

Regional Legal Politic Problems Concerning the Rights of Customary Law Communities in Majene Regency, West Sulawesi Province

*Putera Astomo¹, Faradillah Rizal Putri², Utit Sungkharat³

^{1,2)} Universitas Sulawesi Barat, Indonesia

³⁾ Thaksin University, Thailand

*puteraastomo@unsulbar.ac.id

Received: 14-10-2023

Revised: 17-11-2023

Accepted: 29-06-2024

Abstract

The Majene Regency Government established the Regional Regulation of Majene Regency West Sulawesi Province Number 1 of 2023 concerning Recognition of Protection and Empowerment of Customary Law Communities, but this caused problems, receiving a lot of criticism from various groups regarding the recognition mechanism for Customary Law Communities, which had an impact on the rights of Customary Law Communities in the Regency. Majene, West Sulawesi Province. This research aims to determine and analyze the regional legal politics related to the recognition and protection of Customary Law Communities in Majene Regency, West Sulawesi Province. Besides that, the impacts arising from the implementation of regional regulations on the rights of Customary Law Communities in Majene Regency, West Sulawesi Province. The type of research is doctrinal/normative legal research, the approach method used is legislations (statute approach), and primary data obtained at the West Sulawesi Province Legal Documentation and Information Network (JDIH). The results of this research, namely the impact arising from the implementation of the regional regulation on the rights of Customary Law Communities in Majene Regency, West Sulawesi Province, is that this regional regulation is detrimental to the rights of Customary Law Communities, such as not adhering to an independent identification system (self-identification) regarding the existence of Customary Law Communities. Apart from that, the identification, verification and validation teams for Customary Law Communities regulated in this regional regulation were not related to each other or in other words did not form a unified whole.

Keywords: Problems, Regional Legal Politic, The Rights of Customary Law Communities



© 2024 Putera Astomo, Faradillah Rizal Putri, Utit Sungkharat

This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License.

INTRODUCTION

One of the results of this agreement is the basis for how State administrators behave towards the existence of customary law communities. The amendment to the 1945 Constitution of the Republic of Indonesia was carried out by regulating the provisions of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states “The State shall recognize and respect, to be regulated by law, the homogeneity of societies with customary law along with their traditional rights for as long as they remain in existence and in agreement with societal development and with the principle of the Unitary State of the Republic of Indonesia”. So, based on the constitution, state administrators were obliged to recognize the existence of customary law communities along with their traditional rights. This provision is the entry point

to provide more comprehensive and contextual legal recognition and protection for the existence of customary law communities and their traditional rights. This also includes the right to control and ownership of customary land. However, the next problem is, as we all know now, that the recognition and protection of customary law communities is not working optimally. Of course, this is an obstacle in realizing prosperity for customary law communities.(Yanuar 2021)

In das sollen, the central government has legally guaranteed the implementation of a prosperous government system, namely by striving to achieve the fulfillment of constitutional and traditional rights. The Constitutional rights referred to are the basic rights and basic freedom rights of every citizen, related to education, employment, equality before the law, socio-economic rights, freedom of opinion, the right to live and reside which are guaranteed by the Constitution. Meanwhile, traditional rights are special or special rights that are inherent and owned by a community based on their common origins (genealogy), common territory and other customary objects, rights to customary land, rivers, forests. and practiced in society. However, constitutional juridical obligations regarding recognition and respect for MHA carried out by central and regional governments still encounter various obstacles. State policies regarding public services increasingly show evidence that their existence as a minority group is treated in a discriminatory manner.(Thontowi 2015)

Regions have responded to recognition and respect for customary law communities, especially since the issuance of Constitutional Court Decision Number 35/ PUU-X/2012 on May 16 2013 years which encouraged each region to issue regional regulation products, namely regional regulation concerning legal recognition and protection of customary law communities. One of the regional that responded was Majene Regency, West Sulawesi Province.

The Majene Regency Government took legal politics steps by establishing a Draft Regional Regulation (Ranperda) Concerning the Recognition and Protection of Customary Law Communities. Not long after, the Regional Regulation of Majene Regency West Sulawesi Province Number 1 of 2023 concerning Recognition of Protection and Empowerment of Customary Law Communities.

However, the presence of Regional Regulation of Majene Regency West Sulawesi Province Number 1 of 2023 concerning Recognition of Protection and Empowerment of Customary Law Communities apparently does not have a positive impact on the existence of Customary Law Communities in Majene Regency. This regulation actually creates problems. Based on the findings in the field, the problems that arise related to the Regional Regulation of Majene Regency West Sulawesi Province Number 1 of 2023 concerning Recognition of Protection and Empowerment of Customary Law Communities, namely, this regional regulation has received a lot of criticism from various groups regarding the mechanism for recognizing Customary Law Communities so that it has an impact on the rights of Customary Law Communities in Majene Regency. There are parties who criticize its birth the Regional Regulation of Majene Regency West Sulawesi Province Number 1 of 2023 concerning Recognition of Protection and Empowerment of Customary Law Communities between: the Majene Archipelago Community Alliance (AMAN) and the Adolang of Customary Law Communities. This criticism related to Identification of Customary Law Communities, Identification Teams as well as Verification and Validation Teams, Standardization of Customary Territory Maps.

