
STRENGTHENING INDIGENOUS GOVERNANCE STRUCTURES BASED ON LOCAL WISDOM IN PROTECTING THE TERRITORIAL RIGHTS OF INDIGENOUS PEOPLES

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ABSTRACT

The purpose of this research is to provide strengthening of indigenous governance structures based on local wisdom in protecting the territorial rights of Indigenous Peoples. The research method can be grouped into the realm of socio-legal research, namely the type of socio-legal research, so the approach used is the non-doctrinal approach method. The results show that the strengthening of indigenous government structures based on local wisdom has been implemented in the Republic of Indonesia and has received protection guarantees, but the regulation of the existence of indigenous government structures in strengthening the territorial rights of indigenous peoples has not been answered properly. Recognition of smaller community unit areas cannot only be guaranteed by using policies alone, the existence of indigenous government structures in villages / customary territories / other names is not just formed but is influenced by genealogical-territorial so that regional ties and blood descent structures are very strong. Legal requirements Article 97 Paragraphs (1) and (2) of the Village Law explain that the establishment of an adat village must fulfill the following requirements: the existence of a customary law community unit along with its traditional rights that are actually still alive, whether territorial, genealogical, or functional in nature and the existence of customary government institutions. The implications of this research suggest that for the effective protection of Indigenous Peoples' territorial rights, a more comprehensive legal and policy framework is needed that recognizes and supports the complex genealogical and territorial structures of customary governance.

Keywords: Customary Village, Customary Government Structure, State, Customary Law Community, Governance, Local Wisdom.

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INTRODUCTION

Every society in the world believes that territory and worldviews have a deep and noble wisdom value, become a source for its society and are followed as a culture for its citizens. This wisdom is then adapted to continue and form knowledge of structured tools so that it is a necessity that the importance of the presence of structures in society also provides protection for the territory and also for the survival of the community within it. The UN Declaration on the Rights of Indigenous Peoples refers to indigenous peoples as "peoples" with the right to self-determination. ILO Convention 169 of 1989 explains that indigenous peoples have the right to self-determination (Buana, 2017). Based on this right, they freely determine their political status and freely develop their economic, social and cultural progress. In addition, indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means to fund their autonomous functions.

In Paraguay, the Committee of Experts noted that statistics conducted by the government since the 2002 census show the indigenous population in the country by region and ethnic group. In Mexico, in a government report, the indigenous peoples of Mexico constitute the largest number in Latin America, as estimated by the National Council of Population (CONAPO) from a survey of 12.7 million people comprising 62 indigenous peoples. In northwest Greenland for the expansion of Thule Airbase in May 1953 the Umanaq people claimed special rights to land in the Greenland region, and it was questioned at the time whether the Umanaq people were indigenous with clear title to the land or whether they were part of the wider indigenous peoples of Greenland. In Nepal, the NFDIN and the umbrella organization of indigenous peoples, the Nepal Federation of Indigenous Nationalities (NEFIN), are organizations of representation, consultation and participation. It is believed that with these organizations, they can occupy national organizations and their administrators can be key holders of indigenous consultation and participation processes. If some communities feel under-represented by organizations they will tend to seek recognition as indigenous peoples themselves to gain better access to government (Davidson et al., 2010).

The importance of the existence and recognition of indigenous governance structures is directly linked to the rights of indigenous peoples themselves, by Supreme Decree 23858 (1994). The criteria outlined in ILO Convention 169 define indigenous peoples as: peoples descended from populations settled before conquest or colonial times and within national boundaries. Having territorial boundaries, having a common history, organization, language or dialect and cultural characteristics; paying attention to territorial attachment in the sense of managing habitat and social, economic, political and cultural institutions. It turns out that understanding the existence of indigenous peoples is not enough because the important thing to strengthen recognition of the territoriality of indigenous peoples is the existence of their customary governance structures, so this needs to be considered for continuity and regulation in the legal order of the state, especially in Indonesia, which implements the application of local wisdom in the implementation of good governance.

