Socio-legal analysis of forest cleaning process on Marind travel district Merauke

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Abstract. The socio-legal analysis the process of transferring customary forest into plantation land on the marind tribe. This study aims to (1) analyze indigenous and plantation forests in the literature of legislation - (2) to describe the conservation of land function (3) to describe the Marind / Malind indigenous peoples (4) to analyze the process of natural transition (land/forest) marind. The research method used is the method of socio-legal research, which is a method of research approaching a problem through a merger between normative analysis with non-legal science approach given the law. That is by conducting studies and analysis related to forest clearance. Data collection is done by collecting primary legal materials in the form of laws and regulations and constitutional court decisions and also collecting secondary legal materials in the form of legal opinions, doctrines or theories derived from legal literature, research results, scientific articles, and related websites with research, and interviews that are then used to provide an explanation of the primary legal material. The conclusion of this research is (1) that the definition of forest in Law No. 18 of 2013 about prevention and Restriction of Forest Destruction according to the forest in the perspective of the Marind because it describes the forest as a unity of ecosystem that formed naturally and not formed because set by the government. (2) Land transition process by Marind has to go through several customary ritual processes conducted by the Marind tribe then bring up to some statement from the indigenous peoples which are called by "Letter of Release of Adat." That letter of release than becoming evidence of land transfers from indigenous peoples to another tribe legal entity for then made for one of the requirement to manage and manufacture the Land Certificate. (3) the process of disposal of land using customary rituals and get approval from various parties Masyarakat we can conclude that the step is a step of responsibility towards future generations, so then there will be no problems and disputes in the future either to investors/buyers of land.

1. Introduction
Forest for indigenous Papuans is the foundation of life, in addition to a place to get a live forest also keeps a deep sacred value for every tribe residing in Papua. Just as the Marind tribe inhabited the southern region of Papua, which assume land and forests as a caring Mama (mother), keep, and raising them. Even marind tribes only make land and forest the only inheritance that can be passed on to posterity; the meaning island and forest are only one community which contains economic value and sacrality for the marind tribe.

In article 1 verse (1) legislation number 18 of 2013 about Prevention and Restraint of Forest Destruction, explains that forests are an ecosystem unit in the form of landscapes containing biological
resources dominated by trees in natural communities whose environment cannot be separated from one another.

In this modern era the sacredness of the marind tribe to the forest is degraded rapidly when indigenous peoples begin to recognize money as a commodity other than land. Land that is considered as a mother was sold to industrial companies that then make the forest as a land of palm which then bring up to new social problems for indigenous peoples, ranging from environmental pollution, drought until the game hunted.

Though legal protection for the customary forest is strong enough, one of them is by the issuance of Constitutional Court Decision number 35/PUU-X/2012 This decision granted part of the petition for a judicial review of the status of the customary forest. The status of customary forests is governed by Article 1 Sub-Article 6 of Law No. 41/1999 on Forestry with the definition of "state forest within the territory of customary law communities", is contradictory to the 1945 Constitution so that it does not have binding (or no longer applied) legal force The definition was changed to "forest within the territory of customary law community”.

Similarly, in Article 3 paragraph (1) letter (a) of the Minister of Environment and Forestry Regulation of the Republic of Indonesia Number: P.32/Menhk-Setjen/2015 and establishing customary forest as one of the recognized forest statuses.

Therefore, in the forest forest conversion process, in this case customary forest does not fully use the positive law regulation, it also uses procedures, systems, and procedures that are compatible with the customs and customs of the local people, one of which is marind indigenous people who have their procedures, systems, and procedures in implementing the process transfer of nature/land/forest to person or legal entity.

2. Methods
This research makes process and procedure of transfer of rights from customary forest to plantation land as research object by finalizing various customary forest transition terms and procedures into plantation land by prevailing laws and regulations. The research method used is the method of socio-legal research, which is a method of research approaching a problem through a merger between normative analysis with non-legal science approach because of the law namely by conducting studies and analysis related to the removal of the customary forest into palm oil plantation in Merauke district.

Socio-legal research, is a study that examines the science of law by incorporating social factors within the limits of legal writing.

The Socio-Legal Research still prioritizes the discussion of legal norms, then explores it comprehensively from non-legal science studies/factors outside the law, such as history, economics, social, politics, culture and so on. Socio-legal is the umbrella concept, which covers all approaches to law, legal process, and legal system.

3. Discussion

3.1 Customary forests and plantations in marind law invitations and perspective
Legislation number 5 of 1967 about The provisions of the Basic Forest Provisions state that the forest is a field of growth of trees which as a whole is a living community of nature and its natural environment and which established by the Government as forest. Whereas Article 1 paragraph (1) of Law No. 18 of 2013 on Prevention and Restraint of Forest Destruction explained that a forest is an ecosystem unit in the form of land containing biological resources dominated by trees in the natural community whose environment cannot be separated between one with others.

There is a difference in literacy between forest devil- lition in Law No. 5 of 1967 on Forest Principals, and Law No. 18 of 2013 on the prevention of forest eradication. The forest elements contained in Law No. 5 of 1967, among others:

1. A field of trees
2. It is a life of nature living together with the natural environment as a whole.
3. Established by the Government as forest.

