Jurnal Hukum **Volkgeist**
Volume 4 Issue 2, June 2020
P-ISSN : 2528-360X, E-ISSN : 2621-6159

Implementation of the recognition and respect of the Dayak Iban Semunying customary law community in human rights and SDGs

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Abstract

Education is a human right. Everyone has the right to receive educational rights without restrictions. Everyone has the right to get the education and level of education they will attend. The government has an education equalization plan with the issuance of the Minister of Education and Culture Regulation No. 14 of 2018. The Minister of Education and Culture mentioned above applies a zoning system. The Minister of Education and Culture does not rule out the possibility of impacts for prospective students who wish to continue their education. The problem is how the impact of the PPDB zoning system on education rights in Kajen Subdistrict, Pekalongan Regency. The approach method used is a sociological juridical approach method. PPDB has positive and negative impacts. According to researchers, PPDB is not in accordance with the right to education of children, due to restrictions, the gap in the quality of learning with the same level of difficulty of the National Examination and the same curriculum that applies nationally.

Keywords: *Indigenous Peoples, Human Rights, Sustainable Development Goals*

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Article's Information:
DOI: https://doi.org/10.35326/volkgeist.v4i2.427

1. Introduction

Government policy and development issues have always been a long-standing issue of discrimination accepted by indigenous peoples. In this case, the Dayak Iban Semunying Jaya Indigenous Peoples, Desa Kumba, Kecamatan Jagoi Babang, Kabupaten Bengkayang, Kalimantan Barat, where people who inhabited the forest area as traditional customary land rights for their residence experienced a massive expansion of oil palm plantations by company without permission. Land needs for development needs are increasing, while land is limited, so land needs that tend to increase create a land conflict. (Samosir, 2013)The entry of PT. Ledo Lestari which was backed up by military officials and the granting of permission by Bengkayang Regent No. 13 / IL-BPN / BKY / 2004 dated December 20th , 2004 damaging their livelihoods. The policy of granting permits to customary land is clearly contrary to the sense of fairness that must be accepted by the community because the legality issued by the Regional Government tends to ignore the legal products on it. (Pangkot, 2015)

The need for legal policies on customary land rights of indigenous and tribal peoples does not currently have a human rights perspective, which always creates problems with the non-operation of the law and the conflicting values of developments in indigenous and tribal peoples. The hook is that the clash has always been linked to differences in the socio-cultural culture of the people. (Perbawati, 2015) Therefore, the existence of customary land rights has always been shrinking since the New Order Era,

where there were unilateral claims by investors in the forestry, plantation, or other activities that pocketed legality permits from the central and regional governments. (Sukirno, 2012)

In this issue, the principle of human rights changes into a "Cultural Relativism" which becomes an idea that states "Culture is the only source of validity of moral rights and principles." It becomes necessary to understand in human rights that culture in its dignity must be respected. (Fakhrasi, 2017) The issue of discrimination against rights is the basis for the emergence of the principle of Non-Discrimination in efforts to protect their human rights. Other efforts, namely in conducting policies towards development, should be based on the principle of human rights based development in the SDGs (Sustainable Development Goals). In the Sustainable Development Goals stipulated in principle, it must reach all parties in the business in the construction of indigenous peoples by achieving the development goals without eliminating the cultural and cultural values that have become hereditary traditions.

In connection with research on the rights of indigenous peoples in the *SDGs* has never been done. Research conducted by (Salat, 2012) discusses customary law from the perspective of legal pluralism. Research by Kurnia Warman & Syofiarti (Warman & Syofiarti, 2012) discusses the pattern of resolving ulayat land disputes. (Sukirno, 2012) discusses the affirmative policies in the rights of indigenous and tribal peoples. The research which is almost the same by (Perbawati, 2015) discusses in the study of the impact of political law on indigenous peoples.

In this article, the object of the study that is examined is related to development that is not yet based on human rights to the rights of indigenous peoples Dayak Iban Semunying, which is examined using a doctrinal legal approach. The primary legal material related to the 1945 Constitution of the Republic of Indonesia, Law No.39 of 1999 concerning Human Rights, Law No.5 of 1960 concerning Basic Regulations on Agrarian Principles, Law No.41 of 1999 concerning Forestry, Law No.39 of 2014 concerning Plantations, and the United Nations Declaration on the Rights of Indigeneous People 2007, as well as in secondary legal material consisting of books, one of which is on *Sustainable Development Goals*, articles , journals, and scientific papers related to this research.

