**Protection Of Indigenous Forests As A Strengthening Of The Existence Of Indigenous Peoples In Prismatic Law**

**By: Dr. Candra Perbawati, S.H.,M.H.**

**Abstract**

Indigenous Forest was one of very important natural resource, it's meant for human life, wasn't as the function as agriculture production factor only which produce various food materials, moreover within agrarian country such as Indonesia, but also because it's social culture function.

Indigenous Forest is a right that granted to Indigenous Peoples, therefore must protected, respected, maintained and wasn't ignored, reduce or seized by any person. It's meant that, any people was have obligation to acknowledge and respecting that kind of right of other people. This obligation also prevailed for state and government to respecting, acknowledge, protect, assist and assured their people rights without presence discrimination.

Why Indigenous Forest need to be protected? How the protection of Indigenous Forest can provide Strengthening the existence of Indigenous People based on Prismatic Law Theory? was two problematic within this article. By socio legal approach was used within positivism paradigm will answer the problem in this article. This article was aimed to found why indigenous forest need to be protected and how the protection of indigenous forest can provide strengthening the existence of indigenous people prismatic law theory.

**Keywords: Indigenous Forest , Indigenous Peoples, Prismatic Law.**

**A. Introduction**

**1.Back Ground and Problem**

Indigenous Forest is a forest managed by the indigenous legal community as a legal tradition of the existence of indigenous legal peoples that symbolize the values of respect for the rights of indigenous peoples. Therefore, the existence of indigenous forests becomes important in the life of indigenous peoples. Related to indigenous forests in indigenous legal communities has been acknowledged by the constitution which means indigenous forests are forests whose management is given to indigenous legal communities. Therefore, Government has an obligation to provide protection to indigenous forests in indigenous legal communities.

In some areas within the jurisdiction of the legal community, there are many Indigenous Forest conflicts involving indigenous legal communities as owners who have authority over local customary forests. The conflict resulted in the loss of the rights of indigenous peoples in the management of customary forests. Conflicts about Indigenous Forests in indigenous legal communities show that Indonesian law has not been able to provide protection to indigenous forests owned by indigenous legal peoples. So the law has not provided justice for indigenous peoples in the management of indigenous forests.

Looking at the above reality, therefore in an effort to provide protection to indigenous peoples in the management of customary forests, it is necessary for the government to provide the best solution in this case the politics of the law must run in accordance with the mandate of the constitution, to provide justice and legal certainty for the existence of indigenous peoples.

Protection of Indigenous Forests in indigenous legal communities is an obligation of the Government. This has been decided based on the principles of customary forest regulation contained in Law No. 5 of 1960 which is further stipulated in the Decision of the Constitutional Court No. 35/PUU-IX/2011 which explains that customary forests are not the same as state forests. This decision provides legal certainty for indigenous peoples who have rights in the management of Indigenous forests.

From the explanation above, therefore the problems raised in this paper include two cases, it is: (1) Why Indigenous Forest need to be protected? (2) How the protection of Indigenous Forest can provide Strengthening the existence of Indigenous People based on Prismatic Law?

**2. Research Method**

Qualitative-constructive method by socio-legal approach was used in this research. Data investigation was followed analysis of Mathew B Miles and A. Michel Huberman model that used to collected, reducted, present data and conclude/verrification. Theory used was explained phenomena of research invention was Prismatic Law theory,. Final purpose of this research was make ideal land affairs legal construction which protecting right concerning protection of Indigenous Forest in Indigenous People.

This research including qualitative research tradition by operation study of Post Positivism paradigm[[1]](#footnote-1). Through qualitative method was possibly the researcher to understand society personally and seen them as theirself expressed their world view[[2]](#footnote-2). By qualitative method, research able to found reasons from such social phenomena[[3]](#footnote-3), our able to found undiscovered meanings behind both subject or object researcher. Within qualitative research tradition wasn't known population, because it's research sample was case study.

Based on stand point above, therefore this research grouped into socio-legal reseach method[[4]](#footnote-4). According to Soetandiyo Wignyosoebroto[[5]](#footnote-5) called as not doctrinal approach, it was such study which view law as meaning through interpretation process, it's meant any legal product will determined by interpretation made and agreed by actors related within making process and legal implementation. Law could comprehend by participation, experience and total comprehension (Verstehen). This approach was used to comprehend law within it's society context, it was such method that have non doctrinal characteristic.

Through socio-legal research method, legal object wil interpreted as a part from social subsystem among other social subsystem. Understanding law within it's society context, it's meant there was connection which couldn't separated between law and society, as social basic. According to Tamanaha[[6]](#footnote-6), relationship of both law and society was have the frame called "the Law-Society Frameworks", that have certain characteristic. That relation could be seen within two basic component. First component include from two main themes, it was idea that stated the law as society characteristic and idea that legal function was maintain social order. Second component was Law society relationship, including three basic elements, it was custom/consent, morality/reason, positive law.