Whereas in Law No. 18 of 2013 on Prevention and Restriction of Forest Destruction Forest elements among others:

1. An ecosystem unit in the form of a stretch of land containing biological natural resources.
2. Dominated by trees
3. Community nature of the environment that can not be separated from one to another.

Legislation number 5 of 1967 on Forest Constitution makes forest as an area established by the government, while Law No. 18 of 2013 on Prevention and Restraint of Forest Destruction describes the forest as a unity of ecosystem that formed naturally and not happened because set by the government. Therefore the forest shall be regulated in the Regulation of the Minister of Environment No. 32 of 2015 on Forest Rights. Which is in chapter 3 paragraph (1) of the minister's regulation divides the forest status into three categories: Hutan Negara;

1. Customary forest,
2. Forest Rights.

However, in Article 1 paragraph (3), it is explained that the forest of rights as meant in paragraph (1) is customary forest and individual forest. So that forest rights can also be categorized as customary forest. This is due to the decision of Mahkama Constitution number 35 / PUU-X / 2012, which in the decision of the Constitutional Court stipulates that the Customary Forest is a Forest located in the customary territory, and no longer State Forest.

In consideration of its decision, the 1945 Constitution, namely Article 18B Paragraph (2) and Article 28I Paragraph (3), has given recognition and protection for the existence of customary forest in unity with the territory of customary rights of an adat community. This is a consequence of the recognition of customary law as a "living law" that has been going on for a long time and continued today. Therefore, placing customary forest as part of the state forest is a neglect of the rights of indigenous and tribal peoples, the Constitutional Court finally decides "customary forest is a forest within the territory of indigenous people", not as meaning "customary forest is state forest situated within the territory of customary law communities”[1]

The terms of recognition and respect of indigenous and tribal peoples in the phrase "as long as the facts are still there and acknowledged their existence" in article 18 B paragraph (1) of the 1945 Constitution, should be interpreted as long as it is alive and in accordance with the development of society, because customary law, in general, an unwritten law and a living law, meaning it is a law accepted and observed by the people concerned because it fulfills a sense of justice for them and is appropriate and recognized by the constitution.

Marind tribe does not recognize the term gardening, but the marind tribe a water channel plot which on the future will grow food that will then be harvested together, this culture is known by the Marind tribe with the term Lambada or Yomlek [1].

3.2 Indigenous marind people/malind

The term Marind began to be found in various works of foreign writers - most of whom were missionaries around the beginning of the twentieth century. In general, the so-called Marind are people who are characterized by blacks and curly hair without limiting from where he came from.

There are two types of mention of the original southern region of Papua, namely Marind and Malind. The difference between malind and marind occurs because of differences in pronunciation that occur in indigenous peoples, said Marind mentioned by indigenous people Sendawi located in the south, while Malind said by the indigenous people muli in the north [3].
However, indigenous peoples have agreed in the indigenous peoples' discussion which was held in the sailor area in 2007 that they have agreed with mentions Malind [2]. However; it is not recognized by some indigenous people Marind, one indigenous Marind Imbuti who still want to use the word Marind Malind [2]

Malind-Anim is one of the "original" tribes in the Southern part of Papua. Generally, this tribe is concentrated and also spread in Merauke Regency. Also, Malind-Anim is the "native" tribe of the highest number of population than other indigenous tribes in Merauke, such as the tribe Yei, Kanum, Mandobo and Muyu [4].

However, the Malind-Anim population is smaller than the general Merauke population. Ahead of the referendum was held, the calculation of the indigenous Papuan population had been held. Regarding the percentage of the migrant population in Papua rose sharply from 4% in the 1970s to 41% in 2005, while Papuans in the same period of 96% fell drastically to 59%.

3.3 Natural Transition Process (Land / Forest) by Marind tribe

Indonesia recognizes and respects customary law community units as long as it is alive and in accordance with the rules of legislation, it is stipulated in Article 18 B Paragraph (1) of the 1945 Constitution which reads: "The State recognizes and respects the unity of indigenous and tribal peoples along with their traditional rights as long as they are alive and in accordance with the development of society and the principle of the Unitary State of the Republic of Indonesia, regulated in law".

Marind tribe has a unique way of transferring nature/land / forest to become a proprietary right, or usage right still valid today. Mas'ud Samin as secretary of institute Masyarakat Adat Marind Imbuti explained the release of customary land done through customary rituals. This customary ritual has customary procedures with several stages namely [5]

1. There should be agreement
   This agreement is a discussion which done by indigenous people. This discussion follows by This discussion was followed by delegates from the Marind tribe, led by the adat chief so that they all know that in a region there is land already sold or released. In the past, the chairman had sent custom ropes as messengers in deliberations if they could not attend. Customary meetings or custom meetings are conducted by way of adat chairman sitting on the matched ground, sitting on the ground for talking about the land. This is done for days until the approval of all parties.

2. Perform a glitzy ceremony.
   After the release of the land has been approved then all indigenous peoples and traditional leaders perform a ceremony in the form of dance and play a tool called gatzi. They danced till the morning with the fun with the whole family and relatives.

