

LEGAL PROTECTION TO MANAGE FOREST RESOURCES BASED ON LOCAL WISDOM

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LEGAL PROTECTION TO MANAGE FOREST RESOURCES BASED ON LOCAL WISDOM

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Abstract

Legal protection of forest resources is not only important for communities around the forest, but also the benefits of sustainable forests felt by wider public such as air, land and water quality, and climate. Management of forest resources based on local wisdom is one way to ensure the benefits and functions of forests maintained. Jambi Province and Thailand have various forest management initiated by the community still experience problems, especially in terms of legal protection. The certainty of management area from conflict, the threat of diversion, becomes a business area for forestry companies, plantations and even mining. Appropriate policies to address legal issues are faced both in Jambi Province and Thailand. The results of the study revealed; first, the management of local wisdom-based forest resources by people in Jambi has received recognition, meanwhile there are still problems with the variety of stipulation forms, such as the minister decree, regent, and regional regulation. While in Thailand, there are constraints on the relationship with the government. Local wisdom-based forest management patterns in Thailand have not been supported by strong rules for the community to use forest resources for life. In addition, the benefits of environmental services in Thailand are good enough. Second, sustainability in local marine-based forest management is a common problem faced both in Jambi and Thailand. For this reason, improvements in policies appropriate for sustainability are needed. In Jambi, it requires legal products in the form of stipulations in a regional head (Bupati) decree on community forest management areas. While changes of regulations in Thailand can guarantee legal certainty for the community.

Keywords: forests, legal protection, local wisdom

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INTRODUCTION

Customary law communities in various parts of the world see their place as a whole ecosystem. Beliefs, knowledge, arts, and other forms of cultural expression have been passed down from generation to generation. Many stories, songs, dances, paintings, and forms of expression are important aspects from the knowledge, strengths, and indigenous cultural identities of indigenous people known as local wisdom. They live in dependence and depend on life for natural resources in their territory. It is estimated that there are 190 million indigenous people in Asia (Arqon et al., 2019; Erwin et al., 2019; Helmi et al., 2019; Helmi et al., 2019; Sudarna et al., 2020; Yamani et al., 2020). About 75 million people live in India and 30 million people in Southeast Asia. Among the indigenous people of Asia are Adivasi, Dalit, Assam, Manipuris and Tamil India and Sri Lanka, the Jarowa in Andaman Island, India, Uighurs in Tibet, Ainu in Japan, Lisu, Mien, Akha, Lahu, Lua, Thin, and Khamu who lives mostly as farmers. Global demands urge countries in various parts of the world to carry out rights-based development as an international standard of human rights directed at supporting and protecting human rights. Human rights-based development itself essentially integrates norms and standards (agreements, conventions and declarations) and the principles (equality, justice, empowerment, accountability and participation) of the international human rights system into development planning, policies, and processes (Helmi, 2012). Therefore, this strategy contains elements such showing direct links to human rights, accountability, empowerment, participation, and non-discrimination, and paying attention to vulnerable groups.

The struggle for protection, recognition, and respect for indigenous people not only takes place at the national level, but also at the international level. The International Labor Organization (ILO), including institutions have successfully ratified the Convention on the protection and recognition of indigenous rights and tribal people through ILO Convention 169 in 1986. Recognition and respect for the rights of indigenous

people experienced a great development when the UN General Assembly succeeded in ratifying the UN Declaration on indigenous people. International legal instruments regulated the rights of indigenous people included rights to communal land, natural resources, wealth over traditional knowledge, and free consent to development processes related to the interests of indigenous people. In the UN Declaration on indigenous people, one of them contained the concept of Free and Prior Informed Consent (FPIC). FPIC is actually, not a foreign concept in rural communities in Indonesia. For a long time, this concept took root in the traditions and habits of rural communities in Indonesia. In the context of natural resource management, this clause guarantees that affected people to be asked for their consent without prior permission from the government. Negotiation of obtaining approval should be preceded by the provision of information that reveals the advantages and disadvantages and legal consequences of a particular activity. The adoption of FPIC mechanisms in a number of legal instruments and standardization has been initiated by multistakeholder institutions. The United Nations Declaration on the rights of indigenous people passed in 2007 regulates several provisions relating to FPIC, including the provisions of Article 18 which stipulate that indigenous people have the right to take part in decision making on matters things affected their traditional rights through their own chosen representatives in accordance with their selection methods and procedures to maintain and develop their own decision-making institutions.