So based on the description above, the problems that can be raised in this paper are: (1) What are the things that underlie the weak implementation of recognition and respect for the Dayak Iban Semunying Customary Law Community? (2) What should be the principles of human rights and sustainable development of SDGs in providing recognition, respect and protection for the Dayak Customary Law Community?

2. Method

The discussion on development that is not yet based on human rights to indigenous and tribal peoples uses a doctrinal legal approach (Soekanto, Soerjono, 2014)which is examined in the application and rules or norms in law (Ibrahim, 2006), as well as through the Conceptual Approach and Study Approach Case. The object of this research is the rights of the Dayak Iban Semunying Customary Law Community.

Related to the primary law, the 1945 Constitution of the Republic of Indonesia, Law No.39 of 1999 concerning Human Rights, Law No.5 of 1960 concerning Basic Regulations on Agrarian Principles, Law No.41 of 1999 concerning Forestry, Law No.39 of 2014 , as well as the 2007 United Nations Declaration on the Rights of Indigeneous People, In secondary legal material consists of books, one of which is the

Sustainable Development Goals, articles, journals, and scientific papers related to this research.

3. Findings and Results

3.1 Recognition And Respect To The Implementation Of Indigenous Peoples Dayak Semunying

Issues regarding recognition and respect for indigenous and tribal peoples, even though they have been stipulated in the Statutory Regulations, but in essence they can be fairly weak. In his study, Respect (respect) is one element of recognition, where it has two definitions, namely First, relating to the ability in terms of moral accountability in autonomous decision makers which is another form of recognition of personality or "legal recognition". Second, relating to one's appreciation of the subject of community law.

In Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, "The State recognizes and respects the customary law community units along with 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 is regulated in the Law. ”In legal thinking, there are two terms regarding recognition, namely constitutive recognition and declarative recognition. "Constitutional Recognition" is an acknowledgment that gives rights to people by a state authority, where this right arises in a state statute. Whereas "Declarative Recognition" is an act that affirms or confirms existing rights, where those rights existed before formal authority arose which appeared in the form of "habits". In this case, this recognition is found in the aspect of land law, which means that recognition to indigenous and tribal peoples must be given in full in the control of their customary land. Because the declarative recognition can be seen in the affirmation of rights related to land registration which had previously been clung to with old rights. The word 'long' refers to the period before a law or regulation is enacted. These old rights can be in the form of land rights obtained through Western and Customary Laws (Harsono, 2005). Thus, affirmation of rights is carried out with the thought that previously there were rights on the lands to be registered and therefore all that was needed was an affirmation of existing ones.

In this case, a descriptive explanation of the recognition and respect and protection of the Customary Law Community has the meaning that it must be upheld for the sake of equal justice. However, in its implementation there are always problems relating to the recognition and protection of the Customary Law Community, especially against the Dayak Iban Semunying Customary Law Community. These problems include:

a. Problems With Laws And Regulations; in this matter there are actually many laws and regulations that pertain to customary law communities and their rights, such as those contained in the 1945 NRI Law, Law No.39 of 1999 concerning Human Rights, Law No.5 1960 concerning Basic Regulations on Agrarian Principles, Law No.41 of 1999 concerning Forestry, Law No.39 of 2014. But in its implementation, these regulations actually provide a greater opportunity to benefit through discriminatory practices by the state apparatus. This has resulted in conflicts between indigenous peoples and between indigenous peoples and corporations (HAM, 2016). Recognition and protection of the rights of indigenous peoples in the existing legislation is considered not comprehensive and is still

vague. Even in the Statutory Law there are no articles and laws that contain and regulate the rights of indigenous peoples, so that people lose their rights to their customary territories. This states that the legal products in the customary law community are difficult to interpret, because they must pay attention to the needs and social structure of the existing community, coupled with a different pattern (Sabon, 2012). In addition, in Kabupaten Bengkayang and Kalimanatan Barat Province, where the Dayak Iban Semunying Indigenous Law Community does not yet have a customary law, so this can be used by government and corporate officials to take the rights of these indigenous peoples and make the position of the indigenous people increasingly weak.

