioritizes the basis of statutory regulations, propriety and justice in every state administration policy. In another section, legal certainty is defined as "the belief that members of society have that the government will treat itself based on applicable legal rules and not arbitrarily, without distinction, certainty about the substance of the rules (the contents and how they are interpreted." in practice). Legal certainty is a requirement for the enactment/application of law.

c. Principles of Community Participation

Participation is the principle that everyone has the right to be involved in decision making in every government administration activity. This principle is clearly reflected in the considerations considering Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands. This is because the potential that exists needs to be managed sustainably and with a global perspective, taking into account community aspirations and participation, and national values based on national legal norms. Participation is needed in strengthening democracy and improving the quality and effectiveness of public services. In creating a suitable framework for participation, several aspects need to be considered, namely:

a) Participation through constitutional institutions and civil society networks (association initiatives)
b) the civil society decision making process as a service provider
c) Local government culture
d) Other factors, such as transparency of the substance of open processes and concentration on competence.

In general, the principle of community participation is regulated in the Law on the Management of Coastal Areas and Small Islands and its derivative regulations. According to Article 3 of the Law on the Management of Coastal Areas and Small Islands, there are at least two principles that reflect this principle of participation, namely:

1) The principle of community participation
   The principle of community participation aims to: a. coastal communities and small islands have a role in planning, implementation, up to the supervision and control stage; b. have open information to understand government policies and have sufficient access to utilize coastal and small island resources; c. guarantee representation of the community's voice in these decisions; d. utilize these resources fairly.

2) Partnership Principles.
   The principle of partnership is a cooperative agreement between interested parties relating to the Management of Coastal Areas and Small Islands.

In the Management of Coastal Areas, Small Islands and marine areas, the community is widely involved in participating starting from the planning, utilization, supervision and control of coastal and small island resources coordination stages carried out by the Government and Regional Governments.

d. Principles of Sustainable Development

Conceptually, sustainable development originates from economics which is mainly related to issues of efficiency and justice (equity) to ensure the implementation of economic development for the welfare of society. Sustainable development can

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21 Ibid. p. 89
22Sulistiyowati Irianto et al, Socio-Legal Studies, Pustaka Larasan, Jakarta, 2012, p. 212

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be found both explicitly and implicitly in various international agreements and various other instruments. Rokhmin Dahuri stated that:

"The principle of sustainable development is an effort to utilize natural resources and environmental services found in coastal and marine areas for human welfare, especially stakeholders, in such a way that the rate of utilization of natural resources and environmental services in question does not exceed the carrying capacity of the area, coast and sea to provide it."

Sustainable development is one embodiment of the environmental insight referred to in the 1945 Constitution of the Republic of Indonesia, on the other hand, the principles of sustainable development must also be applied in environmentally sound development policies. There is no sustainable development without the environment as the main element and there is no environmental insight without sustainable development. Thus, it is hoped that these sustainable principles can influence the formation of new legal rules including.

Integrated management of marine areas is a requirement to achieve optimal and sustainable development. Apart from that, there are rules that must be applied in managing marine areas to achieve optimal and sustainable development. Sustainable development is development to meet current living needs that appears to damage or reduce the ability of future generations to meet their living needs.

Thus, sustainable development is basically a development strategy that provides a kind of threshold for the development of natural ecosystems in terms of the resources they contain. In other words, sustainable development is a strategy for utilizing natural ecosystems in such a way that their functional capacity to provide benefits to human life is not damaged. Sustainable utilization of coastal area resources means how to manage all development activities in an area related to coastal areas so that the total impact does not exceed its functional capacity.

The principle of sustainability in sustainable marine development policies and strategies should be comprehensive and integrated between natural resources and human resources, so that it requires commitment from both the central government and regional governments. This commitment is implemented consistently by stakeholders as the first step in laying the basic framework for directed marine development without destroying marine resources. In addition, the principles of sustainable development require implementation in the form of statutory regulations and government policies.