Socio-legal studies using, therefore this research will studied legal principles about land during this time already presence injustice because unable in giving protection of Indigenous Forest of Indigenous people. The reality is Indigenous Forest of Indigenous people wasn't given the right protection of local wisdom value from making process (in abstracto) or the implementation (inconreto) wasn't run properly.

Social setting in this research was some of Indigenous people in Lampung and other parties needed. Within data collection used deep interview method, related observation and document study. Data validation by using Triangulation of resource. Data obtained was analyzed by combining inductive logical (primary data) and deductive logical (secondary data). Data legality technique was analysed by Triangulation of data analysis model from both Mathew B Miles and A. Michel Hubermn.

In determining informant was using purpossive, until reach saturation point in the meaning of completeness and validation was enough to analysis interest. In this research, researcher determine main informant previously as the way opening to appoint other people who able to give information related to both problem and research purpose.

Main instrument of this research was researcher, because it was indept research. Supporting instrument was script book, recording tool, photo camera and others.

In order to obtain data was used literature study method and interview, also documentation. Data analysis used triangulation by using analysis technique of Mathew B. Mileas and A. Michel Huberman models[[7]](#footnote-7). By three lines, it was data reduction, presentation and conclusion/verification.

**3.Theory Plan**

Effort to revealed problem include within problem formulation was used several theories as thinking plan which could be used as analysis point. First problem ) Why Indigenous Forest need to be protected? analysed using legal system theory from Lawrence M Friedman also theory legal working from responsive legal theory of Philipe Nonet and Philip Selznick.. To analyzed second problem How the protection of Indigenous Forest can provide Strengthening the existence of Indigenous People based on Prismatic Law? To theory Prismatic from Fred W.RIGGS.

To comprehend legal working was needed usage social sciences in organize and constructing the law. Therefore in constructing defense legal politic to right regulation of right land within legal society needed assistance from social sciences in order that law as such internalization from developing values within society.

**B. Result and Discussion**

**1. Why Indigenous Forest need to be protected?**

Why Indigenous Forest need to be protected analyzed by using responsive legal theory of Philipe Nonet and Philip Selznick. Both Philipe Nonet and Philip Selznick ideas on responsive law was tried to including elements and social science influence into legal science influence by using social science strategy. There was social science perspective that must be paid attention to legal working totally, therefore law wasn't only content forcefulness and oppression elements[[8]](#footnote-8)

Social science approach was treat legal experience as something changes and contextual. By responsive law, Nonet and Selznick was promising correct institutional, eternal and stable. Development model could be rearranged by focus on autonomous law, by refer to conflicts on that stage which rise not only risk repressive type return, but also possibility occured larger responsivity. Responsive law was oriented on result, purposes which will be reached outside the law. Within responsive law, law arrested was negotiated, not appease through subordination.

Responsive law characteristic was found implicit values which include within regulation and policy. In this legal model, they stated disagreement concerning doctrine they called as basic interpretation and not flexible. By responsive law approach expected could assist to solve the problem occured in society, therefore law really able to prosperous society of larger interest, not for them who in power.

Responsive HAM legal concept here was, that HAM legal making must process participatively by responsive substance about necessity and social aspiration due to reality of human right in Indonesia.

Why Indigenous Forest need to be protected concerning Indigenous society as follows:

1. Philosophically, land affairs legal politic was Dutch inheritance law (Agrarischewet) which used both structure and modern legal culture of west people who prioritising individual interest and oriented on economy interest (profit oriented) and seek enjoyment (hedonism). That land affairs law construction was legal construction which used both structure and modern legal culture of west people who protecting individual right only. That construction wasn't due to structure and culture of tradition law society, therefore it was imposible to accomodate develop values within communal and social tradition law society.
2. Substantially, national land affairs legal politic party in it's existence already used HAM perspective but the implementation wasn't yet. Regulation about acknowledgment of Indigenous people laws was existed, but in implementation wasn't acknowledged and protected. In fact, within national land affairs legal politic, there were article that arrange about Indigenous people existence, it's meant, there were acknowledgement to Indigenous people, but in implementation wasn't acknowledge and protect it. State precisely protecting business usage right owner and ignoring property right of Indigenous people. In fact, the exixtence Indigenous people was still acknowledged, therefore must be in it implementation also acknowledged.

In implementing Indigenous forest protection in Indigenous people, several problems were found. namely: the law cannot work properly. then the legal politics that are running in fact have not provided protection to customary law communities in the management of their customary forests. The Government only protects the interests of the elite and ignores the interests of the indigenous peoples.