It is explained that because maintaining national security in Indonesia requires policies that regulate the management of land, waters and airspace and have supported the development of Indonesia's national resilience (Suwarno et al., 2021). The author feels that this previous research cannot be considered to answer the territorial protection of indigenous peoples. As we know that in the implementation of a government that has diverse patterns and characteristics of culture and customs, the thing that should be strengthened is actually a customary government structure based on local wisdom as a form of protection for the territorial layer below, even this needs to be supported by guarantees of legal certainty. It is clear that there are government affairs at the central level and at the regional level, which at the regional level must not exceed the authority at the central level (RI, 2020). The position of indigenous villages/villages is actually very important, especially there are zones of indigenous territories which from the point of view of indigenous peoples have strong ties to their existence in an area both on land, sea and in the air including under the sea (Margie Elza Maciline Tahapary, 2020). In fact, there is often a problem of disparity between the central government as a stakeholder and the government in the regions, this can be caused by the limited space of indigenous peoples' territories that have not been regulated in the Republic of Indonesia so that there are often many problems whose information for the community cannot be accepted by them to do so (Gordan et al., 2024).

The theory explains that the powers that are higher than the customary law community are powers that cover areas that are wider than the territory of one legal community such as the powers of kings, heads of curia, nagari and so on (Siombo & SH, 2016). In addition, Prof. Djodjodigono in his book *Principles of Customary Law* writes that the basis of Indonesian customary law is the conclusion of the power of the state government or one of its joints and the power of the community arises directly as a statement of the culture of the indigenous Indonesians, strictly speaking, as a statement of a sense of justice in a selfless relationship (Djojodigono, 1958).

It seems that policies alone are not enough to solve problems that become issues in society, because indigenous peoples in their existence in the territory of Indonesia already have control of land, waters and airspace and even land under the sea. This is because they are born in an environment that is bound by blood and territorial terotirial or territorial genelogical within the power of the alliance, so that actually policy is not enough as in previous research conducted by dhiani but there must be strengthening of structures that recognize the existence of government both in villages and in traditional villages/other names, it is just that it is felt that it has not been maximized and it is also possible that some have regulated well but some have not regulated well the continuity of government structures in the village.

It is clear that both the past research of Soerojo wignjodipoero, Prof. Djodjodigono and the research conducted by dhiani puspitawati indicate the importance of a territory that is strengthened by the existence of customary governance structures based on local wisdom. It can be clearly seen that Indonesia is a country that is luxurious in its diversity in the regions with the basis and nature of Indonesia. This research is so important because the current target of regional autonomy is to advance the region at the lower level with the provision of various funding support and legal guarantees, especially the implementation of government at the village/customary village level, while in reality the most difficult thing is also how to overcome the impact of ownership of territories that recognize territorial autonomy so that it is necessary to strengthen the position of structures at the village/customary village/designation according to the area of origin which becomes local wisdom.

Based on the background description above, the purpose of this research is to review and analyze the importance of the existence of local wisdom-based customary governance structures in supporting the territorial recognition of indigenous peoples in Indonesia, as well as exploring policies and laws that support or hinder the implementation of customary governance. The benefits of this research are to provide policy recommendations that can strengthen the position of indigenous peoples in the national government structure, as well as provide a deeper understanding of the relationship between local wisdom and good governance in Indonesia. This research is also expected to serve as a reference for policy makers in formulating regulations that are more inclusive and favorable to indigenous peoples, so as to create a balance between national interests and the rights of indigenous peoples.

METHOD

The approach used in this research is the non-doctrinal approach method (Wignjosoebroto, 2002), especially the micro approach as a meaningful reality developed by interactionists (Wignjosoebroto, 2002). For this reason, the Strengthening of Customary Government Structures Based on Local Wisdom in Protecting the Territorial Rights of Indigenous Peoples will be studied, as

a study area in Maluku Province, especially in the Kei Islands and in Ambon City, whose studies include: 1). Formulating the importance of strengthening customary government structures based on local wisdom 2). Establishing a customary government structure based on local wisdom in protecting the territorial rights of indigenous peoples.

