



THE ROLE OF THE GOVERNMENT IN THE RECOGNITION OF CUSTOMARY RIGHTS TO ACHIEVE ECONOMIC DEVELOPMENT OF CUSTOMARY LAW COMMUNITIES

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ABSTRACT

Every State wants a condition in which the people have a prominent level of welfare and prosperity, because that condition can reflect how a state has been successful in carrying out its development. The existence of development that can lead to prominent level of welfare and prosperity, certainly, shows the success of a state in achieving the state's goals. But in practice it is often found that the people of a state do not have a prominent level of welfare and prosperity due to the unprotected rights of the people. The lack protection rights of the people are one form of social problems; which of course requires a very fast handling. Therefore, in general, every state tries, so that the protection rights of the people can be fulfilled. Similarly, for the state of Indonesia, the protection of communal custom-derived land rights (ulayat rights) of indigenous peoples is one of the tasks that must be fulfilled by the government. The effort is not easy; therefore, needs a thorough study to overcome the problem. The method used in this research is a normative juridical method. The results of the study, indicate the role of government in regulating the recognition forms of the rights of indigenous peoples, especially, communal custom-derived land rights of indigenous people. In addition, there are various substances of legislation that must be regulated in order to recognize communal custom-derived land rights of indigenous people such as how to recognize indigenous peoples, their recognition procedures, indigenous peoples' obligations, and dispute resolution mechanisms. Finally, regulation about recognition of indigenous

peoples is expected to have an impact on the economic development of indigenous peoples itself.

Key Words: The Role of Government; Recognition of Communal Custom-Derived Land Rights; Economic Development; Indigenous People

PREFACE

BACKGROUND

In the middle of the development of the global economic challenge, the people of Indonesia is experiencing a process of development either physical or non-physical such as political, cultural, economic, legal and social development. As a linkage, every activity in this process of development should be done in order to achieve the goals of the state as mandated in the 1945 Constitution, which is to form an Indonesian state government that protects the entire Indonesian nation and all of Indonesia's bloodshed and to advance the general welfare, educate the life of the nation and participate in implementing public order based on independence, lasting peace and social justice. Considering the importance of development in order to achieve the national goals that have been desired, the study of various forms of development becomes very relevant. The study on this matter is able to help in providing inputs for the success of the national development.

In achieving the goals of the country mentioned above, sometimes there are parties who are forced to be sacrificed. This of course can cause conflicts of interest. While on the other hand, the country is in terrible need of security stability in carrying out these objectives. For the Indonesian people that consist of various ethnic groups, languages and ethnicities, even the wealth of biological natural resources has become more difficult to be felt. How the government must develop to achieve the goals of the country, but still need to maintain the interests of the parties who become stakeholders in the development. This happens for all aspects of people's lives, including indigenous peoples.

The issue of the recognition of indigenous peoples and their rights will remain an interesting issue to be discussed, bearing in mind that recently there have been a number of cases which have recently been found in ownership matters of these rights. There are still many cases regarding indigenous peoples that occur today, such as the case of the indigenous people of Meratus Dayak who live along the slopes of the Meratus Mountains, Tanah Bumbu Regency, South Kalimantan in April 2017 and cases of customary land in Kerinci Regency, Jambi in March 2017, and those the latest is the forced taking of customary land by the government in Cigugur on July 20, 2017.

The development in Indonesia should pay attention and recognize the rights of indigenous people. With the non-recognition of the rights of indigenous people, this can have an impact on the level of welfare of the indigenous people. There are still many indigenous

communities who in fact are people who have customary rights and natural resources in it are actually living below the poverty line. Whereas, it is the duty of the government to provide the welfare to all Indonesian people, including indigenous people in accordance with the mandate of the Preamble of the 1945 Constitution.

The number of onslaughts to indigenous people through various regulations that exist both at the central level and at the regional level all this time, has make it difficult for indigenous people to achieve welfare. The existence of various interests in the customary rights of indigenous people is suspected to make it difficult for them to be able to use their communal rights for economic development in the interests of their economic welfare.

By seeing the low welfare of indigenous people, it raises the notion that the state has not been able to stand with indigenous peoples. Various efforts that have been done all this times have not been able to change the condition of the welfare of indigenous peoples yet. Therefore, it is unsophisticated that a new paradigm is needed to overcome this problem, in which various components of the nation should be united in trying to overcome the problems faced by this, including the government component.

Based on the description above, it is emerged that the current role of the government is needed in terms of recognition of Indigenous people in Indonesia. These efforts are expected to provide legal protection for the existence of the Indigenous People. But of course

this role should be based on the values that built upon Pancasila so that it is hoped that welfare will be obtained for the Indigenous People as mandated in the Preamble of the 1945 Constitution of the Republic of Indonesia.

PROBLEM FORMULATION

Based on the background above, there are several issues that will be discussed, that is as follows: (1) What are the forms of recognition of Indigenous People customary rights by the government ?; (2) How do the regulations that should be made by the government related to the recognition of customary rights of the Indigenous People ?; (3) Are the regulations regarding the recognition of customary rights of the Indigenous People are able to support the role of the government in enhancing the economic development of the Indigenous People?