Realizing the importance of sustainable marine development in the management of coastal areas with various regional conditions owned by a country and the intensity of development and linked to the principles of sustainable development, there are 5 (five) approaches to zoning and prioritization of development, namely:

1) The first zone covers coastal land to waters as far as 12 miles from the coastline. In accordance with its biophysical properties, in this zone various kinds of sustainable development activities can be developed, such as coastal agroculture, forestry, pond aquaculture, capture fisheries, tourism, ports and transportation, mining and energy, maritime industry.
2) The second zone covers sea areas beyond 12 miles
3) The third zone covers the sea area from 12 miles to 200 miles towards the open sea (the outer limit of the exclusive economic zone)
4) The fourth zone is the high seas area, outside the exclusive economic zone (EEZ)
5) The fifth zone is an area of small islands

Management of marine areas, especially in regulating spatial planning in marine areas, can refer to the concept of integrated marine area management based on Integrated Coastal Management (ICM), where regulations regarding spatial planning of marine areas are emphasized on the system of territorial authority/zoning both at the national level and at the national level, regional order.

Sustainable development is not an easy thing to implement. Due to the diversity of cultures and geographical conditions, Indonesia must strive for sustainable development in accordance with customary law communities.

Indigenous peoples are a group of people who are vulnerable to being marginalized in the human development agenda. The sea as one of the groups of indigenous peoples who depend on the sea in their daily lives will be seriously threatened by their environmental rights during the climate crisis. The concept of protecting indigenous peoples with traditional rights, including environmental rights, has been formulated in the Constitution, which has been passed down to lower legislation down to district level regional regulations. The Draft Law on Indigenous Peoples, which is the main legal umbrella at the national level, is important to include provisions regarding guarantees of environmental rights as traditional rights for communities which can provide comprehensive protection for indigenous communities in the midst of the climate crisis.

2. Rights of Indigenous Peoples in Marine Area Management

Until now, it is still recognized that custom is something that reflects the nation and identity of each region. Indonesia is a legal state that guarantees the independence of each particular community to respond to these issues, so it requires an in-depth study of the legal needs of indigenous communities which also essentially require a right to independence to defend their lives and those of their customary law communities.

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24 Ibid., p. 12
27 Dina Sumyowati, Determination of Maritime Boundaries of the Unitary State of the Republic of Indonesia, Juridika, Volume 21 May Number 21 of 2006, p. 40
28 Suriyaman Mustari Pide, Traditional Law Past, Present and Future, Kencana, Jakarta, 2022, p. 171
Today's modern life, through legal positivism itself, customary law communities as legal subjects are given a constitutional basis. Customary law has become part of positive law or in other words, customary law has become part of state law. As people's law, it can be seen that customary law has lost its existence as people's law, this statement cannot be proven, whereas as state law, customary law has not lost its existence.29

Customary law is still customary law that was born from, by and for the people where it was born, grew and developed. State law works textually, while customary law as people's law works contextually. 30 Basicaliy, the legal subjects who have the right to manage and utilize natural resources are only members of the local customary law community. This is because customary rights are the sovereignty of local indigenous peoples over their territory. Identification of customary law communities leads to a demand for recognition from customary law communities for their rights related to their position as customary law communities, such as; its position as a community of indigenous peoples and is rooted in the original structure and growth of the community itself.

According to Saafoedrin Bahar, recognition of the rights of customary law communities is not implemented consistently for three reasons, namely:31

a) The central government's lack of understanding regarding the cultural diversity of Indonesian society
b) Investors' need for land since 1967, especially in the mining, plantation and forestry sectors, has caused the government together with the DPR RI to issue a series of laws which in concreto deny the rights of customary law communities to customary land.
c) The growing tendency of very strong centralization of government, which has led to the decline of the study of customary law and customary law communities, is partly due to the assumption that customary law and customary law communities are incompatible with the national spirit and that issues of customary law and customary law communities are seen as part of SARA (ethnicity, religion, race and inter-group) issues are a threat to national security.

Apart from that, it appears that in contrast to the policy of the Dutch East Indies government, which automatically gave recognition to adatrechts gemeenschap, the Indonesian government did not automatically give this recognition. Both in Article 28 I paragraph (3) of the 1945 Constitution of the Republic of Indonesia and various organic laws there are various clauses and conditions that are limitative for the recognition of the existence of customary law with the conditionality of the juridical status and rights of customary law communities. Communities that recognize their existence as indigenous communities cannot be taken for granted, but must demonstrate certain identities, criteria and activities that reflect the values and norms of indigenous communities.