Furthermore, Article 19 stipulates that the State should consult and cooperate with good intentions trusted each other and related indigenous people through their own representative institutions to obtain free, prior and prior approval after there is clear information to obtain approval before adopting and implementing actions, legislative or administrative actions that can affect them. Therefore, management of natural resources in the area of customary law community management is important to be studied in order to learn local wisdom as well as to examine the legal aspects of the protection of these indigenous people.

Looking at vision and mission of Law Faculty in Jambi University, it becomes a superior faculty of law at both national and international levels in the law of natural resources in 2025. This vision is further revealed to be a mission reflected in the activities of Tri Dharma of Higher Education. One of the research activities on legal protection of forest natural resource management based on local wisdom (A study in Jambi and Thailand) greatly supported the implementation of vision and mission of Law Faculty in Jambi University while strengthening the cooperative relationship between Law Faculty in Jambi University and Law Faculty in Thammasat University in Thailand. Hence, it is necessary to explore further the legal protection of local wisdom-based forest resource management in Jambi Province and Thailand. There were two major research questions administered in this study; first, what is the legal protection of local wisdom-based natural resource management in Jambi Province and Thailand? Second, how do future policies need to be realized in legal protection in the management of natural resources based on local wisdom in Jambi Province and Thailand?

METHODS

Research Design and Approach

Research on the legal protection of local resource-based forest resource management is a normative and empirical legal research. Normative legal research is legal research that places the law as a building system of norms (Marzuki, 2008). The norm system in question regards principles, norms, rules of law, court decisions, agreements, and doctrines about indigenous and tribal people in the management of natural resources. According to Marzuki (2008), normative legal research is a process to find a rule of law, principles of law, and legal doctrines to answer the legal problems faced. It is carried out to produce new arguments, theories or concepts as prescriptions in solving problems. In this study, local wisdom in managing forest resources in Jambi Provinces and Thailand was examined in connection with the conceptions and theories regarding the application of local wisdom maintained firmly by indigenous people in Jambi Province and Thailand. Meanwhile, empirical research of this study has the point that the law is inseparable from the existence of indigenous people. The approach used the historical approach and the conceptual approach to legislation.

Types of data and legal materials and Legal Material Collection

The types of data and legal materials in this study included primary data and legal materials. Primary data are the main data related to local wisdom in Jambi Province and Thailand which are carried out by direct involvement or through questionnaires. Secondary data processed and in the form of legal material are collected from local, national, and international legal instruments. However, the legal materials studied included primary legal materials such legal material relating to local wisdom in management of forest resources in Jambi Province and Thailand consisting of the 1945 Constitution, the Human Rights Law, ILO Convention 169 in 2009 concerning the Rights of the Legal Custom Community, United Nations Declaration on the Rights of Indigenous People in 2007, LoGA, Forestry Law, Regional Government Law, and Environmental Protection and Law management. The legal material collection technique was carried out in two ways, literatures and document. Furthermore, in this study, empirical study was also used to collect related supporting data regarding local wisdom in managing forest resources in Jambi Province and in Thailand.

Data Analysis

Legal materials and primary data collected in principle, standards, and norms relating to local wisdom related to forest resource management in Jambi Province and Thailand were analyzed qualitatively. Qualitative analysis was then described descriptively. Descriptive analysis of those perspectives started

from historical juridical analysis and systematic analysis of the regulation of local wisdom in the management of forest resources in Jambi Province and Thailand. After the primary data and secondary data and legal materials were collected, then processed and tabulated to be analyzed descriptively. Before it was written in the form of a report, a team discussion was held to be discussed. The results of the discussion were prepared in the form of reports and used as input for the formation of local, national, and international laws.

RESULTS AND DISCUSSIONS

International legal instrument that guarantee and protect the traditional rights of indigenous people in international law was ILO Convention 169 of 1989. It is called in the Convention on indigenous people in independent countries. This Convention uses two terms when it was examined, indigenous people and tribal people. In accordance with Article 1 (1.b), indigenous people are formulated as communities in independent countries considered as indigenous nations whose determination is based on their origins among other residents who inhabit a country, or a geographical area where a country is located, at the time of conquest, occupation, or the establishment of new national boundaries without regard to their legal status, and still has some or all of their social, economic, cultural, and political institutions. Whereas, tribal people, in accordance with Article 1 (1.a), are defined as those who live in independent countries where their social, cultural, and economic conditions distinguish them from other communities in the country, and whose status is regulated in whole or in part by the customs and traditions of the community or with specific laws and regulations. Therefore, it is precisely translated by indigenous people (Kasim, 2007).