GOALS AND USAGES

The aims of this research are: (1) to explain and analyze the forms of recognition of customary rights of indigenous people by the government; (2) Explain and analyze various regulations that should be made by the government related to the recognition of customary rights of the Indigenous People; and (3) Explain and analyze the impact of the regulation on the recognition of customary rights of the

Indigenous People in supporting the role of the government to improve the economic development of the Indigenous People?

The usages of the research include theoretical and practical uses. Theoretical use is to conduct a theoretical study of forms of recognition of customary rights of Indigenous People in Indonesia. Meanwhile, practical uses are: (1) to be taken into consideration by legislators, the government and law enforcement agencies in facing problems regarding forms of recognition of customary rights of the Indigenous People; (2) Provide consideration to the government in determining the substance related to forms of recognition of customary rights of Indigenous People; (3) Provide input on the influence of the recognition and protection of customary rights of the Indigenous People in supporting the role of the government to support the economic development of the Indigenous People.

RESEARCH METHODS

This study uses a juridical-normative method. The juridical-normative method is a procedure of scientific research to discover the truth based on the logic of legal science from its normative side. The use of juridical-normative research methods is used to examine various laws, concepts, analysis, and history. (Ibrahim, 2005: 57).

The data required in this study, in accordance with the research method used, is in the form of secondary data which is the data of

literature. Secondary data consists of: (1) Primary Legal Material that is a literature material as the main material consisting of fundamental state norms (*staatsfundamentalnorm*). Various related regulations; (2) Secondary Legal Materials, that are legal materials whose substance supports in explaining primary legal materials such as books, articles, scientific journals, and electronic references which are referenced in analyzing problem formulation; and (3) Tertiary Legal Materials, that are materials which are supporting the primary legal materials and secondary legal materials.

Data processing analysis techniques in this study were carried out by compiling the necessary data related to the formulation of the problem. Data and/ or information that have been collected are then reduced by conducting an analysis of data and/ or information with the aim of being tested for the relevance to the issues discussed. Furthermore, the classification of data and/ or information is carried out according to the subject matter and the data are arranged systematically both hierarchically and chronologically. In the course of taking the conclusions, it is able to be done by assessing and analyzing using the logic of legal reasoning that can be helped by legal interpretation in the form of grammatical, historical, systematic, sociological, teleological and authentic interpretations, as well as legal construction in the form of analogies, construction and legal refinement to then draw a conclusion and related to the problem under study (Kusumaatmadja and Sidharta, 2012: 100-108).

LIERATURE REVIEW

Indonesia as a country that hold its own sovereignty and independence certainly makes the condition of the people who are advancing in all fields, educated, affluent and prosperous as one of the main objectives to be achieved. As stated in the Preamble to the 1945 Constitution which states:

“Kemudian daripada itu untuk membentuk suatu Pemerintah Negara Indonesia yang melindungi segenap bangsa Indonesia dan seluruh tumpah darah Indonesia dan untuk memajukan kesejahteraan umum, mencerdaskan kehidupan bangsa, dan ikut melaksanakan ketertiban dunia yang berdasarkan kemerdekaan, perdamaian abadi dan keadilan sosial, maka...”

“Afterward because of that to form an Indonesian nation that protects the entire Indonesian nation and all of Indonesia's bloodshed and to advance the general welfare, educate the life of the nation and participate in implementing public order based on independence, lasting peace and social justice, therefore...”

In an effort to fulfill the objectives of the establishment of the state, the rights of the people need to be recognized, including indigenous people. The recognition referred from the term of *recognition*. The recognition itself has the meaning in the form of a process, method, confession or recognition (Language Development and Coaching Agency, Major Indonesian Online Dictionary, accessed from <https://kbbi.kemdikbud.go.id/entri/rekognisi>). While *recognition*, according to *The Law Dictionary*, is *ratification, confirmation; an*

acknowledgement that something done by another person in the name has one's authority (The Law Dictionary, Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed, accessed from <http://thelawdictionary.org/recognition>). This definition means ratification, confirmation; a recognition that something done by someone else in the name of someone who has authority. Terminological recognition means the act of confessing or recognizing (Language Development and Coaching Agency, Major Indonesian Online Dictionary, accessed from <https://kbbi.kemdikbud.go.id/entri/aku>). Meanwhile, the word admits means declaring the right and legal (Ibid).

There are several recognition theories in the Legal literatures relating to state recognition that seem to be used in terms of recognition of indigenous peoples, in general, the two theories about recognition are (Sujatmkiko, 2012: 180): (1) Constitutive Theory, according to this theory, a country is considered to be born as a new country when it has been recognized by another country, so a country is considered to exist when it has received recognition from another country; (2) Declarative Theory, according to this theory, recognition does not create a state, but the state is a pure fact and in this case recognition is only as acceptance of the fact. Recognition is not a requirement for the birth of a country (Mauna, 2000: 62). Recognition is only a statement or justification (to declare) from the state which gives recognition that a new country has existed in the association of the international community.