Management of marine areas is essentially still considered the right of customary law communities residing in coastal areas over marine resources. So, marine resources belong to indigenous peoples. Being said to be property of the community means that the community has rights over a certain, fairly large area.

This shows that indigenous peoples who occupy the sea coast have customary rights or customary areas which can be on land or on the sea coast. In the management of coastal and aquatic resources on small islands, customary law and customary law existing in communities inhabiting coastal areas and small islands is one of the necessary accesses to ensure the availability of local natural resources and also to protect these resources against the possibilities that could occur in the form of degradation or over-exploitation.

The state is often unable to carry out supervision far into the scope where small, medium and large scale businesses operate in sea and coastal areas or small islands far from government centers. On the other hand, many of these business places are located around and even in the midst of communities that live on coasts and small islands. This condition shows that in reality the rights of customary law communities have been continuously violated, both by the government and non-government parties.

A customary law community that does not yet have legality will face obstacles in defending its rights. Faced with the inconsistency of the Indonesian national legal system regarding the juridical status and rights of customary law communities, the United Nations community provides special attention and protection to the existence and rights of customary law communities. International human rights legal instruments that protect indigenous peoples include the 1989 ILO Convention Concerning Indigenous and Tribal Communities in Independent Countries and the United Nations Declaration on the Rights of Indigenous People.

Soekanto said that customary law communities are legal subjects. Therefore, it is autonomous which is then called village autonomy; This means that the legal community carries out legal actions, for example making decisions that are binding on community members, administering justice, regulating land use, inheritance and so on.32 In customary law, the concept of customary rights will emerge. Basically, customary rights can be said to be the rights of customary law communities to control, own, utilize and manage natural resources in their territory.

The rights of indigenous peoples are currently not in the hands of the indigenous peoples themselves. Even though the statutory provisions have implemented recognition of the rights of indigenous peoples, the reality of the implementation or activation of these rights of indigenous peoples in the hands of indigenous peoples requires real action that they can carry out without being hindered by the state.33

One of the rights of indigenous peoples is the customary rights of indigenous peoples over the sea. According to Wahyono, there are three main variables in marine customary rights, namely:34

1) Region.
In a maritime territorial right, it is not only limited to limiting the area, but also territorial exclusivity. This exclusivity can also apply to marine resources, the technology used, the level of exploitation and temporal limitations.

2) Social unit holding rights (right-holding unit).

The social units of rights holders are very diverse and can be individual in nature, from kinship groups, village communities to countries. This rights holding unit is a matter of transferability, namely how exploitation rights are transferred from one party to another, and equity, namely the distribution of rights into one unit of rights holder.

3) Legality and its implementation (enforcement).

The issue of legality, the subject of discussion is the legal basis underlying the implementation of marine customary rights, namely in some cases in the form of written regulations. Meanwhile, other cases show that the implementation of marine customary rights is an extra-legal practice because it is based on the habits of the community, not according to formal law.

Thus, marine customary rights can be said to be a set of rules or practices for managing marine areas and the resources therein based on customs carried out by coastal communities in villages. This set of rules or customary maritime rights (customary maritime rights) concerns who has the rights to an area, the types of resources that may be captured and the permitted techniques for exploiting resources in a marine area.

The sea has very high resources and has a very large area compared to land. People's treatment of the sea is different, including issues related to whether or not their rights to control the sea are developed. This of course provides an interpretation that customary law communities have enormous management rights over the sea that covers their territory.

Thus, customary rights indicate the existence of a legal relationship between customary law communities (subjects of rights) and natural resources and certain areas (objects of rights). Customary rights contain authorities which state that the legal relationship between customary law communities and their natural resources/territory is a relationship of control, not a relationship of ownership.

Utilization of natural resources must bring prosperity or prosperity to as many Indonesian people as possible. According to the General Explanation of the Fisheries Law: "Utilization of fish resources is not only aimed at the interests of community groups who directly carry out activities in the fisheries sector but must also provide maximum benefits to the Indonesian people as a whole." In order for utilization that can prosper as many people as possible, the State is given the right to control natural resources. The right to control the State is an incarnation of the customary law community's customary rights on a State scale.