There is a lot of research on Customary Law Communities Units including: Zayanti Mandasari research title “Legal Politics of Regulation of Customary Law Communities (Study of Constitutional Court Decisions)”, Gede Marhaendra Wija Atmaja research title “The Politics of Legal Pluralism in Recognizing the Unity of Customary Law Communities with Regional Regulations”, Muhammad Dahlan research title “Recognition of the Customary Law Communities of Rights in the Constitution”, and Wahyu Nugroho research title “Constitutionality of Customary Law Community Rights in Managing Customary Forests: Empirical Facts on Legalization of Licensing”. Of these four researches, the thing that differentiates and is novelty in the author’s research is the focus on various problems of recognition and protection of customary law communities, including their rights in Majene Regency, through local regional legal politics in terms of existing norms the Regional Regulation of Majene Regency West Sulawesi Province Number 1 of 2023 concerning Recognition of Protection and Empowerment of Customary Law Communities so that necessary to correct the issuance of this regional regulation because it has not been able to accommodate all matters relating to the livelihood of the customary law communities in Majene Regency.

The problems of regional legal politics regarding the rights of customary law communities in Majene Regency, West Sulawesi Province are very important to study because we want to find solutions to problems related to the recognition and protection of customary law communities and their rights in Majene Regency who were disadvantaged by the existence of this regional regulation.

Based on the description above, the problems that can be formulated were 1) How the regional legal politics related to the recognition and protection of Customary Law Communities in Majene Regency, West Sulawesi Province? 2) What are the impacts arising from the implementation of regional regulations on the rights of Customary Law Communities in Majene Regency, West Sulawesi Province?

RESEARCH METHODS

This is empirical research, also called socio-legal research, aiming to study the law conceptualized as actual behaviour, indicating diverging social phenomena not written and experienced by every individual in real life.(Disemadi 2022)

The approach method used is legislations (statute approach) by analyzing the Regional Regulation of Majene Regency West Sulawesi Province Number 1 of 2023 concerning Recognition of Protection and Empowerment of Customary Law Communities as a regional legal politics output. Data sources consist of: primary data obtained at the West Sulawesi Province Legal Documentation and Information Network (JDIH) and secondary data including: primary legal materials (laws and regional regulations) and secondary legal materials (journals). The data collection method is through observation, in addition to literature study by reviewing literature and legislation in the field of Customary Law Communities. The research data obtained was analyzed using qualitative analysis techniques by describing the implementation of the Regional Regulation of Majene Regency West Sulawesi Province Number 1 of 2023 concerning Recognition of Protection and Empowerment of Customary Law Communities towards the recognition and protection of Customary Law Communities and their rights in Majene Regency, West Sulawesi Province.

RESULTS AND DISCUSSION

Recognition of Customary Law Communities in a Legal Perspective

In essence, it is more than just KMHA which is only traditional in nature. KMHA is a law community unit which contains reciprocal legal rights and legal obligations between the community unit and its surrounding environment, and also with the state. Protection, recognition and respect for KMHA based on the justice of KMHA principle should receive the same treatment from Indonesian because KMHA is an Indonesian citizen. The treatment of KMHA should also be the same as that of society in general. The rights held by customary law communities must be protected, recognized and respected, not only because KMHA still exists on Indonesian soil. (Rosyada, Warassih, and Herawati 2018)

The existence of Customary Law Communities is very dependent on the implementation and recognition of their customs as a bulwark for the social system through various social institutions. This is why, even in the form of a kingdom, the existence of Customary Law Communities can grow and develop well. Entering the era of colonialism, Customary Law Communities were initially underestimated as primitive with an underdeveloped legal system. Customary law styles such as togetherness, religious (magical-religious), concrete was not yet considered modern laws with a written system. (Sabandiah and Wijaya 2018)

Recognition of customary law communities is already international in scope. The United Nations Conference on Environment and Development which was held in Rio de Janeiro in June 1992, resulted in a new development for customary law communities regarding the relationship between legal communities and the United Nations. The conference recognized that customary law communities and their communities have a very important role in environmental management and development, based on their knowledge and traditional practices.

In Indonesia, the constitutional juridical recognition of Customary Law Communities is confirmed in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states "The State shall recognize and respect, to be regulated by law, the homogeneity of societies with customary law along with their traditional rights for as long as they remain in existence and in agreement with societal development and with the principle of the Unitary State of the Republic of Indonesia". Furthermore in Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia states "The cultural identity and rights of traditional communities were respected in line with developments over time and civilization.

According to Subardi, that Article 18B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia using the term customary law community. Various other regulations in the field of natural resource law use different terms, such as: Customary Community, Customary Law Communities and Traditional Community. The problem is that diversity does not only concern the term, but also affects the diversity of meanings of the institutional constraints of the customary law communities. In the applicative realm normative provisions require explicit translations, both about the understanding, types and forms of customary law communities, so that the recognition and protection can be carried out by the state. Recognition and protection carried out by the state against the customary law community, can be realized if there is a legal basis in the form of legislation, namely the Law on customary law communities. According to Ateng Syafrudin dkk, recognition of the customary law communities mentioned

above along with their traditional rights, must be based on the principle “remain in the frame of the Unitary State of the Republic of Indonesia”. This principle emphasizes that the customary law communities is part of an Indonesian State whose position is very influential and guaranteed by the constitution in developing political, social, economic, legal and human rights to achieve national security and security.(P. Astomo and Asrullah 2019)

However, this recognition provides limitations or requirements so that a community can be recognized as a customary law communities, namely:(Farid 2019)

1. As long as you are alive

As long as it is alive, it means the fact that the MHA complies with the above requirements. However, when MHA no longer exists, don't revive MHA. Likewise, because of developments over time, the mobility of people in Indonesia is very high, so that some people from outside communities come in and because they are familiar, they turn into MHA themselves, of course this is not MHA.