Furthermore, after discussing recognition theories, it will be discussed about forms of recognition. Recognition in the context of recognizing a country is usually distinguished into *de facto* and *de jure* recognition. *De facto* recognition is a temporary recognition, because this recognition is shown to the facts about the position of the new government, whether it is supported by its people and is the governance is effective which causes its position to be stable (Ismi, 2013: 8-9). Whereas *de jure* recognition is a state's recognition of another country followed by certain legal actions (*Ibid*). *De jure* recognition is permanent which is followed by other legal actions (Kusnadi and Saragih, 1989, 82-83). In correlation the *de jure* recognition, it is important to understand the theory put forward by Soedikno, inter alia (Mertokusumo, 2000: 87): (1) Theory of Strength (*machtstheorie*) is a law that has the power to be applied sociologically if imposed by the ruler, regardless of being accepted or not by the citizens; (2) The Recognition Theory (*anerkennungstheorie*) is a law that has sociological force when it is accepted and recognized by the citizens.

In recognizing the Indigenous People, the government should base themselves on Pancasila. Furthermore, the recognition of indigenous peoples is expected to have an impact on the economic development of the Indigenous People. The economic development referred to by Sadono Sukirno is an effort to increase per-capita income by processing potential economic power into the real economy through investment, the use of technology, the replenishment of

knowledge, skills improvement, the addition of organizational and management skills (Sukirno, 1996: 33).

According to Graham Banock, there are several factors that influence the economic development, which are able to be grouped into two, that are economic factors and non-economic factors (Sukirno, 1996: 33). Economic factors that influence economic growth and development include natural resources (NR), human resources (HR), capital resources, and expertise or entrepreneurship. Meanwhile, non-economic factors include the social conditions of culture that exist in society, political conditions, institutions, and systems that develop and apply.

Based on the description above, it is able to be described the flow of thought as in Figure 1 below.

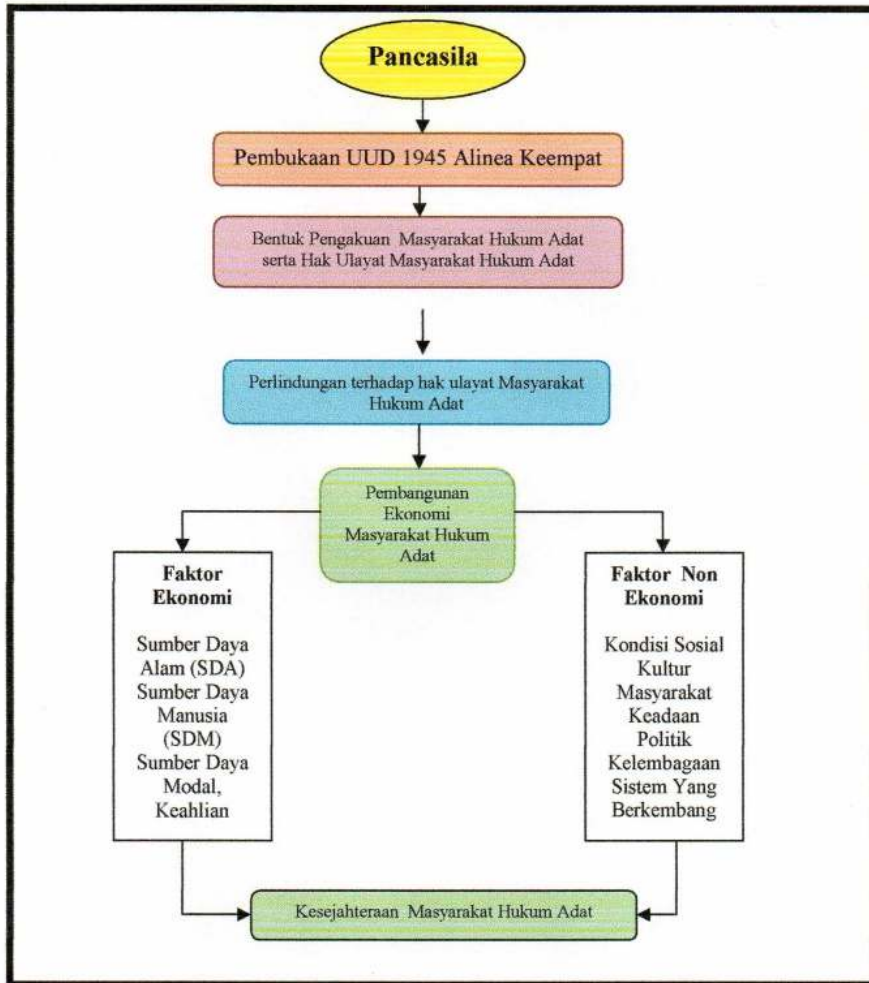


Figure 1 The Flow of Thought

RESULT OF THE STUDY AND DISCUSSION

The Forms of Recognition of the Indigenous People by the Government

All this time, the Indigenous People has obtained constitutional juridical protection as regulated in Article 18 B Verse (2) and Article 28 I of UUD NRI 1945. However, to reinforce the recognition of the customary rights of the Indigenous People there should be several studies on the form of recognition that the government able to do as a manifestation of the role of the government in protecting Indigenous People.

Based on the theory of recognition, so the Indigenous People are able to obtain constitutive and declarative recognition. If based on constitutive theory, Indigenous People is considered to exist, if other communities and the government recognize their existence. Constitutive recognition, of course, is not able to be granted. Other parties or the government will see and learn first about the existence of the Indigenous People. If the Indigenous People and its customs and laws do not contradict with Pancasila, UUD NRI 1945 and other positive laws, the Indigenous People will be constitutively recognized (Compare with Abdurrahman, 2015: 52-79).

