Environmental rights of the indigenous peoples of *Moronene Hukaea Laea* in the national park conservation area

J Nur, F Patittingi, ASalle and SSaad

Faculty of Law, Universitas Hasanuddin. Jl. Perintis Kemerdekaan KM 10 Makassar 90245, Indonesia.

E-mail: farida.pada@unhas.ac.id

Abstract. Various anthropological studies indicate that a country with a high level of biodiversity is usually a country inhabited by a variety of traditional indigenous peoples. The research is an empirical research, by analysing the legal protection of the Indigenous Peoples of *Moronene Hukaea Laea* in the conservation areas. The results show that the existence of the indigenous peoples of Moronene Hukaea Laea has been passed down for generations. Led by customary chiefs or *totongano wonua*, chosen based on father's lineage. At first, the landowners were the property of the Gods (*Enteiwonua*) who inhabited land and forests, to obtain rights to land and forests so that humans must perform *Mooli* rituals to become the owners of the land and forest areas. Hereditary ownership of the so-called joint rights to land and forest area (*Wita ni mbue*).

1. Introduction

Indonesia is a country with various biodiversity. Various anthropological studies indicate that a country with a high level of biodiversity is usually a country inhabited by a variety of traditional indigenous peoples [1]. Similarly, Indonesia as a country has status as a number one pluralistic country in the world. By topography, Indonesia is an archipelago consisting of a number of large islands and thousands of small islands, but more than includes human communities with hundreds of local and ethnic colors [2].

M.A Jaspan [3] in his report concerning ethnic groups in Indonesia elaborates the cultural classification as follows:

| No | Region         | Amount    |
|----|----------------|-----------|
| 1  | Sumatera       | 49 ethnic |
| 2  | Java           | 7 ethnic  |
| 3  | Kalimantan     | 73 ethnic |
| 4  | Sulawesi       | 117 ethnic|
| 5  | Nusa Tenggara  | 30 ethnic |
| 6  | Maluku Ambon   | 41 ethnic |
| 7  | Irian Jaya     | 49 ethnic |
Based on the existing ethnic groups, it is evident that Indonesian people is a pluralistic society, with each complementary culture contains a value and knowledge systems that has grown hundreds or thousands of years and it has been managed for generations guided by hundreds of belief and religious systems. According to van Vollenhoven [4] that cultural diversity with their complementary by for the first time called as a customary law community.

An explicit description of territorial conflict that often brings together indigenous peoples and the State and the private sector in a conflict is shown in the process of National Inquiry as conducted by the National Commission of Human Rights in 2014. In this process, the National Commission of Human Rights conducts an investigation for 40 cases representing hundreds of cases that were registered or had been reported to the National Commission of Human Rights. These cases relate to conflicts over the rights of indigenous peoples with various private investments, including investment in Forest Concession Rights, industrial forest, plantations, and also mining. The National Commission of Human Rights at the end of the inquiry recommended many things. One of them is for the Indonesian Legislation Assembly with the Government to immediately ratify the Bill on the Recognition and Protection of the Rights of the Customary Law Community.

As a systematic and comprehensive process of inquiry, the National Inquiry basically wants to follow-up on the Decision of Constitutional Court No. 35/PUU-X/2012 regarding to customary forests (indigenous territories). Basically, the decision affirms that State’s control over customary forests is contrary to the 1945 Constitution. It means that the law on Recognition and Protection of Indigenous Peoples can end the procedure for recognition of complicated indigenous people and political.

Confronting the situation as described above, the State apparently did not provide a mechanism for conflict resolution that was able to guarantee not only legal certainty but furthermore it was able to guarantee the achievement of justice for indigenous people. More conflict resolution mechanisms are only through the judicial mechanism. While, the choice to use this mechanism is very risky for indigenous people because it often collides with the legal status of indigenous peoples, both their status as legal subjects and the ownership status of indigenous peoples over the objects of their origins.

Mechanisms for conflict resolution within indigenous peoples are increasingly eroded. The use of formal law further marginalizes the role of customary law and institutions in conflict resolution at the level of indigenous communities. This has resulted in increasingly forgotten laws and customary institutions. Basically, movements to demand State recognition do not only occur in Indonesia. In other countries, indigenous peoples also make efforts for the State to recognize the rights of indigenous peoples. For example, in Philippines, a movement demands recognition of indigenous peoples leading to the birth of the Indigenous Peoples Rights Act/IPRA, a law on the rights of indigenous peoples in the country.