2. In accordance with societal developments

Change in society is a certainty, and humans must change, especially changes towards a better direction. In the past 10 years, the development of society has been very fast, marked by changes in increasingly sophisticated information technology which facilitates communication between people quickly, so the pattern of community relations has also changed.

3. Principle of The Unitary State of the Republic of Indonesia

The existence of the MHA must not conflict with the Unitary State of principle. Therefore, the legal, social and cultural systems must not conflict with the Pancasila philosophy.

4. Regulated in Laws

There is currently no specific law governing MHA that regulates the recognition and protection of the rights of customary law communities. However, several regulations regulate the recognition and protection of MHA.

The existence of customary law communities in Indonesia was further strengthened by the Constitutional Court Decision Number 31/PUU-V/2007 where the Constitutional Court reaffirmed the existence and criteria of customary law communities, including: 1) Customary law communities can be said to still be alive if de facto they contain elements of: elements include a society whose citizens have a group feeling; the existence of traditional government institutions, the existence of traditional property or objects and the existence of customary legal norms. 2) Customary law communities and their traditional rights are in accordance with the principles of a unitary state if these customary law communities do not interfere with the existence of the Unitary State of the Republic of Indonesia as a political unity, do not threaten the sovereignty and integrity of the Unitary State of the Republic of Indonesia, and the substance of customary legal norms is in accordance and does not conflict with statutory regulations. 3) Customary law communities and their traditional rights are in accordance with community development if their existence has been recognized based on law (general or sectoral including Regional Regulations), the essence of traditional rights is recognized and respected by customary law communities. its members are also broad and do not conflict with human rights.

The traditional rights of customary law communities throughout the history of international law began on June 29 2006 years, the United Nations Declaration on the Rights of Indigenous Peoples was agreed. This declaration is progressive because it recognizes important foundations in the protection, recognition and fulfillment of the rights of indigenous peoples. This declaration contains recognition of both individual and collective rights of customary law communities, the right to cultural identity, the right to education, health, language and other basic rights. This declaration recognizes the right of indigenous peoples to self-determination and recognition on the rights of customary law communities to land, territory and natural resources and participation in development. The substance of the need for customary law communities to obtain state recognition is to obtain protection and guarantees for the implementation of the rights of customary law communities. Even though Indonesian legal pluralism is conceptually in the weak category (weak legal pluralism), it is felt that it can provide justice for customary law communities. The theory of distributive justice by John Rawls establishes freedom as the first principle of justice in the form of, "The Principle of Equal Freedom." This principle states "Everyone must have the same rights to the same system of basic freedoms that is most extensive in accordance with a system of similar freedoms for all." The implementation of all these basic freedoms must be constitutionally guaranteed.(Safiuddin 2018)

The rights of Customary Law Communities are also included in The United Nation Declaration on The Rights of Indigenous Peoples (UNDRIP), but the term used is Customary Communities. The initial history of UNDRIP began with Augusto Wiliemsen Diaz, an official at the United Nation Human Rights in Geneva. Augusto paid great attention to the importance of the rights of indigenous peoples being accepted in United Nation mechanisms. The struggle for this declaration began specifically in 1982, when The Working Group on Indigenous Population (WGIP) was formed and subsequently prepared a draft Declaration. Over 11 years the draft was prepared and submitted to the Sub Commission in 1993. Subsequently, the draft was submitted to the United Nation Human Rights Commission in 2006. The United Nation Human Rights Commission formed a Working Group on The Draft of The Declaration (WGDD). The United Nations Declaration on The Rights of Indigenous Peoples is a declaration adopted by The United Nations General Assembly (MU PBB) New York on 13 September 2007. This declaration outlines the individual and collective rights of indigenous peoples (natives) as well as their rights. on culture, identity, language, work, health, education and other issues. The Declaration also emphasizes their right to maintain and strengthen their institutions, culture and traditions and their right to development to meet their needs and aspirations. The Declaration also prohibits discrimination against indigenous peoples and promotes their full and effective participation in all matters concerning their concerns as well as their right to remain distinct and pursue their own vision of economic and social development.

This Declaration states that the specialized organs and agencies of the United Nations system and other intergovernmental organizations will contribute to the full realization of the provisions of this Declaration, through the mobilization of, among other things, financial cooperation and technical assistance. The exercise of the rights stated in this declaration, human rights and fundamental freedoms must be respected. The exercise of the rights contained in this declaration shall be subject to limitations established by law, in accordance with international

human rights obligations. Whatever restrictions they may be, they must not be discriminatory and are only intended to support guarantees of recognition and respect for the rights and freedoms of other parties and to create conditions of possibility that are fair and most supportive of a democratic society.

The meaning of Customary Law Community developed after the enactment of Law Number 6 of 2014 concerning Villages where Customary Law Communities was interpreted as “village”. The position of the Village as a The United Customary Law Communities (KMHA) is also strengthened by the Constitutional Court Decision Number 31/PUU-V/2007 mentioned above. Through this decision, the Constitutional Court formulated criteria for the unity of customary law communities to be said to be de facto still alive (actual existence) whether territorial, genealogical or functional in nature, at least containing the elements of (i) the existence of a society whose citizens have group feelings (in-group feeling); (ii) the existence of traditional government institutions; (iii) the existence of assets and/or customary objects; and (iv) the existence of a set of customary legal norms. Especially for customary law community units that are territorial in nature, there is also the element (v) of the existence of a certain territory.(P. Astomo 2018)

According to Silahuddin, Law Number 6 of 2014 has placed the position of villages in a new paradigm, not only placing villages as government organizations within the district/city government system (local state government), but also placing villages as mixed (hybrid) organizations. between self-governing communities and local self-government.(April, Alkadafi, and Said 2023)