RESULTS AND DISCUSSION

Strengthening Indigenous Governance Structures Based on Local Wisdom

Recognition of the Enactment of Customary Governance Structures

In article 1 paragraph (1) of the 1945 Constitution, the State of Indonesia is a unitary state in the form of a republic. The principle of a unitary state means that the supreme power over all state affairs is the central government without any delegation or delegation of power to local governments (Lubis, 2015). Article 18 paragraph (1) of the 1945 Constitution which is the substance of the division of regions in the Unitary Republic of Indonesia is divided into provinces, and the provinces are divided into regencies and cities, each of which has a regional government regulated by law. Ni'matul Huda added that the provisions of Article 18 paragraph (1) have a close relationship with the provisions of Article 25A regarding the territory of the Unitary State of the Republic of Indonesia (Ni'matul Huda, 2014). If we look at the existence of these two articles (the provisions of Article 18 paragraph (1) and the provisions of Article 25A), it is clear that the position of the government is closely tied to the territory, especially when the government has established a structure that is used as a form of recognition of inherent authority. This is even the case at the village/indigenous village level of government.

Article 18 of the 1945 Constitution before the amendment or before the change in the chapter on regional government in its explanation explains the division of Indonesian regions in provinces which are further divided into smaller regions, there are regions that are autonomous (streek and locale rechtsgemeenschappen) (Yamin, 2019).

After the Second Amendment, Article 18B of the Constitution of the Republic of Indonesia states, (1) The State recognizes and respects units of regional government that are special or special in nature as regulated by Law. (2) The State recognizes and respects the units of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by Law. From this provision through the regulation of Article 2 paragraph (8) and paragraph (9) of Law No. 32 of 2004 concerning regional governance states, (8). The state recognizes and respects units of regional government that are special or special in nature which are regulated by law. (9). The state recognizes and respects the units of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Republic of Indonesia. In the elucidation of this article, for the principles of autonomy and assistance tasks, the implementation of government affairs by the regions can be carried out directly by the regional government itself and can also be assigned by the provincial government to the district/city government and villages or assignments from district/city governments to villages. As a note in the explanation of this article there is also an understanding of regional competitiveness which is a combination of factors of regional economic conditions, the quality of regional public institutions, human resources, and technology, which as a whole builds the ability of regions to compete with other regions. In this article there is also the intention of explaining

the regional relations that occur as a consequence of the establishment and disposal of autonomous regions organized in the territory of the Republic of Indonesia. Thus, the regional area is a whole and unified state territory. This arrangement further emphasizes that in the order of government in the region, in this case starting from the Province, Regency/City to the village and in its development including indigenous villages/other names, especially in the framework of the needs of indigenous village structures/other names, of course, need to be clearly positioned because it is also binding on the structure of government carried out. The reality in the field in areas that are in accordance with the mandate of the Constitution of the Republic of Indonesia and in accordance with the provisions in the Village Government Law through its development up to the Village Law should be a dual implementation of the government system between the needs of the village government before the mandate of the Village Law and after the mandate of the Village Law there is recognition for indigenous villages/other names. As is known, in terms of legal position, the actual attachment between the village government structure and the territory is limited to 12 nautical miles. However, in the order of customary governance in the description of customary villages/other names as in Maluku in 11 district/city administrative areas with their government characteristics, there are also customary villages/other names so that the position of the territory is based on the boundaries of petuanan either individuals/families/families/fam/clans/alliances which in their legal position are bound by the customs of indigenous peoples in their territory which includes land, sea, air and even areas under the sea and/or sea surface as far as the eye can see, as well as in air space. The position of customary government institutional structures (customary villages/other names) formed within the district/city is *mutatis mutandis* bound by the series of government operations in the region.

Historically, villages/traditional villages/other names are the forerunners of the formation of society and government in Indonesia (Supriadi, 2015). The community groups within the village are autonomous institutions with their own deeply rooted traditions, customs and laws, and are relatively independent from the interference of outside power entities (Rosidin, 2019).