The long and endless road due to political policies that have not been in favor of the recognition of Indigenous Peoples in Indonesia has resulted in several customary law communities in Indonesia experiencing suffering due to conflicts with stakeholders and access to managing and utilizing natural resources for life negated and this as wanted by the State for the customary law community turn into a modern society, thus the criteria for recognition of the customary law community in the 1945 Constitution are not fulfilled, i.e criteria as long as the reality still exists.

In Indonesia, one of the customary law communities with case as mentioned above is the customary law community of Moronene. Moronene community is an indigenous community that lives based on ancestral origins in a custom territory; they have sovereignty over land and natural resources, socio-cultural life regulated by customary law and traditional institutions that manage the survival of their communities.

In the history of Southeast Sulawesi, the customary law community of Moronene is a community which first inhabited the land of Southeast Sulawesi, in addition to Tolaki and Mekongga peoples. Surrounding land management and utilization of natural resources are conducted in a traditional manner based on their knowledge and become a habit adopted in the customary law community of Moronene Hukaea Laea. Given the characteristics of Moronene in forest management that accommodates the socio-cultural aspects of indigenous peoples, it is necessary to conduct a research
on the right protection of Customary Law Community Moronene Hukaea Lea in National Park Conservation Area of Rawa Aopa.

2. Method
This is an empirical research [5], analyses legal protection of the customary law communities of Moronene in conservation areas. The research was conducted in the Indonesian Ministry of Environment and Forestry and the National Park of Rawa Aopa Watumohai, as well as Moronene community both those living inside or outside conservation areas.

3. Challenges of the customary law community in the National Park Conservation Area
Geographically, the territory and the customary law community of Moronene are located in the southern part of Southeast Sulawesi which covers “land and sea areas”. Generally, as other ethnic groups have a social layering system that is bound to customary institutions that functions as a pattern of social order in social life. Initially, social structure in Moronene community was formed based on “local wisdom” from community leaders. Therefore, it is necessary to appoint, promote and enthrone wise someone, as well as the mandate to lead, protect and create people prosperity. Such figure is called Mokole. Thus, Mokole or King in Moronene community was appointed and crowned by community leaders from Limbo group (Miano Motu’a).

According to customary law of Moronene [6], initially the land ownership is the Gods (Nteiwonua) who inhabit land or forest. To get the land rights, the people must perform a ritual “Mooli” (buy) and who is the first to perform a ritual Mooli is considered as the next ruler of the land or area. In the customary law of Moronene, the first person who inhabits the forest area was called Tonomotuo as well as the ancestor of the customary law community in the region.

Normatively, Act No. 41 of 1999 on Forestry was established in the spirit of awareness to a sustainable environment alignment, but on the other hand, there are statements to accommodate the dynamics of aspirations and participation of the community, customs and culture and values the community, indicates the alignment of this law with indigenous peoples with all their traditional wisdom. Based on this legal reason, it can be understood that the existence of this law is no longer solely economic-centric, but environmentally sustainable ecology-centric.

In this law, it is explicitly recognized and regulated regarding customary forests and customary law communities. Customary forest is State forest that is within the territory of indigenous peoples. The government decides the status of customary forests as long as in reality the relevant legal community still exists and its existence is recognized. The use of customary forests is conducted by the customary law community in accordance with their functions. The use of customary forests that function as protection and conservation can be done as long as they do not disrupt their functions.

Principally, all forests and forest areas can be utilized while taking into account their nature, characteristics, and vulnerability, and are not justified in changing their basic functions, namely the functions of conservation, protection and production. In order to maintain the sustainability of the basic functions of the forest and its condition, efforts are also made to rehabilitate and reclaim forest and land, which aims to restore the quality of the forest, increase the empowerment and community prosperity.

There is a dilemma in forestry policy. On the one hand, the Central Government is considered dominate decision-making in forest management. However, on the other hand when districts and their communities were given wider opportunities to manage forests in their areas, in some district there was many small-scale concession permits granted that causes increase forest destruction. It proved that during 1997-2000, at the beginning of the era of regional autonomy, the level of forest destruction increased from 1.87 million hectares to 2.83 million hectares due to the euphoria of reforms that caused massive deforestation. However, since 2002 -2005 the level of forest destruction has begun to decline to 1.18 million hectares per year [7].

A study of the development of arrangements regarding the customary law community and their customary rights is focused on the prevailing laws and regulations. While, for laws and regulations
that have ever existed and are no longer valid, which in the material the provisions governing relating to the customary law community and/or customary rights will be compared with current and relevant laws and regulations.