According to Zudan, the construction combines the function of self-governing community with local self-government, the customary law communities unit which has been part of the village area, is organized in such a way as to form villages and traditional villages. Villages and customary villages basically carry out almost the same tasks as official/administrative services. Meanwhile, the only difference is in the implementation of original rights, especially regarding the social preservation of customary villages, regulation and management of traditional territories, customary peace trials, maintenance of peace and order for customary law communities, as well as arrangements for the implementation of government based on the original structure. Customary villages have government functions, village finance, village development, and receive facilitation and guidance from the district/city government.(Sara and Saputra 2021)

Studies on “villages” in Indonesia will bring further to at least three interpretations or definitions. First, in a sociological scope, the term village represents a social entity or community whose people reside within an area and they know each other well. They are relatively homogenous and heavily rely on what nature can offer. Second, in an economic scope, the term village is defined more as a social entity whose people try to fulfil their daily needs by utilizing what nature can offer. Third, in a political scope, a village is understood as a government organization or authorized organization that politically possesses special authority simply because it is part of the state government.(Azani 2021)

The Existence of Customary Law Communities in Majene Regency, West Sulawesi Province

Majene Regency is one of the districts in West Sulawesi Province. Majene Regency has eight sub-districts including: Banggae, East Banggae, Pamboang, Sendana, Tammerodo, Tubo Sendana, Malunda, Ulumanda, and Majene. The population of Majene Regency in 2023 based on data from the Majene Regency Central Statistics Agency is 362,720 peoples who adhere to Islamic.

One of the well-known customary law communities that exists today, especially strong in its tradition, ritual, culture and customary law, is the Adolang of Customary Law Communities. This community lives and resides in Kappung Ratte, Banua Adolang Village, Pamboang District, Majene Regency and their tribes is the Mandar Adolang Tribes. This is based on Majene Regent's Regulation Number 8 of 2018 concerning Determination and Confirmation of District and Village Boundaries in Pamboang District, Majene Regency. The Adolang of Customary Law Communities can be seen in the picture below:

Gambar 1. The Adolang of Customary Law Communities



The entity of the people of customary law along with their traditional rights living in society should be entitled to a) an area that at least meets one or a combination of elements involving community whose members share the traditions in the same community per se, customary government, asset and/or customary objects; and/or the structure of the norms of customary law; b) the entity of the people of customary law along with their traditional rights seen as congruous with the growth of society if the existence of the community is recognized by statutory regulations the general and sectoral statutory regulations that represent the growing values that fit the current societal development, and the substance of these traditional rights is recognized and respected by the people concerned and the citizens in a wider scope and they must not contravene the principle of human rights; c) the social entity of customary law along with the people's traditional rights according to the principle of the Unitary State of the Republic of Indonesia as long as the existence of the community of the customary law does not upset the structure of the Unitary State as a political and legal unity that respect the sovereignty and integrity of the Unitary State while the legal norms of the customary law comply with the provisions specified in statutory regulations. Sutoro Eko mentions five definitions of village in the context of Indonesia: 1) village, or in another term that defines it, that represents the unity of the people of customary law is an entity dissimilar to a regional area; 2) village, or in another term that defines it, represents an entity pre-existing before the birth of the Unitary State of the Republic of Indonesia in 1945, with its genuine structure carrying the rights of origin; 3) village represents part of diversity or multiculturalism in Indonesia that cannot be instantly uniformed; 4) through a long history, village structurally has served as room for exploitation of land and

population, where villages in general have been unfairly treated since royal and colonial times to the present time of modern government; 5) the Constitution has specified the matter therein, requiring the country to recognize and respect the existence of villages, sometimes termed the social entity of customary law, along with their traditional rights.(Timotius 2018)

In the context of customary law, Ter Haar argues that customary law is made with full authority without any sophisticated preparation, meaning that it is not binding. His definition is known as *beslissingenleer*, implying that the customary law overlooks the written part, and this is the whole rule that exists within the decision made by legal functionalists. This decision is believed to carry *macht* (the power of authority) and effect that may be spontaneously in place without any of them having the courage to rebel against it. This decision not only covers an official dispute but also deals with the conflict arising in society to settle according to the local wisdom that lives in line with spiritual values and the community.(Fitria 2020)

Ronald Titahelu believes that the following factors can be considered to figure out whether the people of customary law remain adherent to the local law: 1) the normative rules within the community, proverbs in the formulation of the local law, or unwritten legal principles; 2) regularity in the formulation of the local law involving proverbs or unwritten legal principles with the decision made by a tribal head through the deliberation attended by the locals (the Decision of Customary Council); 3) involvement of processes/methods/guidelines recognized by the locals and these processes are often referred to as instruments to settle disputes; 4) imposition of sanctions or force following violations of normative rules as referred to in point 1; 5) the presence of special institutions dealing with social and economic matters or the political systems and structure.(Sedubun 2022)

The diversity of the Indonesian state can be seen in the diversity of ethnicities, races, languages, and religions. The diversity of cultures and customs that are owned is a treasure in enriching national culture, of course also rich in abundant natural wealth in several regions in Indonesia. In essence, this archipelago is regulated and managed from generation to generation by customary law, followed by hundreds of belief systems and religions.(Hidayat and Arifin 2019)

The Regional Legal Politics Related to the Recognition and Protection of Customary Law Communities in Majene Regency, West Sulawesi Province

There is a very close correlation and interconnection between politics and law, where law is expected to be able to make the exercise of power and politics more humane, while power politics is expected to be able to converge human behavior to become more orderly and also hope that justice can be realized. So that can be said that law plays a role in how to humanize the use of law.(Susanto et al. 2021)