b. Problems with policies and impartiality of the Central Government and Local Governments towards Indigenous Peoples; in the case of the Dayak Iban Semunying Customary Law Community, it is related to the partisanship of the state apparatus, in which case there is an involvement of the TNI person who is the manager of the corporation, so this has a bad impact because the presence of these elements facilitates the corporations who want to enter into something permit permitted area. This was later proven by granting permission by Bengkayang Regent No. 13 / IL-BPN / BKY / 2004 dated December 20, 2004 for oil palm plantations has entered the territory of the indigenous people of Semunying Jaya as a source of life. This can be said that the government (regional and central) is still half-hearted and even ignored, so that in the implementation of the rights of indigenous peoples is ignored as there is no permit for exploitation, the impact caused, and others. The lack of clarity and impartiality of the government towards the recognition and protection of indigenous peoples has led to conflicts among indigenous peoples, both those conflicts occurring among indigenous and tribal peoples and other parties including the government and corporations. Laws are held with the aim of maximizing the satisfaction of needs and interests. Law is needed because in this life there are many interests that ask to be protected. In essence, that right is none other than the interests protected by law. (Turisno, 2011).

c. Problems between Indigenous Peoples and Corporations; In this case many cases of the existence of customary rights in an area often deal with development policies, especially related to development in the field of investment (forestry, mining, tourism, and so on). Until now, local governments have seemed too passive in overcoming conflicts between communities and corporations. So far, the stigma attached to indigenous peoples as "obstacles to development" cannot be justified, because basically indigenous peoples are not anti-development. As proof, if indigenous peoples refuse development, then there will be no road that divides the forest and goes into remote rural areas of indigenous peoples. So far, what the Government has been socializing with indigenous peoples is only the good impact of the development program so that the indigenous people believe and accept the offer from the Government. However, if an indigenous community rejects a development program, it is not impossible for the Government to resort to forced measures by seizing indigenous peoples' land for development reasons. The seizure of indigenous peoples' lands is not necessarily only done by the Government. Even corporations that have received permission from the Government often do the same thing, it's just that the purpose is different, namely for personal or corporate profits. The method used by these investors is also classified as the Government, namely that indigenous peoples are first lured by the

goodness of investment, for example what will be received by indigenous peoples if an investment has been carried out without explaining in detail the adverse effects that will occur. This is what makes a development program policy when dealing directly with the existence of customary rights, and the solution is often in favor of the "powerful", so this is the aspect that makes legal policies against indigenous peoples are often not based on human rights of indigenous peoples. This has often led to opposition from indigenous peoples who consider their rights no longer recognized by the Government.

d. Problems of the Natural Resources Sector; Problems related to natural resources can also be seen from the start of the entry of plantations that provide pragmatic choices to the community related to the economic value of an area and community needs. In turn, many customary territories have been turned into plantation areas with a low bargaining position and community role. This condition does indeed involve three parties, namely the elements of entrepreneurs, government and elements of society. However, the community is usually a subordinate party by the regional government, or even subordinate by the entrepreneur. In addition, customary territories are no longer accessible to their customary owners. Many cases of customary landowners or ancestral lands from customary communities are no longer accessible to the customary community concerned due to settlement relocation (village regrouping) or due to the current determination of national park boundaries. According to *Pontianak BPNST*, conflicts over land disputes with companies or local governments. These conflicts often occur in areas that have become plantation or mining areas, or other areas designated as conservation areas. Generally the problems are related to land disputes that will be used as plantations and mining areas or zoning, issues of access to the community's increasingly productive productive customary land, culture (habits) of indigenous peoples that cannot follow company culture (profit oriented), promises of development compensation not carried out by companies or local governments, unfair distribution of plasma land between local communities and migrants brought by the company, both state and private plantations, and so forth. The loss of buffer forests in Semunying Jaya village turned out to have a big effect on people's lives.

e. Problems With The Lack Of Involvement Of Indigenous Peoples In The Planning, Implementation And Supervision Of Government And Private Programs; the interests of indigenous peoples have not been accommodated in the planning of the management rights of their areas because indigenous peoples are not involved in the planning. For example, in the case of PT Ledo Lestari in Semunying Jaya Village, which began operating in 2005 based on information from the local community, the company has never conducted any socialization or notification (coordination) to residents. The community considers that PT Ledo Lestari entered without permission. The socialization of Semunying Jaya is firstly a "standard of values" that must be considered in a society that holds strong social and cultural values and systems. However, the socialization was never carried out by the company. This condition is very possible for a negative verdict on the company's good intentions. Granting permission by Bengkayang Regent No. 13 / IL-BPN / BKY / 2004 dated December 20, 2004 for oil palm plantations has entered the territory of the indigenous people of Semunying Jaya as a source of life. The company evicted community gardens and cleared peat swamp forests and cut down tropical natural forests which the community used as customary forests.