The general elucidation of Law No. 6/2014 on Villages, abbreviated as the Village Law, through an amendment to the 1945 Constitution of the Republic of Indonesia, states the recognition of customary law communities (Laike, 2019). It is clearly illustrated that in the Village Law there is a combined construction of the function of self-governing community with local self-government, which is the fact that customary law communities, which have been part of the Village area due to the implementation of various laws, must be reorganized in such a way as to become villages and customary villages/other names (Herdiana, 2019). Through the Village Law, indigenous villages have government functions, village finances, village development and receive facilities and guidance from the Regency/City government (Maulidiah, 2016). In this position, villages and villages receive the same treatment from the government and local governments. Therefore, at this time, indigenous villages can make changes to the face and effective governance, the implementation of effective development and community development and community empowerment in their territory.

Indigenous villages/other names are in principle the heritage of local community governance organizations that have been maintained for generations, which are still recognized and fought for by leaders and communities of indigenous villages/other names in order to function to develop local welfare and socio-cultural identity (Nugraheni & Indarja, 2016). Indigenous villages have origin rights that are more dominant than village origin rights since the indigenous village was born as an original community in the community. An indigenous village is a customary law community unit that

historically has territorial boundaries and a cultural identity formed on a territorial basis that is authorized to regulate and manage the interests of the village community based on the right of origin (Timothy, 2018). Basically, customary law communities are formed based on three basic principles, genealogical, territorial, and/or a combination of genealogical and territorial. The determination of customary villages is basically guided by the Law while still considering the dualism of determining customary villages in indigenous communities that are bound by customary rules and territories. In addition to the establishment of indigenous villages within the framework of a government that is bound by administrative expanses of territory, the absolute requirement for clear boundaries needs to be resolved by the presence of local governments at the provincial and district/city levels to accommodate by providing regulatory guarantees that support the implementation of indigenous village governance as a rule of government, namely the existence of government (standardized structures required by law and other regulations in addition to customary structures bound in government containers), other devices, and coupled with other institutions in the life of indigenous peoples such as common feelings, property and customary governance institutions. In this case, if the local government has not been able to facilitate the legal needs for the implementation of customary governance structures, it can be implemented properly by not conflicting interests between adat and positive law, but can also include it in the decree of the customary village leader/other names, as a bridge for harmonious implementation. This is actually a legal necessity in all regions in the Republic of Indonesia which has not been clearly regulated and often causes legal problems up to the court level for indigenous peoples who defend their territory as referred to in Maluku petuanannya/territory claimed rights based on territorial control from their father/family/fellowship.

Implementation of Customary Government Structures in Maluku

The guarantee of recognition of the unity of Masyarakat Hukum Adat through the provisions of Article 18B paragraph (2) and in accordance with the Village Law, has established that the need for customary governance institutions is very important for regions within the Republic of Indonesia which, although carrying out the construction of a combined function of self-governing community with local self-government, still hold firmly to their customary governance institutions as the right of origin and then continue to carry out their customary governance structures which are still maintained in the context that basically indigenous peoples are formed based on three basic principles, genealogical, territorial, and/or a combination of genealogical and territorial.

Maluku is one of the provinces that is varied in its local wisdom, because administratively it consists of 2 cities and 9 regencies. Geographically divided from large islands and medium to small islands, including Ambon Island administratively divided into Ambon City and Central Maluku Regency, and Seram Island which is often called the mother island is divided into 3 districts; Central Maluku Regency, West Seram Regency and East Seram Regency. Buru Island is administratively divided into Buru Regency and South Buru Regency. Other Islands are the administrative areas of Tual City and Southeast Maluku Regency, Aru Island which became Aru Islands Regency is a Regency adjacent to Southeast Maluku Regency and Tual City, Saumlaki Island as the administrative area of Tanimbar Islands Regency and the last is Lemola Island (Leti, Moa Lakor) precisely on Moa Island Tiakur City as the center of Southwest Maluku Regency. Maluku is a province that also has a diversity of naming customary government structures in its designation and implementation, which is tied to its territory. Kusumadi Pujesewoyo explains that adat, which is the basis of community life, is passed

down from one generation to another, through a process of socialization (Timothy, 2018). And that process produces institutions. The point is that indigenous peoples are essentially something that arises spontaneously in a certain area, for this reason, human life has traditional ties according to the structure (structure) that has been passed down from generation to generation and there are advanced (modern) ties in the form of a regular association organization, this tendency is strong among indigenous peoples based on kinship, neighborliness or regionalism, so the process of forming customary institutions is present to coordinate all these tendencies.