Even though the presence of state organizations with their powers is important, it is not necessary for state organizations to eliminate the powers of indigenous community organizations and the various regulations contained in their customary or customary laws. Management of marine resources belongs to indigenous communities in coastal areas. It is said that ownership of a customary community means that the customary community has rights in a fairly large area.

Customary law communities that occupy coastal areas have customary rights areas located on the sea coast. Marine customary rights covers the area from the coast to certain boundaries in the sea that can be reached by indigenous peoples when harvesting from the sea.

The nature of the diverse marine wealth in Indonesia shows that there are many that stand out, especially the biological marine richness of fisheries which is closely related to people's lives, both marine riches exploited by traditional fishermen and those carried out by large fishing companies. Fisheries management has become very prominent because of its potential to improve people's economic lives. This is closely related to indigenous communities, on the coast and small islands in the surrounding sea and coastal areas.

The measurement in the form of nautical miles is not a measure for determining the distance from the edge to a particular beach. The distance from the coast to the edge of the sea is determined by the ability of indigenous peoples with their simple and traditional equipment to periodically continuously and from generation to generation reach certain places in the sea to take the sea products in it, and certain areas can be defended against other parties not taking the results contained therein.

Management of marine areas for various marine resource products within them, the customary law that exists in communities living on coasts and small islands is one of the accesses needed to guarantee the availability of local natural resources and also to protect these resources against the possibilities that could occur in the form of degradation, over-exploitation. The state cannot carry out supervision to the extent where small and medium scale businesses operate in coastal and marine areas or small islands far from government centers. Indigenous communities in Southeast Maluku, especially in the Kei Islands, recognize the division of the sea that are used for settlement.

Indigenous people in the Kei Islands, especially Maur Ohoiwut, divide the coastal and marine areas around their islands into the following types of areas:

a) Ruat met (waar) soir which means a dry coastal area at the lowest low tide with a width of up to 10 meters from the dart line and a depth of up to three meters. Inside live small shellfish and fish for bait

b) met, an area stretching from 10 meters to 300 meters (varies), which at the lowest low tide is a dry area but at high tide has a depth of 3.5 meters. This place is a special area for women and children to gather marine products such as small coral fish, shellfish, seaweed and so on.

c) hangar rattan or hangar soin, a shallow area that never dries up even during low tide, which is a buffer zone between the deep sea and the tidal area. This area contains coral reefs, various types of coral fish (domersal).

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36RZ Titahelu, Just Legal Development: Discussion of Law and Society, Paper presented at the Church and Society Consultation, organized by the General Synod of Churches in North and Central Sulawesi, Tondano May 2005, p. 11

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d) *nahan ratan* or *nahan soin*, deep sea areas with a depth that usually reaches 15-100 meters and karanag as far as 500-1000 meters from the land boundary line, with various types of coral reefs, both small and medium fish  

e) *faruan*, an open sea area with a depth of 100-200 meters, while the span width can reach 1000-3000 meters from the land line. This area is traditionally a catchment area for large marine fish such as mackerel, skipjack tuna, sharks and so on  

f) *wewuil*, friend of the open sea with a depth of 200-300 meters and a stretch that reaches 3000-5000 meters wide from the land boundary line. In this area, large fish are also caught, such as in the *Faruan area*  

g) *Wahduan*, an open sea area with obstacles between 300-500 meters and a width of up to 5000-7000 meters and a land boundary line. In this area, big fish are also caught, such as in the *Faruan* and *Wewuil areas*  

h) *Leat Dong*, a sea area with a depth of 500-1000 meters and a width of between 7000-10,000 meters. This area also has deep sea fish such as *faruan wewuil* and *wahdua*  

i) and *walaar enteat*, an open sea area with obstacles between 1000-5000 meters and a stretch width of between 10,000-20,000 meters from the mainland coastline  

j) *Tahit Ne Wear*, the open sea area which is generally seen as the boundary of marine customary rights  

In areas like these, although not all regions have such a division, the fishing community in Maluku, the majority of whom come from indigenous communities, own, manage and utilize their marine products.