It is different from the constitutive recognition, the recognition of the rights of the Indigenous People in terms of the declarative theory, the Indigenous People is considered to exist, because based on the fact the Indigenous People has indeed lived in Indonesia since ancient times. Therefore, if the Indigenous People is recognized constitutively and declaratively, the rights of the Indigenous People will receive legal protection.

Moreover, the recognition of the rights of the Indigenous People mentioned above, recognition is able to be assessed from the forms of recognition. The forms of recognition that are relevant to the Indigenous People are *de facto* and *de jure* recognition. The *de facto* recognition is a temporary recognition. This recognition is shown in the realities or facts that are existed. The form of *de facto* recognition has resemblance with the declarative theory in which the existence of Indigenous People is recognized because based on the fact that the Indigenous People has lived since ancient times in the State of Indonesia. While, *de jure* recognition is a recognition which is followed by certain legal actions. *De jure* recognition is permanent which is followed by several legal actions (Kusnadi and Saragih, 1989: 82-83). This *de jure* recognition is related to constitutive theory. Indigenous People are able to be recognized *de jure* if the Indigenous People carry out legal actions in accordance with Pancasila and the 1945 Constitution.

The legal action in *de jure* recognition, if it is associated with Soedikno's opinion, can be based on: (1) Theory of Strength (*machtstheorie*). Based on the theory, the rights of the new Indigenous People have sociological legal power if it is enforced by the authorities, regardless of whether they are accepted or not by the community. When using the theory of strength, those who are able to play a role in recognizing the existence of the Indigenous People are the government. The role of the government is expected to take legal action that able to accommodate the rights of the Indigenous People,

for example by making a law that regulates Indigenous People. Therefore, all elements of the community of Indonesia will recognize and protect the Indigenous People and will not act arbitrarily oppose the Indigenous People. If it is sourced from the authorities, the legal action has been carried out, it is expected that all elements of society are able to accept and recognize the legal action. The next is based on recognition theory (*anerkenntungstheorie*). Based on this theory, the rights of the Indigenous People have sociological power when they are accepted and recognized by the community. Finally, the law will be applied and recognized by all people without compulsion from the authorities (Mertokusumo, 1996: 87).

When it is connected with Hans Kelsen's opinion, there are two acts of recognition, that are political action and legal action (Soemadiningrat, (2002: 2) Political action in recognizing Indigenous People have a meaning of the state by way of the role of its government recognizes and desires to establish the political relations and the intercourse with the Indigenous People, the government should recognize the recognition politically (*politics of recognition*) as a legal subject, social and political subject that should be accepted by its existence and its rights (Tylor, 1994: 7-10). While legal action is determined by national law produced by the government to establish the facts related to Indigenous People in a concrete case (Alting, 2010: 64).

In addition to the 1945 Constitution, virtually there are enough laws and regulations adjusting the recognition of the existence of the

Indigenous People. Figure 2 below are some regulations that provide protection for the rights of the Indigenous People.