Soejono Soekanto provides an understanding of social structure as a reciprocal relationship between social positions and between roles (Soekanto, 1986). According to Teer Haar, talking about customary institutions means talking about groups that have a fixed and eternal structure and the people in that group each experience their life in their group as a natural thing, a matter of nature (Soekanto, 1986). No one of them has the possibility to dissolve the group. By F. H. Utila that customary institutions must be supported by the organizational structure of the village government/customary village/other names in the development of law in Indonesia (Pujesewojo, 1978).

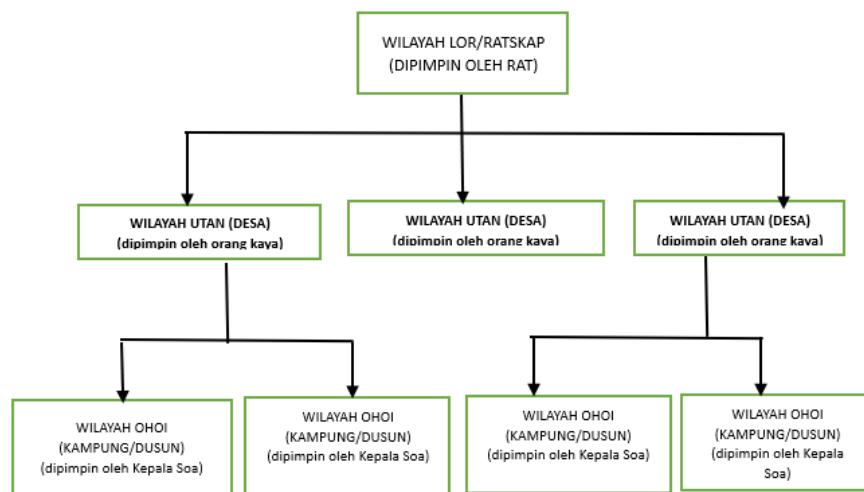
Implementation of Customary Government Structure Based on Local Wisdom in Maluku

Maluku as a province that is often called a thousand islands, making the sea and islands a unified area until now, especially this is clearly found in the position of the customary government structure that is still maintained in 11 districts/cities. If observed, this customary government structure is still implemented based on local wisdom even though it has not been maximally implemented. It is undeniable that the 1999 incident that occurred in Maluku has always been imagined as a religious conflict, and the way it was resolved has also helped connect the red thread of the adat government structure with the existence of religion as a solution, another fact that the adat government structure contains blood ties beyond the basis that is bound by the birth of the existence of religion in customary customs so that the position of the adat government structure also bridges and answers that the territory is not only in the aahal that can be seen in human nature but in areas that are bound by the sacredness of traditional ceremonies. This kinship relationship basically all negeri in Maluku have a customary government structure called negeri/ohoi government structure led by the head of the negeri/raja (Sumarsono, 1993). One example is in Ambon City in Maluku Province in the chart below:



Figure 1. Customary Government Structure called State Government Structure

With the enactment of the previous Law No. 22 of 1999 on Local Government and Law No. 32 of 2004 on Local Government, there were several adjustments in implementation, from institutions such as the LMD which in the position of the structure applies to the BPD and up to the existence of customary institutions in customary governance, namely Saniri Negeri in Maluku in the Ambon City area, and the leadership of the country from the Village Head to the title of Raja according to the Village Law. Tuan Adat (Landlord) and Kewang and Malesi are structural devices that make up the territory and the important role of MHA territories in areas that are related to proof according to the law both positive law and customary law are bound to that part of the territory. Another comparison of the basic structure of Customary Government in the Kei Islands according to the level or level of territory (Silubun, 2020):



**Basic Structure of Customary Government in Kei Islands
by level or region**

A Lor or Ratskap is a collection of several Utan headed by a "Rat or Raut" (King). Utan is one or more ohoi headed by a "Orang Kaya" or Rongkai. While Ohoi is a settlement unit inhabited by several faams headed by a "Soa Head" or Rengtu, thus forming a basic system of customary government in the Kei Islands which is tiered according to the level of the region.