To guarantee the implementation of the contents of this Convention, the responsibility is put in the hands of the government (members of the ILO ratifying ILO Convention Number 169) to develop, coordinate, and take systematic actions in order to protect the rights of indigenous people, and guarantee recognition of their integrity. The intended action should include the following steps. First, ensure that members of indigenous people and their benefit from the same rights and opportunities as other members of the population as stipulated in national legislation. Second, promote full realization of social, economic, and cultural rights of indigenous people based on their cultural and social identity, customs and traditions, and institutions. Third, help community members concerned to eliminate socio-economic gaps that might occur between indigenous people and other residents who also live in a country that is in accordance with their aspirations and way of life. Fourth, the implementation of this Convention emphasizes the principle of dialogue and deliberation. The Convention requires the government to conduct negotiations, and to provide facilities that enable indigenous and tribal people to freely participate and the availability of means for development and initiatives belonging to indigenous people and tribal people. Negotiations carried out in the context of applying this Convention in accordance with the provisions of Article 6 should be carried out in good faith. Because indigenous and tribal people have the right to decide priorities regarding the development process because this will affect lives, beliefs, institutions of indigenous and tribal people, belief systems, natural resources, and their lands. Fifth, the principles should be respected by the government as confirmed in the Convention, such in form of recognition and protection of indigenous people rights and indigenous people over land / natural resources (collective ownership), natural resources, and their consent to relocation to them. Those principles included; 1) the rights of ownership and control of indigenous people towards land that they traditionally inhabit and the use should be recognized (article 14, 1), 2) the government should guarantee effective protection of their ownership and control rights (article 14 (2)), 3) adequate procedures should be established in the national legal system to resolve claims for land

submitted by indigenous people (article 14, 3), 4) the rights of indigenous people to natural resources related to their land should be specifically protected. These rights included the right of the community to participate in the use, management and conservation of these resources (article, 15, 1), 5) in case where the State retains ownership of mineral resources or sub-surface resources (which are under the skin of the earth) or rights to other natural resources relating to land, the government should negotiate with them (article 15, 2), 6) if a transfer is made, then relocation should be carried out with the approval given in a free condition and with prior discussion. If the agreement is not obtained, then the transfer may only be carried out with the procedures stipulated by national legislation (article 16 (1), 7) if possible, the community should have the right to return to their traditional lands, as soon as the reasons for relocation which are no longer available (article 16 (3), 8) if it is not possible to return to traditional land, the community in any way possible should be given land with the legal status and land quality that is at least the same as the land that they previously occupied (article 16, 4).

Legal Protection of Local Wisdom-Based Natural Resource Management in Jambi Province and Thailand

Local wisdom-based forest management or once popularly known as community-based forest management in countries that have land and forests such as Indonesia and Thailand developed tens or even hundreds of years ago. In Jambi Province, local wisdom-based forest management existed long before independent Indonesia with a customary forest management model known as "rimbo", or another term "imbo". Imbo or jungle is managed by the community based on local customary law, especially to utilize non-timber forest products such as rattan, resin, fruits, and honey. Likewise the benefits and environment of forests such as river water with all its benefits, clean air. The use of wood from the forest is also carried out only to fulfill daily needs of the community or individuals, such as building houses, meeting halls or places of worship. The use of wood from forests is not commercially viable. Not much different in Thailand. Although the forest is fully controlled by the state, traditionally there are forests managed traditionally based on the local wisdom of the community. The total area of Thailand is approximately 514,000 km² with a forest area of 147,620 hectares or 20% of the total area in the country. The debate surrounding sustainable forest use in Thailand occurred at a disagreement in the management of forest resources well between the Royal Forestry Department, NGOs, and local communities. Rules in a community forestry plan began in the early 1990s, but have not yet been implemented. These differences are complicated by a force with a "shaky structure" of the bilateral environment of Thai society. In Thailand, according to Hares (as cited by Soegijono, 2010), there are many ways that can be used to assess local forest management with an emphasis on conservation and sustainable use, and relating to local environmental literacy including knowledge, values and practices, both by qualitative analysis and quantitative analysis. Local communities have long been managing and utilizing forests for their lives. Since the central government has taken over forest management from the community, communities have suffered and forest management has failed due to a lack of community participation. In addition, there are capitalist effects in forest management. According to Shigetomi (year), Shin'ichi's penetration of capitalists did not eliminate social units, but rather spurred the transition from bilateral relations to collective cooperation as an adaptation to the market economy. Villages in Northeast Thailand have developed collective organizations such as labor exchange groups, death ceremony groups, and savings groups. He saw the role of these businesses towards the formation of local organizations that would manage forest resources under a program sponsored by the government and NGOs. He observed that the programs had been successful where the program was similar to natural villages managed around Buddhist temples or religious guards. Although it was no longer