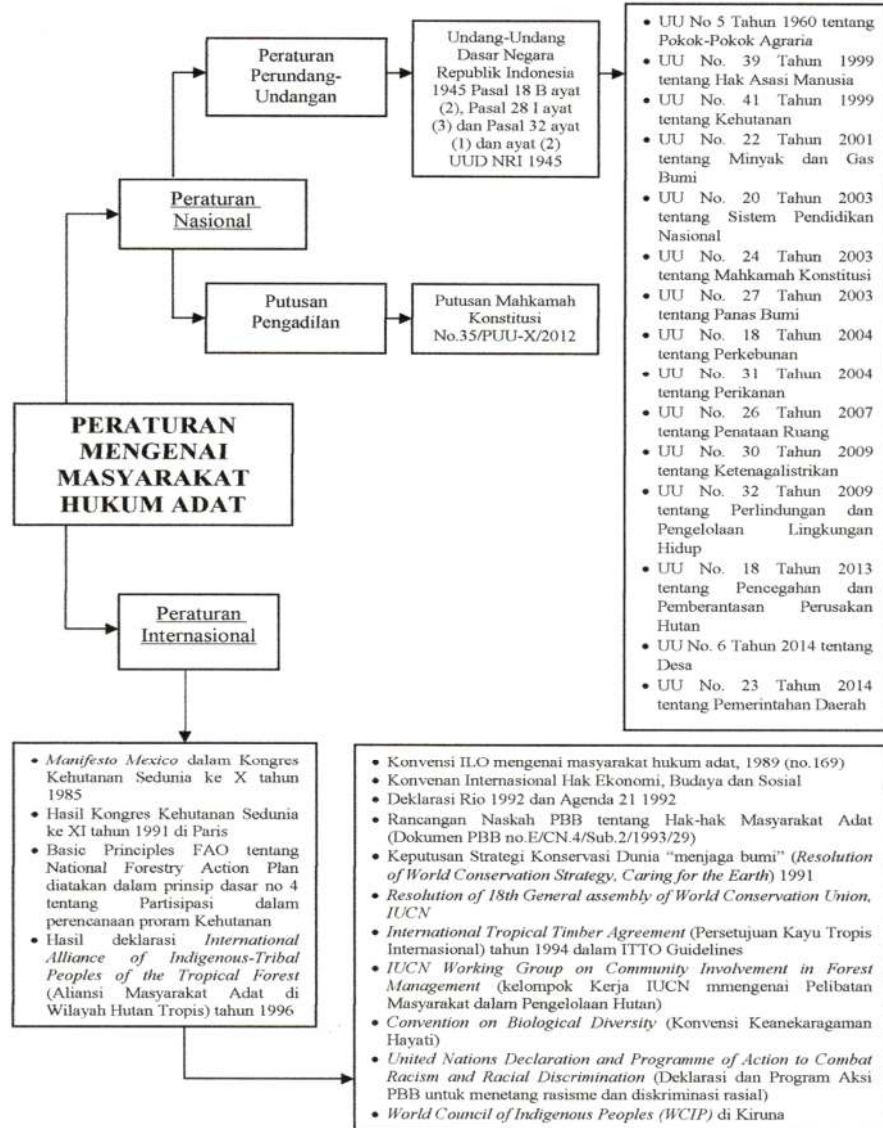


Figure 2: Regulations that Provide Protection for The Rights of the
Indigenous People

Nevertheless, according to Jimly Asshiddiqie, there are several cases that need to be considered related to the recognition, that are: (1) Recognition is given to the existence of an Indigenous People and its traditional rights; (2) The existence that is recognized is the existence of Indigenous People's units; (3) The Indigenous People are indeed alive (still alive); (4) In a particular environment (*lebensraum*), (5) recognition and respect are given without neglecting the dimensions of eligibility for humanity in accordance with the level of development of the existence of a nation; and (6) recognition and respect cannot diminish the meaning of Indonesia as a state in the form of NKRI (Asshiddiqie, 2003: 32-33).

The description above has illustrated how the forms of recognition that able to be done by the government towards the Indigenous People, but by still paying attention to various requirements so that the recognition is not arbitrarily determined and able to have strong legal certainty.

**The Arrangements that Supposed be made by the Government
Related to the Recognition of Customary Rights of the Indigenous
People.**

Recognition of the Indigenous People in the life of state and nation has been seen in the regulation concerning the Indigenous People which is scattered in many national laws and regulations. At the present, the protection and recognition of the Indigenous People are formulated in various laws and have been included in the National Legislation Program, but they have not provided much protection for Indigenous People. Some of the substances of the regulations that need to be included in relation to the recognition of Indigenous People's rights are as follows:

Table 1 the substance of the regulation in the context of recognition of the rights of indigeneous people

No.	Material	Reason	Substance
1.	Principle in regard to the recognition and protection for the Indigenous People	Recognition of the Indigenous People still has to pay attention to the national importance (National importance are intended to maintain the unity and integrity of the Republic of Indonesia and ensure the continuation of National Development, in accordance with the third principle of Pancasila), local wisdom (because the Indigenous People has wealth that should be considered to achieve the welfare of the Indigenous People) therefore there needs to be a principle of national importance so that is not because of the recognition of the Indigenous People causes the emergence of	Provisions should be made regarding the principle of national importance

		national integration in accordance with the third principle in Pancasila	
2.	The Characteristics of the Indigenous People	In the formulation of the characteristics of the Indigenous People should be based on what is and happens in the society. The characteristics possessed by customary law are not only because they have customary law, but also there are other things such as indigenous culture, local wisdom, and others, as of it needs to add other elements so that the characteristics of Indigenous People become complete and adequate.	Provisions about other elements of customary law characteristics such as local wisdom, indigenous culture and others in the occupancy of the characteristics of the Indigenous People need to be made
3.	The way of the recognition and protection of the certain rights need to be included	<ul style="list-style-type: none"> • The procedure for recognizing and protecting the rights of the Indigenous People should aim to achieve public welfare, especially the welfare of the Indigenous People • The procedures for the protection and recognizing of the rights of the Indigenous People should also be implementative so that they are able to be fulfilled by the Customary Law Community. As is the implementation of the regulations, so that the Indigenous People feel that their rights are guaranteed and their welfare is achieved. • The achievement of 	Provisions should be made regarding the process of protecting and recognizing the rights of the Indigenous People with a simpler process and taking into account the conditions and interests of the Indigenous People concerned.

		<p>prosperity is able to bring a sense of unity and unified of the Indigenous People towards the country so that the goal of the third principle of Pancasila which is <i>Persatuan Indonesia</i> (The unity of Indonesia) is achieved.</p>	
4.	<p>Further explanation regarding the procedures of the recognition and protection of the rights of the Indigenous People</p>	<ul style="list-style-type: none"> • Indigenous People generally do not have written data or documents because of the nature of the Indigenous People in Indonesia itself which is not familiar with a documented archiving process while the identification process needs well-documented written data. • The difficulty of the identification process makes many Indigenous People are not well identified. Therefore, it is necessary to simplify the process of identifying the Indigenous People. • Difficulty in the identification process of the Indigenous People due to several things, that are as follows: <ol style="list-style-type: none"> 1. The overlong procedure. 2. It needs more times. 3. It is not equitable. 4. It is not taking notice to 	<p>Provisions should be made regarding different procedures other than archival concern. As in evidence in the general proceedings.</p> <p>This case by taking into account the existence of history that is difficult to identify because the Indigenous People tend not to carry out the written documentation process and the affluent of customary law will be very difficult to find the right criteria</p>