In studying legal politics, generally the first question that arises is whether the study of legal politics is a study of legal science? If yes, what is the object of study and scope of legal politics? According to Abdul Latif and Hasbi Ali (2010), such questions can be answered from both a theoretical and philosophical point of view. Legal politics is a part of legal science that examines changes that must be made in applicable law in order to meet the demands of people's lives. Thus, legal politics discusses the direction of development of a legal system. Legal politics builds the *ius constitutendum* from the *ius constitutum*. Because philosophically, law is formed for certain purposes, the process between how to achieve the goal and seeing the desired

goal will give birth to legal politics. As a legal discipline, legal politics provides an academic basis for the process of forming and discovering laws that are more appropriate to the historical context, situation and conditions, culture, values that develop in society, while also taking into account the community's needs for the law itself.(Anggoro 2019)

Legal politics is a legal policy that the government intends to or has implemented nationally, including: (i) legal development, both the formation of laws and updates to legal materials that are considered foreign or not in accordance with needs by creating the necessary laws; and (ii) implementation of existing legal provisions including confirmation of institutional functions and development of law enforcement members. According to Theo Huijbers, legal development in the context of legal policy should include three things: (i) guarantee justice in society; (ii) create peace of life (create alive placidity) by maintaining legal certainty; and (iii) realizing use by addressing real interests in collective life in a concrete manner.(Hidayat and Arifin 2019)

According to Moh. Mahfud, that legal politics is an official policy line regarding law that will be enforced either by making new laws or by replacing old laws, in order to achieve state goals.(Wibawa 2016)

Legal politics means state policy to achieve its goals through the formation of legislation. Legal status means that the law functions to resolve state problems. Therefore, the state seeks to create and enact legislation so that state goals are achieved. The state here is the legislative institution which has the authority to enact legislation after being approved by the executive institution, namely the president.(Islamiyati and Hendrawati 2019)

Imam Syaukani and A. Ahsin Thohari determined the scope or area of study of legal politics as follows: a) The process of exploring the values and aspirations that develop in society by state administrators who have the authority to formulate legal politics. b) The process of debating and formulating these values and aspirations in the form of draft legislation by state administrators who have the authority to formulate legal politics. c) State administration which has the authority to formulate and determine legal politics. d) Legislation that contains legal politics. e) Factors that influence and determine legal politics, whether they will be, are currently or have been determined. f) Implementation of legislations which are the implementation of the legal politics of a country.(Asnawi 2016)

Legislation is an inseparable part of the national legal system. In its development, legislations cannot be separated from legal politics. Legal politics itself is based on the principle that laws and/or legislations are the design or result of the design of political institutions.(Arkana and Firdaus 2022)

Legal politics in the formation of legislations, including regional regulation, must also pay attention to the principles of forming legislations of principles so that legislations become quality output in the context of legal formation or development.

According to Karl Larenz, that law of principles are ethical law measures that provide direction to the establishing of law. Based on Karl Larenz's opinion regarding law of principles, of course law of principles are a guideline in the establishing of law. The law in question is positive law (*ius constitutum*) where one of the positive law is legislations.(Tan 2018)

According to A. Hamid S. Attamimi, the principles of establishing good legislative regulations are law of principles that provide guidelines and guidance for pouring the contents

of regulations into appropriate forms and structures, using appropriate methods, and following the processes and procedures for establishing which has been specified. He further stated that in the context of the establishment of legislations in Indonesia, the principles of establishing good laws are as follows: the principles of Indonesian law ideals, the principles of a state based on law, the principles of government based on a constitutional system, and other principles. (Widayati 2020)

According to the author, from the perspective of legislative science, the realization of good legislations cannot be separated from the principles of establishing the legislation itself. Legislation is formed through a law-forming policy where the policy requires a guideline, basis or foundation in the establishment of legislations process known as the establishment legislation of principles. It is hoped that these principles will be able to produce good legislations and become a solution to every law problem that occurs in the life of society, nation and state for the sake of realizing justice. (P. A. Astomo and Rais 2023)

Based on the definition of legal politics, it can be understood that the legal politics of Customary Law Communities is an official state policy in the field of law (legal policy) related to the recognition and protection of Customary Law Communities so that it is related to the existence and position of Customary Law Communities in the region must also receive recognition and protection, especially since the space for Customary Law Communities to operate on a daily basis is closely related to the implementation of traditions, rituals, culture and customary law. Therefore, a regional government policy together with the Regional People's Representative Council (DPRD) of Majene Regency is needed to form regional legal products, namely regional regulations.

The Resource Development Observer Institute (LPPSD) and HuMa on November 30 2021, at Wisma Yumari, Majene Regency, held a consolidation event for indigenous communities in an effort to encourage the birth of regional regulations (perda) recognizing and protecting the rights of customary communities in Majene Regency, West Sulawesi. During the event, the Pappuangang Adolang Traditional Elder, Puang Gading Corai, handed over an academic text related to regional regulations on the recognition and protection of the rights of indigenous peoples, to Abdul Wahab (Chairman of Commission 3 of the Majene Regency DPRD from the PAN Party). Abdul Wahab is also Chairman of the Majene Regency Regional Regulation Formation Body. The consolidation event featured resource persons, namely Yuli Prasetyo Nugroho (Head of the Sub-Directorate for Recognition of Customary Forests and Protection of Local Wisdom, Directorate General of PSKL-KLHK), Mulya Sarmono (Preparation Team for the draft academic text and Ranperda PPMA Majene Regency), Agung Wibowo (Director of the Indonesian Human Relations Association), Muh. Tabritatif (Chairman of the AMAN Majene Daily Executive Board). There were 30 participants who took part in the event, they were: representatives of each indigenous community in Majene Regency, representatives of the Majene Regency Government (related SKPD), representatives of the village government, representatives of the Majene Archipelago Youth Front (BPAN), Traditional School Administrators, Women Adat, literacy observer and journalist.