related to religion, the joint organization was based on economic assistance.

On the other hand, Bhumibhamon (2005) stated that all natural forest land and forest resources in Thailand belong to the state. Therefore, forest policy aims to preserve and use forest resources. However, people in Thailand maintain close relations with forests where they are sources of livelihood for most people in the countryside. Forests are an integral part of social and cultural framework for the community. Thai people who are in the vicinity of the forest realize that these various problems will disrupt the benefits of forests for the survival of life. This awareness is evidenced by the attitudes and actions of the people who are committed to preserving the function of forest area for sustainable development. The management of forest is carried out based on local wisdom so that it is balanced between economic, social and environmental interests to achieve sustainable functioning of forest resources. Besides, the forms of local wisdom-based forest management in this country are developing together and facilitated by NGOs that often act as liaisons between community and government such in terms of resolving land conflicts, forest destruction due to illegal logging, prevention of damage to watersheds. In Jambi Province, local wisdom-based forest management has weakened in the New Order era. After 1998, various initiatives especially by environmental, NGOs, facilitated communities around the forest to obtain management rights over communal forest areas. These areas are generally former permits that have not been extended or left out by the permit holder company.

The initiative gets management rights by the community, because Law number 41 in 1999 concerning Forestry, it turns out that it has not guaranteed legal certainty because it requires discriminatory treatment between the community and forestry investors in managing the acquisition of rights. Until the community's right to manage rights over the forest area is facing "complicated" legal issues, community management is based on local heritage. On the other hand, the confession was bound by very difficult provisions, such as in customary forests. As a result, the government or regional government determines directly on a forest area which is actually a community area based on local wisdom. In line with the demands of the community together with NGOs, the environment is getting stronger for local wisdom-based forest management, the government and local governments then enact regulations. Beginning in 2002, there were patterns of community-based forest management or based on local wisdom such as community forestry, customary forests, partnership forests, and village forests. In Jambi Province, there are community forests, cooperation between universities and the forestry ministry. Other management patterns then began to be carried out in the community, such customary forests and village forests through NGO assistance. Various community initiatives with NGOs and universities are found in Tebo, Bungo, Sarolangun, Merangin, and Kerinci districts. The development of the community's demands for management rights was also carried out on plantation forests in Jambi, and even the community made claims against the plantation forest permit area. In response to this condition, plantation forest companies under the direction of the Ministry of Forestry are collaborated with communities around the permit area in the form of partnership forests. This community forest management space has been stronger since the Constitutional Court Decision number 35 / PUU-X / 2012 on May 16 in 2013 granted part of the material test lawsuit by the Alliance of indigenous people of the Archipelago (Aman), indigenous people of Kenegerian Kuntu Kepri, and the Cisitua Banten Kesepuhan indigenous people for provisions concerning customary forests in Law number 41 in 1999 concerning Forestry.

Based on the rules, customary forests are no longer part of the State forest. Instead, they are rights forests managed by the customary law community. The implication of the decision is the