		<p>the importance and conditions of the Indigenous People.</p> <p>5. The recognition requirements which are difficult to fulfill by the Indigenous People.</p>	<p>regarding what is meant by the traditional heritage.</p>
5.	<p>The Rights to the Customary Land, Customary Territories and Natural Resources for Indigenous Peoples</p>	<p>Eventually, the regulation was intended for the prosperity of the community in accordance with the mandate of the Fourth Alinea of the Preamble of the 1945 Constitution of the Republic of Indonesia. Thus, the regulation regarding customary territories, customary land, and natural resources should fulfill the welfare of the Indigenous People.</p> <p>Regulations regarding the customary territories, customary land and natural resources of the Indigenous People are considered unable to provide prosperity because:</p> <ul style="list-style-type: none"> • The lack of recognition of collective rights in customary land does not accommodate the ownership of the customary land as a community property. • The UUPA does not recognize the collective ownership in a Land Rights. • It is necessary to establish a regulation regarding the existence of collective 	<p>Provisions should be made that recognize the collective ownership and able to be recognized as a Land Rights. This recognition needs to be obviously regulated and followed by regulations which are further stipulated in the laws and regulations underneath this regulation because this regulation will require a lot of adjustments and will be very technical.</p>

		land ownership which capable of becoming a <i>lex specialis</i> in the regulation of Land Rights.	
6.	Environmental Rights	The Indigenous People should be the community of the State of Indonesia to get the same protection as other communities.	Provisions should be made regarding the obligation of other parties who are concerned to be obliged to protect the right to the living environment so that the Indigenous People receive environmental protection and they are obliged to receive environmental restoration in the damaged customary territory.
7.	Right to Carry out the Customary Law and Justice	When the dispute ensued, the method of adjudication is used for the first time by means of consensus. It is better if customary justice is used as the last option so that it does not take a lot of time and in the end also if it undergoes the customary court there is not necessarily peace between the dispute parties.	Provisions should be made regarding procedures when the dispute is ensued related to the rights of the Indigenous People then resolved in advance by means of consensus.

8.	Indigenous People Obligations	All of the obligations of the Indigenous People need to be interpreted in the circumstance of Pancasila so that what is the obligation of the Indigenous People is not considered as a burden, but it is a joint effort to achieve mutual prosperity.	Provisions should be made regarding the obligations of the Indigenous People, especially in relation to maintaining the integrity of the Unitary State of Republic of Indonesia.
9.	The Empowerment of Indigenous People	This regulation will be better if the purpose or the reason why hold an empowerment of the Indigenous people is added so that economic development occurs in order to achieve the goals of the state which is able to be found in Paragraph 4 of the Preamble of the 1945 Constitution of Indonesia.	Provisions about the empowerment of Indigenous People should be made.
10.	The Duty and Authority of the Government	There are still several deficiencies in the the duty of the government, Government duties that already exist are not enough to accommodate the recognition and protection of the rights of the Indigenous People.	Provisions should be made regarding the duties of the government, especially related to the protection of the Indigenous People's rights.
11.	Customary Institution	The regulation regarding the customary institutions will certainly have a positive impact. But it is necessary to enhance the function of the customary institution. In the case of a dispute happens, the Indigenous People resolves the	Provisions should be made regarding the function and role of the customary institutions in which this

		dispute within this customary institution.	customary institution is a place to resolve disputes relating to Indigenous People.
12.	<p>Dispute Settlement Mechanism:</p> <p>a. Internal Dispute</p> <p>b. A dispute among the Indigenous People</p> <p>c. Dispute between the Indigenous People and other parties</p>	<p>The existence of special provisions regarding the settlement of disputes for the Indigenous People shows that there is serious attention from the legislator that in resolving disputes, the Indigenous People has a special style. The settlement of Indigenous People's disputes certainly requires more knowledge from judges who will later settle the case in accordance with their respective customary law. The existence of a dispute settlement mechanism for the Indigenous People shows that the settlement of the Indigenous People's dispute is not able to be equalized with the settlement of ordinary disputes. Eventually, it should be reviewed the characteristics of customary law itself.</p>	<p>Provisions should be made regarding the dispute between indigeneous people.</p>
17.	Sanctions	<p>Sanctions in a regulation are certainly exist as a consequence of the violations of the obligations or prohibitions as regulated in the relevant regulations. This is aimed to achieve justice, in accordance with what is stated in the fifth principle of Pancasila that is <i>Keadilan Sosial</i> (Social Justice). Prohibitions that are not regulated good enough and obligations that</p>	<p>Provisions should be made regarding the regulation in the consequences of the obligations breach of the Indigenous People.</p>

		are not good also make the rules regarding sanctions are not able to stand optimally. Therefore it is necessary to improve in the articles regarding the sanctions.	
19.	The role of the community	To establish every law to be properly implemented as a positive law, certainly needs to have a community participation in it. So that, the participation of the community in an absolute regulation needs to be exist.	There is necessity to establish provisions about the community who play a role in realizing a common prosperity that is the welfare of indigenous people as well as community in general.