Article 9 of the Draft Regional Regulation of Southeast Maluku Regency Number... Year... Concerning the Recognition and Protection of the Kei Evav Customary Law Community states that:  

1) The Kei Evav Customary Law Community has rights of origin, including:  

   a. Rights to customary sea and land areas;  
   b. Kei Evav Indigenous Community's right of ownership over land and natural resources;  
   c. The right to share the benefits of genetic resources and traditional knowledge by outside parties; And  
   d. The right to implement Lar Vul Nga Bal Customary law and customary justice.  

2) The rights as intended in paragraph (1) include:  

   a. The right to own;  
   b. Right to use;  
   c. Right to develop;  
   d. The right to control on the basis of possession; And  
   e. The right to own from generation to generation.  

3) The rights as intended in paragraph (1) point a include the right to own, use, develop and control on the basis of hereditary control and ownership of:  

   a. The sea area of 4 miles or 6.44 km corresponds to the 7 (seven) marine space zones or Sor Fit Roa which are within the boundaries of the Ratschap area; And  
   b. The land area corresponds to the 7 (seven) land space zones or Sor Fit Nangan which are within the Ratschap area boundaries.  

4) The marine space zone or Sor Fit Roa as referred to in paragraph (3) letter a, includes:  

   a. Tubur which is a dry coastal area and is used to moor boats;  
   b. Met, which is a coastal area that has the potential for seaweed, snails, crabs, small fish and octopus;  
   c. Soor or hangar which is an area where there are lots of coral and sponges;  
   d. Batetan is an area with lots of large rocks, and there is a habitat for rockfish, turtles, sea cucumbers and pelagic fish;  
   e. Nam which is the boundary area between Batetan and Lehetan, as a place for pelagic fish and seabed fish, and a zone where rocks and sand are mixed;  
   f. Lahetan which is a blue sea area; And  
   g. Tahiti Bum Sawel is the inner and outer sea area, where whales, sharks and dugongs live.  

5) The land space zone or Sor Fit Nangan as referred to in paragraph (3) letter b includes:  

   a. Ngur or Witin which is a residential area and residential buffer area which is usually planted with fruit and vegetables;  
   b. Vutun which is a cultivation area for gardens;  
   c. Kait which is a hamlet of longevity plants;  
   d. Wair’ ain which is a water buffer area for plantations;  
   e. Meen which is a wetland forest area;  
   f. Hungan which is an area with lots of rocks;  
   g. Yaat or Aturun is a jungle area.  

6) The rights of origin as intended in paragraph (1) are regulated based on the Lar Vul Nga Bal Customary Law and in accordance with the provisions of statutory regulations.

Meanwhile, Article 10 states that:  

1) The Kei Evav Customary Law Community has rights originating from State recognition consisting of: a. rights to land, coastal areas, islands and natural resources; b. the right to development; c. the right to spirituality and culture; d. environmental rights; and e. right to take care of yourself.  

2) The rights as intended in paragraph (1) include the right to determine development, fulfillment, restoration and protection in accordance with the provisions of statutory regulations.
Thus, traditional law communities in Maluku have not fully received the right to manage marine areas properly. The legal regulations are clear that local governments can manage marine areas. While the Indonesian constitution recognizes the existence of indigenous peoples as long as they are still alive, so that indigenous peoples also have the right to manage marine areas, but in fact indigenous peoples are always ignored. Therefore, management of marine areas is only carried out by the state without regard to the rights of customary communities.

4. CONCLUSION

The legal principles underlying the rights of customary law communities in managing marine areas are based on several principles including the Principle of State Control, the Principle of Citizenship, the Principle of Legal Certainty, the Principle of Community Participation, and the Principle of Sustainable Development. Customary law communities do not yet have full rights to manage marine areas properly. The legal regulations are clear that local governments can manage marine areas. While the Indonesian constitution recognizes the existence of indigenous peoples as long as they are still alive, so that indigenous peoples also have the right to manage marine areas, but in fact indigenous peoples are always ignored. Therefore, management of marine areas is only carried out by the state without regard to the rights of customary communities.

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