The classification of forest areas that can be managed by customary law communities is conducted by applying the customary law of Me’uma (farming customary law) by the customary institution of the customary law community Moronene Hukae Laea. Such classification in relation to the customary law community Moronene Hukae Laea is basically contains intent and purpose for “protection” and “utilization of area” of natural resources, which includes all ecosystems, includes forests, environment and living species inside it. The concept of region classification based on trust in the existence of these gods is very strategic to prohibit, limit, and utilize forest areas in accordance with their respective functions [8]. In other words, such classification gives signs to humans so as not to exploit forest areas arbitrarily, because there are areas by customs must not be disturbed by sustainability.

For the customary law community Moronene, the natural resources of forest areas, rivers and other natural environments are part of their life needs. Thus, the value of Moronene Hukae Laea states that in fact humans are not prohibited from taking forest products anywhere, but not greedy. To maintain and guarantee the preservation of the forest, after taking it must replant. Or if humans take forest products do not depleted, save the seed or “replant” to the empty land [9]. The community must love plant and environment by conduct replant. As the philosophy of Dayak people that before taking anything from the nature, the human must first give to the nature. That is, in principle people may cut down and burn trees in the production forest area, to be used as fields, but after that they must be replanted. Forest damage generally occurs because people forget to plant.

Based on the interview about the value of local wisdom, a view of local community stating that, “the trees in the forest are essentially living things that will eventually die, because before they die they must be used.” They argue that the value of local wisdom is to place the function of the forest as a gift from God that must be utilized for human needs, but after that it must be replaced by re-planting. Because actually the big trees that are cut down, there are benefits, both for development and human needs as well as for the sustainability of the forest in general. Small trees that before could not develop because they did not get enough daylight and blocked by large trees, so with the big trees being cut down, small trees would develop well.

The utilization of forest areas includes the utilization of “natural resources” and “biological resources”. As “natural resources,” what is utilized is “forest area which includes the unity of ecosystems in a landscape of land that contains biological natural resources dominated by trees in the natural environment, both of which cannot be separated.” Then, as a biological resource, what is utilized is all natural potential that lives in a particular area, such as flora and fauna that can provide benefits for human life and the surrounding environment, including forests as an element of living natural resources.

From the concept of natural resources, the essence of the following discussion are natural resources (forests and all their contents) and biological natural resources which include flora and fauna) contained in 4 (four) areas (Inalahipue, Inalahi Popalia, Inombo, and Luemo) in the indigenous territory of Hukae Laea.

Moving from the collective awareness that forests are the most important source of human livelihood, and therefore indigenous peoples around the forest in general including MAM in Hukae Laea cannot be separated from the forest. Forest as a living natural resource is not only a necessity for rural people, but also a necessity for all human beings, including those who live in urban areas, because humans cannot essentially live without forests. Therefore, in the concept of forest conservation, it should be translated into 2 (two) aspects, namely: Firstly, forests as a source of human life must be managed and utilized optimally in the interest of fulfilling basic needs of the community, both those living in around the forest and for public interest, even for the sake of sustainable national development; Secondly, forests must be saved from damage caused by irresponsible human behavior. Therefore, it must be preserved, both through government programs and through self-help efforts from the community itself. From the rural community, especially those who live around the forest, the
management and utilization of forests must be based on local wisdom as has been inherited from ancestors from generation to generation.

In regard to the understanding of recognition and protection to indigenous peoples over land as customary rights, then the recognition of indigenous peoples over land leads to the understanding of State or government recognition both politically and legally, through the regulation of government rights and obligations in giving respect, opportunity and protection for the development of indigenous peoples and their traditional rights within the frame of the Unitary State of the Republic of Indonesia. The recognition shows that the State/government has recognized, declared legitimate or affirm that the customary law community has the right to natural resources owned and obliges the government to protect these rights from threats or interference from other parties. This recognition is a recognition formulated in the form of State law on the rights of indigenous peoples over land and other natural resources.

Customary right is a right that can only be granted to indigenous peoples as mentioned in their traditional rights. The customary law community is indigenous people units that still and use their customary law in their daily lives in addition to national law. Article 18B Paragraph (2) of the 1945 Constitution mandates that ‘the State recognizes and respects customary law communities’ units and their traditional rights as long as they are still alive and in accordance with the development of the community and the principles of the Unitary State of the Republic of Indonesia, as regulated in legislation.’

4. Conclusion

Law concerns forestry has been issued in writing since the time of the Government of the Netherlands East Indies, which applies specifically to Java and Madura. While, outside Java and Madura, each customary law applies. Dualism of forestry law applies to the capacity of traditional institutions that control forest areas, it is recommended for central, provincial and Bombana district governments to strengthen the customary law in relation to customary or conservation forest management.

In the context of revitalizing customary villages in the control and customary forest management, then it is recommended for central, provincial and Bombana district governments to strengthen the capacity of traditional institutions that control forest areas, it is intended they understand their respective roles and functions in the control of customitory forest.

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