Not long after, the Regional Regulation of Majene Regency West Sulawesi Province Number 1 of 2023 concerning Recognition of Protection and Empowerment of Customary Law Communities. What needs to be underlined here is that the terminology of this regional

regulation does not only provide recognition and protection, but also empowers Customary Law Communities from all sectors of life in Majene Regency. As for substance the Regional Regulation of Majene Regency West Sulawesi Province Number 1 of 2023 concerning Recognition of Protection and Empowerment of Customary Law Communities can be seen in the following table:

Table 1. Majene Regency of Regional Regulations Regarding Recognition of Protection and Empowerment of Customary Law Communities

No	Substance	Regarding Settings
1.	Scopes	<ul style="list-style-type: none"> a. Recognition Customary Law Communities; b. Protection Customary Law Communities; c. The Rights of Customary Law Communities; d. Empowerment Customary Law Communities; e. Customary Dispute Resolution;
2.	Recognition Customary Law Communities	<ul style="list-style-type: none"> a. Identification; b. Verification and validation; c. Determination.
3.	Protection Customary Law Communities	<ul style="list-style-type: none"> a. Protection of customary territories; b. Protection as a legal subject; c. Return of customary territories to be managed, utilized and preserved in accordance with their customs; d. Developing and maintaining culture and local wisdom in order to preserved environmental functions; e. Improving the standard of living of Customary Law Communities; f. Preservation of local wisdom and traditional knowledge; and g. Preservation of assets and/or customary object.
4.	Rights and Obligations of Customary Law Communities	<ul style="list-style-type: none"> a. The rights of Customary Law Communities includes: rights to customary territories, natural resources, building, spirituality, culture, and environment. b. The obligations of Customary Law Communities includes: maintaining the integrity of customary territories within the framework of the Unitary State of the Republic of Indonesia, developing and preserving their culture as part of Indonesian culture, being tolerant between Customary Law Communities and with other communities, maintaining the sustainability of environmental functions and controlling pollution and/ or damage to the environment in customary territories, managing and utilizing natural resources in customary

		territories in a sustainable manner, maintaining the sustainability of national development programs and results, and complying with legislations.
5.	Empowerment Customary Law Communities	a. Improving the quality of human resources; b. Preservation of traditional culture; c. Facilitating access for the benefit of Customary Law Communities; d. Productuive endeavor; and e. Cooperation and partnership
6.	Customary Dispute Resolution	a. Customary law; b. Court.
7.	Coaching and Supervision of Customary Law Communities	a. Coaching includes: empowering the institutional capacity of Customary Law Communities, socialization, education and training. b. Supervision includes: monitoring and evaluation.
8.	Finance	Recognition and protection of Customary Law Communities was financed with funds sourced from the APBD and other legal and non-binding funding sources.

Source: The Regional Regulation of Majene Regency West Sulawesi Province Number 1 of 2023 concerning Recognition of Protection and Empowerment of Customary Law Communities.

Based on table 1 above, the scope of the Regional Regulation of Majene Regency West Sulawesi Province Number 1 of 2023 concerning Recognition of Protection and Empowerment of Customary Law Communities broadly includes: recognition, protection, empowerment, the rights, customary dispute resolution, coaching and supervision, and finance of customary law communities.

The Impacts Arising from the Implementation of Regional Regulations on the Rights of Customary Law Communities in Majene Regency, West Sulawesi Province

From a regional legal political perspective, the formation of The Regional Regulation of Majene Regency West Sulawesi Province Number 1 of 2023 concerning Recognition of Protection and Empowerment of Customary Law Communities creates problems. This regional regulation has drawn criticism from various parties, one of which is criticism from the Majene Archipelago Community Alliance (AMAN). The problems that arise in this regional regulation can be seen in the following table:

Table 2. Problems with Regional Regulations Related to the Recognition and Protection of Customary Law Communities

No.	Jenis Problematika
1.	Identification of Customary Law Communities
2.	Identification Teams as well as Verification and Validation Teams
3.	Standardization of Customary Territory Maps

Source: Archipelago Community Alliance (AMAN) Majene.

Problems with The Regional Regulation of Majene Regency West Sulawesi Province Number 1 of 2023 concerning Recognition of Protection and Empowerment of Customary Law Communities in tables two can be described as follows:

1. Identification of Customary Law Communities

Article 1 Number (6) The Regional Regulation of Majene Regency West Sulawesi Province Number 1 of 2023 concerning Recognition of Protection and Empowerment of Customary Law Communities that identification of Customary Law Communities is the process of determining the existence of Customary Law Communities which is carried out by the Customary Law Communities themselves by referring to the elements-elements of the existence of Customary Law Communities.

The word “self” in the terminology of Article 1 Number (6) applies the principle of self-identification, meaning identifying one’s own status as a Customary Law Community independently, which is in accordance with the principle of self-determination as contained in The United Nation Declaration on The Rights of Indigenous Peoples (UNDRIP). The principle of self-identification means that Customary Law Communities have the right to independently identify their status.