The Regulations Regarding the Recognition of Customary Rights in the Indigenous People in Supporting the role of the Government to Improve the Economic Development of Indigenous People.

The discussion regarding the role of the government in the recognition of customary rights of the Indigenous People cannot be separated from Friedman's opinion on the role of the state in the concept of a modern state, that is: "*... first, as protector, secondly, as disposer of social services, thirdly, as industrial manager, fourthly, as economic controller, fifthly as arbitrator*". Out of Friedman's opinion, it can be concluded that the recognition of customary rights is the first

step in protecting the customary rights of the Indigenous People themselves. All of these are something that is not able to be separated from the role of the government in implementing the principles of the modern state. By involving the government as a protector of society, the state which in this case is represented by the government is also able to act as a supporter of economic development so that the level of public welfare is achieved, including for the Indigenous People.

The role of the government as in the concept of a modern state, if it is associated with the Indigenous People, now has experienced this development indicated by the existence of various recognitions of the rights of indigenous peoples that is in the manner of the recognition of 9 customary forests as belonging to indigenous peoples. However, this recognition is not enough if it is not associated with the fourth concept of Friedman that is as an economic controller, which also signifies supporting the economic development.

For all this time, the discussion that has been carried out regarding the recognition of customary rights is how the recognition effort is and how the procedures should be carried out. But when the recognition has been obtained how can the efforts are made so that the economy of indigenous people is able to be developed infrequently touched. This is where the increasing role of government is needed. The increasing role of the government should also be an important discussion, considering that it is impossible to leave indigenous peoples in the current state. In general, indigenous peoples, when they are reviewed from an economic perspective, are difficult to be able to

develop their economy because the recognition and protection of customary rights in several areas has not yet been obtained, in addition there are limited human resource capabilities.

The mentioned conditions, if it is associated to Graham Banock's opinion on several factors that influence economic development, accordingly the conditions of indigenous peoples have several factors that are able to support their economic development, which are economic factors and non-economic factors. The description is able to be seen in the description below.

a. Economic factors

As described above, economic factors that influence economic growth and development inter alia natural resources (NR), human resources (HR), capital resources, and expertise or entrepreneurship. Indigenous Peoples, if their customary rights are recognized, will have legal certainty over their rights to natural resources which include land and natural wealth such as soil fertility, climate / weather conditions, forest products, mining and marine products which are able to be a contributing factor to its economic development. Furthermore, human resources also determine the success of national development through the number and quality of the population. The large population of indigenous peoples is a labor that has the potential to produce production, but it should be supported by the quality of indigenous peoples and different skills of expertise from the

expertise of other human resources to produce goods and services that are different from other resources so that there is a diversification of products. Indigenous people should be having a competitive advantage so that their economic capacity is able to be increased. The superiority of competitiveness covers the development of community resources, enhancement of skills possessed by indigenous peoples and the entrepreneurial ability of indigenous peoples, as well as the management of natural resources who have an environmentally conception. For example, the ability to produce product diversification is the Tenganan Pangrisingan community in Bali who are able to sell services and products that are different from other Balinese people. In addition to the ability of other skills needed by indigenous peoples, for example processing raw materials from nature, it becomes something that has a higher value or also called the production process. For example, a typical product of the Baduy people began to penetrate the market, through the role of the Baduy people in Ciboleger Village, Leuwidamar Subdistrict, which began to engage in Small and Medium Enterprises (UKM). Meanwhile, capital resources are needed to process the raw material. The formation of capital and investment is intended to explore and process wealth. Capital resources in the form of capital goods are very important for the development and continuity of economic development because capital goods are also able to increase the productivity. The facilitation of Ultra Micro financing (UMI) in a collaboration with the Ministry of

Finance is an example of the role of the government in economic development efforts. Where the UMKMs crafters are indigenous peoples who are starting to grow their businesses, they are able to access the People's Business Credit (KUR) and able to obtain loans free of collateral.

b. Non-Economic factors

In relation to non-economic factors that embrace the social culture and institutional conditions that exist in indigenous peoples if they and the customary institutions are open up to positive developments in society, it is able to encourage community economic development. The thing that drives the economic development of other indigenous peoples is the problem of government legal politics. In this case, will the government's politics of law be directed to the importance of Indigenous People? As stated by Mahfud MD, the politics of law in the system of modern Indonesia is easy to find because it is indeed a characteristic of the modern state that is closely related to the legal system as the main role model. Basically, a modern nation is a nation that accepts and implements new innovations, for the sake of a continuously increasing life to become a better life for the people. Moreover, the power to govern in a modern state is based on law, meaning that in a State Law, a government that is formed democratically only enforces its political power, limited to the framework of the constitutional mandate (Mahfud, 2012: 3). For economic development, a strategic role for the

government is needed. The actions that are able to be taken to create a hermony from the government for indigenous people are in addition to what has been done, that is making regulations relating to recognition of indigenous people in the form of regulations that provide procedures for recognition and protection of the rights of indigenous people, implementing the programs which aims to encourage the recognition, protection and compliance of the rights of indigenous people, the government should also make regulatory provisions relating to increase the competitive advantage of indigenous people so that people are able to compete against the development of society.