social capital of community to develop patterns of village forest management, those are community plantation forests. Finally, through the Minister of Environment and Forestry Regulation (PerMen-LHK) Number 83 in 2016 concerning Social Forestry, Minister of Environment and Forestry Regulation Number 34 in 2017 concerning Recognition and Protection of Local Wisdom in the Management of Natural Resources and Environment. Based on PerMen-LHK Number 32 in 2015 concerning forest rights, forests consist of state forests, customary forests, and rights forests (Article 3 paragraph 1). Then, paragraph 2 of this article, forest rights as referred to in paragraph 1 consist of customary forests and individual forests/ legal entities. Moreover, Article 4 based on the Minister of Environment and Forestry Regulation concerning indigenous forests confirms the authority and mechanism for determining customary forests managed by customary law communities. They included; 1) the customary law community, individually or jointly in a group or legal entity submits a request for stipulation of the right forest area to the Minister. 2) The legal entity as referred to in paragraph 1 is in the form of a cooperative formed by the local community. (3) Based on the application as referred to in paragraph 1 and paragraph 2, the Minister carries out verification and validation. (4) Verification and validation as referred to in paragraph 3 should be carried out by referring to the guidelines prepared and determined by the General Director by involving stakeholders. (5) Based on the results of verification and validation as referred to in paragraph 4, the General Director on behalf of the Minister within fourteen working days specifies the right forest in accordance with its function. (6) The designated forest area as referred to in paragraph 5 is included in the map of the forest area. (7) In the event, the community does not submit an application for the stipulation of the right forest as referred to in paragraph, (1) the Minister together with the regional government should identify and verify indigenous people and their territories inside the forest area to obtain customary forest communities.

Therefore, this ministerial regulation on the one hand provides a "very" broad opportunity for indigenous and tribal people, both individuals and legal entities to propose and obtain management rights to customary forest management areas for the welfare of the community. Even, there are still ambiguous arrangements regarding customary forests and forests such as Article 4. Although the legal space has considerable management rights, there are still a number of problems for people in Indonesia to manage local forest-based forests. First, changes in regulatory authority between the central government, the district government, and the Village Government. Second, the legal form of stipulation, especially on customary forests, the minister's decision raises its own difficulties for the community. Determination by ministerial decree has implications for supervision. Third, sustainability of management. Community managed areas in Jambi are faced with pressures on oil palm plantations, unlicensed mining, and increasingly limited forest resources in other areas that can be utilized. The problems previously mentioned also occur in community forest management in Thailand. Although, in Indonesia, it tends to be better. The Thai community faces a government "regime" which tends to be closed to the public space to carry out forest management based on local wisdom.

15 Future policies: Legal protection in the management of natural resources based on local wisdom in Jambi Province and Thailand

Looking at various issues of forest management by the community both in Jambi and Thailand, a better formula is needed to ensure sustainability. First, the actualization of the change in the sustainable development paradigm is the balance between economic, social growth, and environmental sustainability or the sustainability of forest functions as an ecosystem (Helmi & Iskandar, 2019; Helmi, 2011). Thailand still

needs policy changes, because the legal space for community management rights is still not guaranteed by the government. However, the problems in Jambi and Thailand regarding sustainability are relatively the same. This is attributed to strong pressure of forestry companies to obtain management rights through permits for the management of production forests. The second problem is the need for policies to affirm and determine the status of community management areas. The forest consists of state forest and rights forest. At present, there are quite a lot in Jambi, community-managed forest areas in the form of customary forests, village forests, community plantation forests that are still in the state forest status, even the status is as a company permit area. The third problem is about strengthening community forest management institutions. Although legally in Indonesia, it is regulated about institutions such as cooperatives or corporate legal entities, forest management groups. However, these institutions are still weak in management practice. Fourth, it is necessary to affirm the legal form and clarity of authority, especially related to the "independence" of the community in

CONCLUSIONS AND RECOMMENDATIONS

Protection on the management of local wisdom-based forest resources by the community in Jambi is based on PerMen-LHK number 32 in 2015 concerning Forest Rights, PerMen-LHK number 83 in 2016 concerning Social Forestry, and PerMen-LHK Number 34 in 2017 concerning Recognition and Protection of Local Wisdom in the Management of Natural Resources and the Environment. Tebo, Sarolangun, Merangin and Kerinci Regencies have been determined by a Regent Decree. Even in Bungo, local regulations have received management certificates from the President. While in Thailand, there are constraints on the relationship with the government that are not yet. Local wisdom-based forest management patterns in Thailand have not been supported by strong rules for the community to use forest resources for life, while the benefits of environmental services in Thailand are good enough. Sustainability in local-based forest management is a common problem faced both in Jambi Province and Thailand. For this reason, improvements in policies appropriate for sustainability are needed. In Jambi, it requires legal products in the form of stipulations in a regional head (Bupati) decree on community forest management areas. While Thailand changes in regulations can guarantee legal certainty for the community.

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PAGE 1

PAGE 2

PAGE 3

PAGE 4

PAGE 5