3. Conducting murder/killing pig
   After perform glitzy ceremony all night then the party who wishes to release his land collects the pigs to be killed, then strikes the pig using the wood back and drips his blood on the boundaries of the land to be released, then all the indigenous peoples who follow the Gatzi ceremony bear witness to the release of the land thus has legal property over land move to others. This is similar to the principle of publicity on the ground, which has the same objective of telling the status of land ownership to avoid misunderstanding in the future.

4. Division of pork to indigenous people
   After cut off then the pork is shared to all the community fairly, because togetherness is very important of the marind tribe.

Various custom rituals performed by the Marind tribe in the Marind tribe process that then gave birth to a kind of statement from the indigenous people who called with "Letter Release of Customary." Unlike the Java region that uses "Girik" and South Sulawesi areas that use "Rincik" as proof of ownership of ulayat land. In Kabupaten Merauke instead, use Letter of Release as proof of
land transition from indigenous peoples to people who are not indigenous peoples to serve as one of the requirements of making Land Certificate by Badan Pertanahan Nasional.

Based on the rule which done by the indigenous people which have to be done, in the practice sometimes deviated from the rule which agreed by the customary figures that exist, about, the limits of ownership of land rights to be processed for their release sometimes didn’t have clarity so legal certainty given to potential investors/buyers is very weak, and make the dispute in the future.

Thus there should be a regulation that specifically regulates the conversion of customary land in Papua into use rights or property rights for the smooth development in Papua, especially in the field of land.

3.4 Benefits Release on sustainable development

In Article 2 Sub-Article B of Law Number 32 the Year 2009 on the Protection and Pengenlohan of the Environment there is a principle of "participative" as one of the principles of environmental management and protection, and then in the explanation of article 2 letter B there is a definition of what is meant by the Principles of Conservation and Environmental Sustainability, which reads as follows:

*What is meant by "the principle of sustainability" is that everyone assumes obligations and responsibilities to future generations and each other in one generation by conserving the carrying capacity of the ecosystem and improving the quality of the environment*[6]

Thus, the process of disposal of land using customary rituals and get approval from various parties Masyarakat we can conclude that the step is a step of responsibility towards future generations, so then there will be no problems and disputes in the future either to investors/buyers of land. In addition to the principle of sustainable sustainability, there is also a participative community principle contained in article 2 letter K.

In article 2 letter K UUPLH 2009 written the word "participative" as one of the principles of management and environmental protection, and then in the explanation of article 2 letter K there is a definition of what is meant by the principle of Partisipatif, which reads as follows:

*The meaning of "participatory principle" is that every member of the community is encouraged to take an active role in the decision-making process and the implementation of environmental protection and management, either directly or indirectly.*

Thus, the participation of the community, whether individual or direct or indirect, is still in need from the start of the process of environmental business permits to the process of forest exploitation if only the land or forest is used for plantation or exploitation purposes.

4. Conclusion

Forest for Marind tribe itself, the forest is natural, land, also land to stay, looking for something to eat, and hunt. Until the marind tribe assume if forest is mom(other) who take care, keep, and raising them with sincere till forest definition in legislation number 18 of 2013 about prevention and effort to eliminate destruction forest in fact more appropriate with forest in perspective marind tribe because describe forest as a unity ecosystem which was formed natural and didn’t happen because set by the government. The process of changing land of the marind tribe have to pass through some processes those are arranged a deal with all of the indigenous people, perform glitzy ceremony, murderer/ killing pig, and distribution pork to indigenous people. All sorts of the ritual indigenous which done by the marind tribe in that marind tribe process then bring up like letter declaration from the indigenous people which named “the release of indigenous”. Which is then the evidence transition land from indigenous people to another tribe or the law for being as one of requisite for manage land or construction certificate land. N article 2 letter B of Law Number 32 the Year 2009 on the Protection and of the Environment as "Principle of Environmental Sustainability and Sustainability" as one of management and environment. Thus, the process of preserving the land using customary rituals and getting help from various parties can enable us to simplify the steps that are the step of responsibility
towards future generations, so that later there will be no problems and problems in the future either to
the investor/buyer of the land.

Reference
[1] Mahkamah constitue. http://www.mahkamah konstitusi.go.id/index.php?page=web.Berita&id=8475#.W0NHAdIzbDc di akses Tanggal 10 Juli Pukul 02.00 WIT
[2] Interview Albert Gebse Mouwend the lead of indigenous people institution district merauke 28 june.
[3] Interview Xaverius Bavo, the lead of merauke indigenous people constitution, 2 july 2018
[4] Boelaars J and Vriens, Usher irian tribes to kristus: story of development religion in merauke archdiocese, (year not listed) 8-9
[5] Interview Mr. Anselmus 2018, indigenous person in merauke/member of LMA Marind Imbuti: 29 June 2018.
[6] Law part setwilda tk ii Merauke, law identificate marind indigenous, communal law area marind indigenous Soson in Imbuti, Urumb, Yatomb, dan Matara. 2000