The principle of independent self-identification which stated in Article 1 Number (6) cannot be applied and enforced because it conflicts with Article 5 letter a which states that the regional government provides recognition of the existence of Customary Law Communities through an identification process, meaning independent identification carried out by the Customary Law Communities are only pseudo because the authority to identification the recognition of Customary Law Communities is the regional government, don’t the Customary Law Communities.

Another problem related to the identification process is that the regent as a regional government gives the task to the Department by forming an Identification Team to identify the existence of Customary Law Communities which stated in Article 6 paragraph (1) that the Regent through the Department carries out the identification as intended in Article 5 letter a by forming Identification Team. This creates problems because it is not clear which Department is given the task of forming an Identification Team to carry out this identification.

Therefore, both Article 5 letter a junto Article 6 paragraph (1) have a detrimental impact on the rights of Customary Law Communities in Majene Regency because they cannot exercise their rights through the principle of self-identification and were hindered by the authority of the regional government (regent) to carry out the identification process of the existence of Customary Law Communities.

2. Identification Teams as well as Verification and Validation Teams

Article 6 paragraph (2) states that the Identification Team as referred to in paragraph (1) involves the District Head, elements of Customary Law Communities and Customary Community Institutions as determined by Regent’s Decree. This article raises problems related to the Customary Law Communities Identification Teams, namely 1) unclear differences between elements of the Customary Law Communities and Indigenous Community Institutions. These two terms are ambiguous, namely “Customary Law Communities” and “Indigenous Community Institutions”. What is meant by first establishing Customary Law Communities and then continuing with the establishing of an Indigenous Community Institutions? 2) From a

human rights perspective, the Identification Teams established based on the Regent's Decree requires a long political process, including who is responsible for proposing the names to be submitted to the Identification Teams so as not to politically exclude Customary Law Communities, there by harming their rights to participate in the identification process.

3. Standardization of Customary Territory Maps

Article 7 paragraph (2) states that the proposed Map of Customary Law Communities as referred to in paragraph (5) letter e, uses the Geographic Information System (GIS) program with the following data: a) territorial boundaries of bordering customary law communities. b) regional spatial plan. c) forest area information from the ministry of environment and forestry. d) information on control and ownership of land plots from the local land office. e) land cover conditions.

Article 7 paragraph (2) has received criticism that the internal capabilities of indigenous communities need to be reviewed with the map standards mandated in the Regional Regulation, considering that the process of internalizing spatial and social information in geographic information systems is not as easy as imagined. The participatory mapping process requires energy, money, time and concentration as well as qualified skills, so standardizing map requirements in the identification process can be an obstacle to the process of recognizing indigenous communities. In the same article, conditions are stated in the form of a spatial and territorial planning document for indigenous communities. In practical discourse, spatial and territorial planning of indigenous communities begins with the preparation of land use plans. This process also requires energy, time and concentration, so it has the potential to become an obstacle to the rate of recognition of indigenous communities.

Therefore, the determination of standardization of customary area maps should need to be reviewed because this requirement has a detrimental impact on the rights of customary law communities where the quality of human resources owned by Customary Law Communities in Majene Regency is inadequate, both in quantity and quality, especially in carry out mapping of their respective traditional territories, especially in simple terms, they only prioritize the principle of deliberation among traditional stakeholders, especially in managing custom and culture.

CONCLUSION

Regional legal politics related to the recognition and protection of Customary Law Communities in Majene Regency, West Sulawesi Province can be understood that the legal politics of Customary Law Communities is an official state policy in the field of law (legal policy) related to the recognition and protection of Customary Law Communities so that it is related to the existence and position of Customary Law Communities in the region must also receive recognition and protection, especially since the space for Customary Law Communities to operate on a daily basis is closely related to the implementation of traditions, rituals, culture and customary law. Therefore, a regional government policy together with the Regional People's Representative Council (DPRD) of Majene Regency is needed to form regional legal products, namely regional regulations in this case the Regional Regulation of Majene Regency West Sulawesi Province Number 1 of 2023 concerning Recognition of Protection and Empowerment of Customary Law Communities.

The Impacts Arising from the Implementation of Regional Regulations on the Rights of Customary Law Communities in Majene Regency, West Sulawesi Province is causing harm to the rights of Indigenous Peoples. These losses include: First, they cannot exercise their rights through the principle of self-identification and were hindered by the authority of the regional government (regent) to carry out the identification process of the existence of Customary Law Communities. Second, from a human rights perspective the Identification Teams established based on the Regent's Decree requires a long political process, including who is responsible for proposing the names to be submitted to the Identification Teams so as not to politically exclude Customary Law Communities, there by harming their rights to participate in the identification process. Third, quality of human resources owned by Customary Law Communities in Majene Regency is inadequate, both in quantity and quality, especially in carry out mapping of their respective traditional territories, especially in simple terms, they only prioritize the principle of deliberation among traditional stakeholders, especially in managing custom and culture.