The policy of granting permits to customary land is clearly contrary to the sense of fairness that must be accepted by the community because the legality issued by the Regional Government tends to ignore the legal products on it.

3.2 Principles Of Human Rights And Sustainable Development Goals On Recognition, Respect And Protection Of Indigenous Law Communities

In the case of the Iban Semunying Dayak Customary Law Community, this is related to the problem of discrimination in their rights to customary rights. In the state obligation stated in Article 6 paragraph (1) of Law No.39 of 1999 concerning Human Rights, reads: "In the context of upholding human rights, differences and needs in customary law communities must be considered and protected by law, the community , and government. This actually becomes a very important basis related to the recognition, respect and protection of indigenous and tribal peoples.

The emergence of corporate forest tenure faced by the Iban Semunying Dayak community has become an issue that has an impact on their lives. This can be seen from the lack of a vision of protection from the government of indigenous peoples related to design and development which then impacts on the issue of injustice and discrimination (Sugiwati, 2012). In Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it reads: "The state recognizes and respects the customary law community units along with 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, which are regulated in Constitution." The word "... As long as it's alive ..... " has the phrase that the recognition has a condition. The same thing in the sound of Article 4 paragraph (3) of Law No.41 of 1999 concerning Forestry, "Forest control by the state still takes into account the rights of indigenous peoples, as long as in reality it still exists and is recognized, and does not conflict with national interests" where " ... as long as the reality is still there and its existence is recognized ... " it becomes a problem. This is then connoted that the "recognition" given by the state to indigenous and tribal peoples has certain conditions.

In this case it is stated that conditional recognition has a subject-centric, paternalistic, asymmetrical, and monologal paradigm, such as: "The state recognizes", "the state respects", "as long as ... in accordance with the principles of the Republic of Indonesia" which presupposes the great role of the state to define, recognize, legitimize, legitimize existence, as long as indigenous peoples want to be conquered under state regulation or in other words "tamed".

This paradigm is not in accordance with the principles of equality and autonomy in democracy (Hardiman, 2006). According to Satjipto Rahardjo, “the four requirements in Article 18B paragraph (2) of the 1945 NRI Act as a form of hegemonial state power that determine the presence or absence of indigenous peoples.” (Rahardjo, 2005) The state wants to intervene, regulate everything, define, divide, carry out the division *(indelingsbelust)*, all of which are carried out by and according to the perception of the holders of state power. Meanwhile, according to Soetandyo Wignjosoebroto, “the four requirements, both ipso facto and ipso jure, would be easily interpreted as' claims being petitioned, with the burden of proof that indigenous peoples will still exist by the indigenous peoples themselves, with policies to recognize or not admit unilaterally in the hands central government power.” (Wignjosoebroto, 2005)

Changes in values and awareness as a result of globalization directly or indirectly affect the content and style of the national legal system (Sudaryatmi, 2012). This also

relates to international legal instruments that give responsibilities to governments in providing protection and respect for indigenous peoples (Ndaumanu, 2018). In the World Commission on the Social Dimension of Globalization, the study of aligning the objectives of the socio-economic, environmental, and development must defend the rights of indigenous peoples in their territories, resources, culture, and identity (Muazzin, 2014).

Regarding the recognition, respect and protection of indigenous and tribal peoples, in the Sustainable Development Goals, the Goal 11.4 of the SDGs is "Strengthening efforts to protect and preserve world cultural heritage and natural heritage." Then this should be good in terms of legal policy and regional autonomy in carrying out development of the community must be based on human rights principles. In this case, the following principles should be upheld with respect to, respect for and protection of indigenous peoples that are linked to the principles of sustainable development of the SDGs, namely:

a. ***Principle of Participation*** *:* in the rights approach presupposes the broad and deep involvement of the community as a party to development This principle is also a target in Goal 16.7 SDGs, which reads, "Ensuring responsive, inclusive, participatory and representative decision making at every level." Most of this participation is understood as the direct involvement of citizens and various social groups in determining a policy as well as how the policy must be accounted for through monitoring and evaluation mechanisms. Within the scope of indigenous peoples' issues, participation is always formulated as' full and effective participation 'in development.This requires that from the outset, communities must have been involved in making decisions about a development project in their customary territory. One of the main arguments is that they are the direct recipients of the project. Therefore participation in the context of indigenous peoples is in line with what is affirmed in the principles of FPIC (Free, Prior and Informed Consent).