**2. How the protection of Indigenous Forest can provide Strengthening the existence of Indigenous People based on Prismatic Law Theory?**

Protection of Indigenous Forest can provide Strengthening the existence of Indigenous People was used Prismatic Society-FW Riggs concept

Legal concept of Prismatic Society was legal concept as solution to settle two culture problems include in society.[[9]](#footnote-9) Within society include two cultures, it was which based on *gemainchaft* dan *geselschaft.* Protection of Indigenous Forest can provide Strengthening the existence of Indigenous People was harmonious law which combine between national land affairs values and tradition law. Due to Prismatic society concept, that Protection of Indigenous Forest can provide Strengthening the existence of Indigenous People was the solution to overcome problem faced.

Legal politic of Protection of Indigenous Forest which can provide Strengthening the existence of Indigenous People law was such combination of both modern and tradition values which could leaving out concept dichotomy, it was individual-liberal and communal-social. That context was due to Indonesia law which based on Pancasila, which reject those both concept but take the positive value by acknowledge presence individual interest and all at once put public interest on personal interest. By those new legal politic, Indigenous Forest in Indigenous People could get the protection, therefore that legal politic could work properly and prosperous society.

**Protection Of Indigenous Forests As A Strengthening Of The Existence Of Indigenous Peoples In Prismatic Law Theory by Fred W. Riggs**

Prismatic Society

Adat Law Society

Comunal- Social

Modern Society

Individual-liberal

**Protection Of Indigenous Forests**

Patembayan

Paguyubann

Diffracted

Fused

**C. Conclusion and Suggestion**

1. Why Indigenous Forest need to be protected concerning Indigenous people because:

1. Philosophically, land affairs legal politic was Dutch inheritance law (Agrarischewet) which used both structure and modern legal culture of west people who prioritising individual interest and oriented on economy interest (profit oriented) and seek enjoyment (hedonism). That land affairs law construction was legal construction which used both structure and modern legal culture of west people who protecting individual right only. That construction wasn't due to structure and culture of tradition law society, therefore it was imposible to accomodate develop values within communal and social tradition law society.
2. Substantially, national land affairs legal politic party in it's existence already used HAM perspective but the implementation wasn't yet. Regulation about acknowledgment of Indigenous people laws was existed, but in implementation wasn't acknowledged and protected. In fact, within national land affairs legal politic, there were article that arrange about Indigenous people existence, it's meant, there were acknowledgement to Indigenous people, but in implementation wasn't acknowledge and protect it. State precisely protecting business usage right owner and ignoring property right of Indigenous people. In fact, the exixtence Indigenous people was still acknowledged, therefore must be in it implementation also acknowledged.
3. In implementing Indigenous forest protection in Indigenous people, several problems were found. namely: the law cannot work properly. then the legal politics that are running in fact have not provided protection to customary law communities in the management of their customary forests. The Government only protects the interests of the elite and ignores the interests of the indigenous peoples.

2. Protection of Indigenous Forest can provide Strengthening the existence of Indigenous People because:

Legal politic of Protection of Indigenous Forest which can provide Strengthening the existence of Indigenous People law was such combination of both modern and tradition values which could leaving out concept dichotomy, it was individual-liberal and communal-social. That context was due to Indonesia law which based on Pancasila, which reject those both concept but take the positive value by acknowledge presence individual interest and all at once put public interest on personal interest. By those new legal politic, Indigenous Forest in Indigenous People could get the protection, therefore that legal politic could work properly and prosperous society.

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**UNDANG-UNDANG**

Undang-Undang Dasar NRI 1945

UU No. 5 Tahun 1960, tentang UUPA

UU No. 11 tahun 1967 tentang Pertambangan

UU No. 39 Tahun 1999, tentang Hak Azasi Manusia

UU No. 41 Tahun 1999 tentang Kehutanan

UU No. 23 Tahun 2014 Tentang Pemerintahan Daerah

Kepmen PMNA dan Tata Ruang No. 9 Tahun 2015

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2. Robert Bodgan and Teven J Taylor, *Kualitatif Dasar-Dasar Penelitian,* Terjemahan Khozin Afandi, Usaha Nasional, Surabaya, 1993, page 10 [↑](#footnote-ref-2)
3. Sanapiah Faisal, Varian-Varian Kontemporer Penelitian Sosial dalam Burhan Bungin (ed) Metodologi Penelitian Kualitatif, Rajawali Press, Jakarta, 2001, Page.28 [↑](#footnote-ref-3)
4. Within socio-legal research there are two aspects of researchs, first legal research, it was permanent research, there were several material within norm context, act regulation and second socio research, meant method and social science theories about law to assist researcher in take analysis. This Appreach. [↑](#footnote-ref-4)
5. Soetandiyo Wignjosoebroto, *Op.Cit,* .183 [↑](#footnote-ref-5)
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