REFERENCES

- Anggoro, Syahriza Alkohir. 2019. "Politik Hukum: Mencari Sejumlah Penjelasan." *Jurnal Cakrawala Hukum* 10, no. 1: 77–86.
- April, Muhammad, Muammar Alkadafi, and Muh Said. 2023. "Hukum Adat Dalam Penyelenggaraan Pemerintahan Desa Adat Di Kabupaten Siak Provinsi Riau Dan Provinsi Bali." *Jurnal Hukum IUS QUIA IUSTUM* 30, no. 2: 396–419.
- Arkana, Jibril, and Sunny Ummul Firdaus. 2022. "Politik Hukum Partisipasi Masyarakat Dalam Perancangan Peraturan Perundang-Undangan Di Indonesia." *Sovereignty* 1, no. 3: 521–29.
- Asnawi, Habib Shulton. 2016. "Politik Hukum Putusan MK Nomor 36/PUU-X/2012 Dalam Upaya Mengembalikan Kedaulatan Negara Dan Perlindungan HAM." *Jurnal Konstitusi* 13, no. 2: 299–320.
- Astomo, Putera. 2018. "Kedudukan Dan Pengujian Konstitusionalitas Peraturan Desa Dalam Peraturan Perundang-Undangan." *Jurnal Konstitusi* 15, no. 2: 282–305.
- Astomo, Putera, and Asrullah Asrullah. 2019. "Legal Protection for the Indigenous Law Communities and Their Traditional Rights Based on the Verdict of the Constitutional Court." *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 6, no. 1: 90–108.
- Astomo, Putera Astomo, and M Tasbir Rais. 2023. "The Establishment Village Regulation of Problematic in West Sulawesi Province Reviewed from a Sociology of Law Perspective." *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam* 8, no. 2: 215–26.
- Azani, Muhammad. 2021. "The Development of Islamic Law in Indonesia Through Traditional Theory and Legal Changes." *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam* 6, no. 2: 113–28.
- Disemadi, Hari Sutra. 2022. "Lensa Penelitian Hukum: Esai Deskriptif Tentang Metodologi Penelitian Hukum." *Journal of Judicial Review* 24, no. 2: 289–304.
- Farid, Abdul Haris. 2019. "Masyarakat Hukum Adat: Ada Atau Tiada?"
- Fitria, Ikhda. 2020. "Recognizing Adat Law: Problems and Challenges in Modern Law System in Indonesia." *The Indonesian Journal of International Clinical Legal Education* 2, no. 4: 503–16.

- Hidayat, Arif, and Zaenal Arifin. 2019. "Politik Hukum Legislasi Sebagai Socio-Equilibrium Di Indonesia." *Jurnal Ius Constituendum* 4, no. 2: 147–59.
- Islamiyati, Islamiyati, and Dewi Hendrawati. 2019. "Analisis Politik Hukum Dan Implementasinya." *Law, Development and Justice Review* 2, no. 1: 104–17.
- Rosyada, Amrina, Esmi Warassih, and Ratna Herawati. 2018. "Perlindungan Konstitusional Terhadap Kesatuan Masyarakat Hukum Adat Dalam Mewujudkan Keadilan Sosial." *Kanun Jurnal Ilmu Hukum* 20, no. 1: 1–22.
- Sabandiah, Raithah Noor, and Endra Wijaya. 2018. "Diskriminasi Terhadap Agama Tradisional Masyarakat Hukum Adat Cigugur (Discrimination against Traditional Beliefs of Cigugur Indigenous Community)." *Jurnal Penelitian Hukum P-ISSN 1410*: 5632.
- Safiuddin, Sahrina. 2018. "Hak Ulayat Masyarakat Hukum Adat Dan Hak Menguasai Negara Di Taman Nasional Rawa Aopa Watumohai." *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada* 30, no. 1: 63–77.
- Sara, I Made, and Komang Adi Kurniawan Saputra. 2021. "Socialization of the Implementation of Good Village Governance and Sustainability Village Credit Institutions: Community Service in Pejeng Village, Tampaksiring District, Gianyar Regency, Bali." *International Journal of Business, Economics and Law* 24, no. 4: 58–65.
- Sedubun, Victor Juzuf. 2022. "PEMBENTUKAN PERATURAN DAERAH TENTANG PEMBELA HAK ASASI MANUSIA BIDANG LINGKUNGAN HIDUP OLEH MASYARAKAT ADAT." *Bina Hukum Lingkungan* 7, no. 1: 22–38.
- Susanto, Endri, Hariadi Rahman, Nurazizah Nurazizah, Lisa Aisyah, and Ema Puspitasari. 2021. "Politik Hukum Pidana Dalam Penegakkan Undang-Undang Informasi Dan Transaksi Elektronik (ITE)." *Jurnal Kompilasi Hukum* 6, no. 2.
- Tan, David. 2018. "Law Transformation in The Field of International Trade Contract into Indonesian Positive Law." *Journal of Law and Policy Transformation* 3, no. 2: 142–53.
- Thontowi, Jawahir. 2015. "Pengaturan Masyarakat Hukum Adat Dan Implementasi Perlindungan Hak-Hak Tradisionalnya." *Pandecta Research Law Journal* 10, no. 1.
- Timotius, Richard. 2018. "Revitalisasi Desa Dalam Konstelasi Desentralisasi Menurut Undang-Undang Nomor 6 Tahun 2014 Tentang Desa." *Jurnal Hukum & Pembangunan* 48, no. 2: 323–44.
- Wibawa, I Putu Sastra. 2016. "Politik Hukum Perlindungan Dan Pengelolaan Lingkungan Menuju Ekokrasi Indonesia." *Kanun Jurnal Ilmu Hukum* 18, no. 1: 51–68.
- Widayati, Widayati. 2020. "Implementasi Asas Hukum Dalam Pembentukan Peraturan Perundang-Undangan Yang Partisipatif Dan Berkeadilan." *Jurnal Hukum* 36, no. 2: 59–72.
- Yanuar, Muh Afdal. 2021. "Pemikiran Hukum Progresif Untuk Perlindungan Hukum Dan Kesejahteraan Masyarakat Hukum Adat." *Jurnal Konstitusi* 18, no. 1.

- 18 Putera Astomo, Faradillah Rizal Putri, Utit Sungkharat: Regional Legal Politic Concerning the Rights of Customary Law Communities in Majene Regency, West Sulawesi Province