b. ***Principle of Justice :*** The principle of justice should also include equality in socio-political positions and before the law. The justice meant must be in harmony with the five precepts of Pancasila, namely social justice for all Indonesian people. This means a justice in which the State plays an important role in the development and welfare distribution program for all Indonesian people This principle is also a target in the 16C Goals of the SDGs, which read: "Promote the rule of law at the national and international levels and ensure equal access to justice for all." In the context of indigenous peoples, social justice like this requires the functioning of a mechanism of control by the people of all state administrators. And it takes place through two channels, namely the legal and political channels. The first through an honest and decisive judicial process that treats all Indonesian citizens equally before the law, while the second through an honest, free and confidential election mechanism.

c. ***Principle of Transparency :*** Transparency in question is the disclosure of information to the public as subjects in development, which has certain rights and obligations towards the State in their position as citizens of Indonesia; transparency that supports the intelligence of indigenous peoples so that their prosperity as part of the "nation and Indonesian bloodshed" continues to increase; respecting the cultures of indigenous peoples as forming elements of Indonesia's national culture; which provides space for people to freely and autonomously

make decisions about their future. In Goal 12.6 SDGs read: "Developing effective, accountable and transparent institutions at all levels." Transparency is based on the assumption that bias in information will have an impact on the objectives to be achieved, therefore, information must be conveyed as clearly as possible to be understood by the person recipient of information, not the giver of information.

d. ***The Principle of Equality / the Principle of Non-Discrimination :*** The equality in question is the absence of differentiation based on skin color, education level, cultural differences / diversity, belief systems, so that the implementation of national and state development places indigenous peoples as one of the important components of the Indonesian nation to become smarter, more prosperous, and more capable of develop group and personal life within the community and within the nation and as citizens of the world. The principle of equality in indigenous peoples presupposes that there is equal freedom, an equal position, an equal treatment. Equality like this also requires state intervention. In target 10.3 of the SDGs "Ensuring equal opportunities and reducing disparities in outcomes, including by eliminating discriminatory laws, policies and practices, and promoting appropriate legislation, policies and actions related to legislation, policies and appropriate actions related to these legislation and policies"

e. ***Principles of Human Rights :*** The closeness of the problems of indigenous and tribal peoples and human rights issues is inseparable from their position, being vulnerable to neglect and not being included in the development process and even sacrificed. This situation makes the issue of human rights must be an inseparable part of the regulation of indigenous peoples by placing it as a principle. The main purpose of making human rights as a principle is to keep the indigenous (legal) community from losing its dignity as a human being.

f. ***Principles of Public Interest :*** In the context of the recognition and protection of customary (legal) communities, which constitute a minority, the application of the principle of Public Interest must be done differently because at the same time it is confronted with the principle of affirmative action. The principle of affirmative action allows the government to make policies that favor marginalized groups with the intention of having equal access to opportunities and enjoying rights. Consequences if done by considering the principle of affirmative action, the implementation of the principle of the Public Interest must ensure in advance that marginalized groups also have the same interests and concerns as the common needs being fought for. In addition, ensuring policies and programs that carry the issue of the Public Interest do not destroy identity and weaken the ability to organize by customary (legal) communities. The implementation of the principle of Public Interest with this spirit is possible if at the same time there is a sensitivity to respecting plurality. This means that marginal groups must be excluded from policies with a public interest theme.

4. Conclusion

Based on the discussion about the weak implementation of the recognition and protection of the Dayak Iban Semunying Jaya Indigenous Law Community, it can be concluded that there are several problems (1) Problems related to laws and regulations, (2) Problems as a result of policies and impartiality of the central government and regional governments on Indigenous Peoples, (3) Problems between Indigenous Peoples and Corporations, (4) Problems in the Natural Resources Sector, and (5) Problems of the lack of Indigenous Peoples' Involvement in Planning, Implementing and Supervising

Government and Private Programs. In this case it can be mentioned that until now it has been very difficult to protect the rights of indigenous peoples, where the state is still siding with corporations in order to attract investment. Things that obstruct investment activities are gradually being eliminated even willing to ignore the rights that exist within indigenous communities.

In the implementation that must be improved, the legal policies of both the central and regional governments should pay more attention to aspects of fulfilling human rights. This must then pay close attention to the applicable principles, such as participation, justice, transparency, fairness / non-discrimination, human rights principles, and the public interest. This must be the basis for its influence if it requires a human rights-based legal policy.

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