Local Wisdom-Based Customary Government Structure in Protecting Indigenous Peoples' Territorial Rights

Regional Guarantees in Strengthening the Position of Indigenous Government Structures Based on Local Wisdom

Since the reformation, the second amendment in the MPR annual session in 2000 to Article 18 has resulted in several articles, one of which is Article 18B Paragraph (1) and Paragraph (2) of the 1945 Constitution of the Republic of Indonesia which describes: the state respects and recognizes special local government units and the unity of MHA and their traditional rights in accordance with the principles of the Republic of Indonesia. The consequences and legal guarantees provided by the 1945 Constitution of the Republic of Indonesia mandate that every state regulation or legislation does not ignore the rights of origin and original arrangements.

The guarantee of the continuity of the pluralism of village governance up to the existence of indigenous villages was previously regulated in several laws including: the enactment of Law No. 5 of 1979 concerning Village Government, Law No. 22 of 1999 concerning Regional Government, Law

No. 32 of 2004 concerning Regional Government, and the birth of Law No. 6 of 2014 concerning Villages, which is called the Village Law, not only provides legal certainty but also provides a special place for indigenous villages or what is called by other names. based on Article 1 Paragraph (1) of the Village Law which emphasizes the elements of villages and indigenous villages or what is called by other names, has territorial boundaries, there are government affairs (Sukriono, 2010). The interests of the community are based on community initiatives, rights of origin, and/or traditional rights (local self-reliance) that are recognized and respected in the system of government of the Unitary State of the Republic of Indonesia (Margie Elza Maciline Tahapary, 2020). The legal requirements of Article 97 Paragraphs (1) and (2) of the Village Law explain that the establishment of a customary village must fulfill the following requirements: the existence of a customary law community unit along with its traditional rights that are actually still alive, both territorial, genological, and functional in nature and customary government institutions (Valendani, 2015). The importance of establishing and structuring indigenous villages as mandated by the Village Law provides access to regional policies to immediately carry out regional arrangements and formulations in accordance with the continuity in the current MHA order.

Implementation of Customary Government Structures in Accordance with Local Wisdom in Protecting the Territorial Rights of Indigenous Peoples

Article 1 paragraph (1) of the Village Law guarantees the implementation of the right of origin and traditional rights in regulating and managing the interests of indigenous peoples. Ahimsa Putra defines local wisdom as a set of knowledge owned by a community that comes from previous generations as well as from its experience in dealing with the environment and other communities, to solve various problems and/or difficulties faced. This means that local wisdom is dynamic and varied because in addition to being obtained from previous generations, it is also enriched by various experiences and knowledge of the present (Sukirno, 2024). to realize local security stability between Law No. 23 of 2014 on local government and Law No. 6 of 2014 on Villages has not been fully supported by Law No. 30 of 2014 on Government Administration, particularly in relation to the implementation of the Law on Local Government. 30 of 2014 concerning Government Administration, especially in the General Principles of Good Governance Article 10 paragraph (1) AUPB has not contained local wisdom as an AUPB, because AUPB can be seen as unwritten legal rules, especially in matters of government has a space of discretion, so that a cultured country to avoid conflict requires a system that is regulated definitively in its position as a law so that local wisdom must be a priority of the legal ideals of the Republic of Indonesia. Basically, changes will continue to occur, policies and autonomization are not a solution that touches on the lowest level of society, because the important lesson is that to save the territory of the Republic of Indonesia must start from regulating the structure of customary government (customary village / other names) which is part of its jurisdiction and inseparable.

CONCLUSION

The importance of the existence and recognition of the existence of customary government structures is directly connected to the rights of the indigenous people themselves, customary government structures based on local wisdom as a form of protection for the lower layers of territory, even this needs to be supported by guarantees of legal certainty so that it is necessary to form Regional Regulations on Customary Government Structures according to their territories along

with their authority. There is a need for territorial arrangements that elaborate between customary territories and agrarian laws and sea area laws to maintain the security, unity and unity of the territory of the Republic of Indonesia which is measured from the territory of the Customary village or other designation.

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