Furthermore, the role of the government is needed in making regulations other than regulations regarding the recognition of the rights of indigenous peoples which able to support all economic and non-economic factors so that the economic development of indigenous people is able to be improved. Because of without other regulations, the ultimate goal of prosperity is difficult to achieve. The government has a very important role to support and facilitate indigenous people to be able and ready to compete through efforts in making various regulations which are able to increase supplier's bargaining power (*bargaining power*), overcome the threat of substitute products, and help in increasing the buyers' bargaining power (*bargaining power of buyers*), and the last is through the ability to increase

competitive ability in competition among members (*rivalry among competitive firms*).

Moreover, the government should also take away various regulations which are not harmonious which are able to cause the rights of indigenous people are not protected. Conduct socialization of indigenous peoples so that they are able to use various existing regulations to protect customary rights for the economic development of indigenous people. Supervise policies in terms of recognizing and protecting the rights of indigenous people. Provide a means of resolving conflicts between indigenous peoples and state agencies and/ or other legal subjects. Eventually, the government needs to make regulations that support the economy and prosperity of indigenous peoples who have an environmentally conception. Thus, it is expected that the new role of the government is able to create economic development of indigenous peoples as mandated by the 1945 Constitution.

The role of the government is important to be held considering the conditions of the world are constantly moving, making it impossible to escape the effects of globalization. Indeed, on the one hand, the existence of globalization has positive consequences, that are entrepreneurs who are trying to always expand. They should create a strategy that is able to balance opportunities and threats, and this case has resulted in a change in strategy and organization known as the global expansion strategy. They strive to improve competitiveness which the course id to supports the strength of the company and

reduces its weaknesses by finding areas of new business areas including the territory of indigenous peoples. On the other hand, the existence of these companies whose goal is profit oriented are able to be a major threat to indigenous people. Taking into account that Indigenous People in the capabilities of their Human Resources are still not able to compete in the management of natural resources in their customary territories, as of what happens is that natural resources in indigenous peoples' lands have been exploited but there have been no significant changes to the prosperity of their own indigenous communities due to their customary territory exploitation.

The increasing of the role of the government through a variety of regulations is expected to ensure the equality of the rights of indigenous people to materialize and avoid exploitation by investment companies both foreign investment and domestic investment on customary rights and the company in carrying out its business should be constantly paying attention to the prosperity of society so that economic development of the indigenous people is able to grow and sustain regular and stable development. As well as supervising that the externalities of economic activities that harm society is able to be avoided or reduced.

CLOSING

CONCLUSION

Based on the description above, the conclusions that can be drawn are as follows:

1. The forms of recognitions of the customary rights of the Indigenous People by the government are consist of: (1) Declarative recognition, the Indigenous People is recognized for its existence because the Indigenous People, based on the fact, has actually lived in Indonesia since ancient times; (2) The *de facto* recognition, the Indigenous People is recognized based on the existing facts, the Indigenous People is recognized because they, based on the facts, already lives in the State of Indonesia, this recognition is identical to declarative recognition; (3) *De jure* recognition, Indigenous People is recognized by other parties whose recognition is indicated by carrying out legal actions. In this recognition also contained two theories, that are the Theory of Strength (the Indigenous people was recognized because of the coercion of the authorities) and the Theory of Recognition (Indigenous People was recognized without coercion from other parties); and (4) Politically recognized (politics of recognition), the Indigenous People is recognized as a legal subject, social and political subject as well as the recognition of their existence and rights. Various forms of recognition should be based on the values that are contained in Pancasila.
2. The regulations that should be made by the government relating to the recognition of customary rights of the Indigenous People, inter alia, principles concerning the recognition and protection of the Indigenous People, the characteristics of the Indigenous People, further explanation of the procedures for recognizing and protecting the rights of the Indigenous People, the right to

customary lands and customary territories, and the natural resources of the Indigenous People, the right to the living environment, the right to carry out customary law and justice, the obligations of the Indigenous People, the empowerment of Indigenous People, customary and traditional institutions, dispute resolution mechanisms.

3. The regulations regarding the recognition of customary rights of the Indigenous People are able to support the role of the government in enhancing the economic development of the Indigenous People. This is because the initial purpose of the regulation itself is prosperity for the community so that the regulation regarding the recognition and protection of the rights of the Indigenous People is expected to be able to improve the economic development of the Indigenous People. Therefore, the existing regulations for recognizing and the Indigenous People should bring economic development to the Indigenous People. Eventually, the main objective of the Indonesian state as stated in the Fourth Paragraph of the NRI 1945 Constitution is able to be realized.

SUGGESTION

Based on the description in the previous sections, research suggestions can be submitted as follows. (1) It is recommended to the government to make laws and regulations which regulate the granting of *de jure* recognition to the Indigenous People which is indicated by the official recognition of the government followed by certain legal

actions; (2) It is recommended to the legislative and government agencies to make laws and regulations based on Pancasila which contains the substance, inter alia, the principle of national importance to maintain the unity of the Republic of Indonesia; and (3) The realization of the prosperity of community that focuses on the Indigenous people begins with the existence of a form of recognition of the existence of the Indigenous People. The recognition is made for the Indigenous People will guarantee the rights that should be owned as stated in the RUU PPH of the Customary Law. The RUU PPH on Indigenous People will cover many gaps that can erode the rights and obligations of the Indigenous People itself and become an involucre for all the activities that they carried out.

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