



THE RECOGNITION AND LEGAL PROTECTION OF CUSTOMARY LAW SOCIETY OVER LAND

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ABSTRACT

This paper aims at determining the recognition and legal protection of indigenous and tribal peoples on land and natural resources in the perspective of legislation. It uses normative research with literature identification approach, legislation such as Law Number 5 of 1960 on the Basic Regulations of Agrarian Principles (BRAP), and other laws and relevant regulations to this research. The data collected from primary, secondary and tertiary legal materials are analyzed qualitatively, systematically arranged and presented descriptively. Basically the recognition and legal protection of indigenous and tribal peoples has been determined in Article 3 of the BRAP and Article 18 B paragraph (1) of the 1945 Constitution and other sectoral laws and regulations, it is just that there is no synchronization or harmonization between various sectoral laws and regulations governing the recognition and protection of the rights of indigenous peoples.

Keywords: Legal Recognition and Protection; Customary Law Community; Ulayat Land

INTRODUCTION

BACKGROUND

Indigenous people are a community with a communal form. Communal community is a community in which all areas of life are carried out in an atmosphere of togetherness (Harsono, 2003: 187). Indigenous peoples exhibit a close relationship in interpersonal relationships and the process of social interaction that occurs among people creates certain patterns called *a uniform of customary of behaving within a social group* (Soekanto, 2005: 67).

In the life of indigenous people, the land is understood as a geographical and social entity that has been inhabited for generations, controlled and managed by indigenous people as a marker of social identity inherited from their ancestors. This cultural and territorial identity is the source of collective rights for indigenous people and these rights are constitutional rights stated in the 1945 Constitution and its amendments (Ihromi, 2001: 210). The existence of customary law as a component of national law is still inferior to state law. This is an evident in the recognition of customary land of indigenous people (Harsono, 2000: 185). Whereas the existence of indigenous people and their traditional rights as other human rights are the rights inherent in indigenous people. The traditional rights of indigenous people are rights which are *ohtohon* or original rights that are a sign of the existence of an indigenous people.

In the context of legal politics in Indonesia, the existence of indigenous people and their traditional rights has a long history. Before the Proclamation of the Republic of Indonesia in 1945, the Dutch colonial government, which had long-standing authority in

Indonesia, applied the politics of legal pluralism by dividing the legal system into three legal categories, there are western civil law, foreign eastern law, and indigenous law for the indigenous population. After colonialism, the legal unification process strived by Indonesian Government's from the 1945 Constitution to Law No. 5/1960 concerning on Agrarian Principles (UUPA). At the beginning of the republic, Indonesian legal thinkers attempted to adopt customary law which became the basis for the regulation of customary rights to be used as a foundation for the development of national law. This faced major challenges because the social system of the Indonesian people consisted of various ethnic groups and had their own respectively locality.

One of the violations and contraventions of the rights of indigenous peoples is the shooting by officers against the Dayak Meratus people, 23 October 2014. At that time, a Dayak Meratus person was shot dead and three people were injured when the Tanah Bumbu Regional Police with 35 *Sabhara* and *Reskrim* (Indonesian Police Units) personnel conduct raids on illegal logging in Baturaya, Menteweh District Tanah Bumbu South Kalimantan. The raid was carried out because the community was accused of illegal logging in the area that entered the concession of the HPH Company, PT Kodeko Timber. The problem is that the company's concession enters the Batu Lasung customary area. This shooting is clearly a contrary situation to the desire of many people for the recognition of the rights of indigenous people. What is experienced by Dayak Meratus residents is

only one example of various violations and contraventions of the rights of indigenous people. Various problems faced by indigenous people have not been able to be resolved properly in the mechanism of state law. Whereas, in the 1945 Constitution, there have been a guarantee from the state to recognize and respect the existence and traditional rights of indigenous people (BPHN, 2014).

PROBLEM FORMULATION

Based on the description on the problem's background, this study will discuss how is the legal recognition and protection of indigenous people on land and natural resources?

RESEARCH GOALS

This study is aimed to know and understand the legal recognition and protection of indigenous people on the land and natural resources in the constitution of the Republic of Indonesia and various other laws and regulations.

RESEARCH METHOD

The theoretical framework in the article uses the theory of legal certainty, as it is known that the purpose of law is to protect humans. The law is a collection of legal norms based on legal principles. So that legal norms are able to protect human interests and

create discipline in society, the Law should be implemented. Through the implementation of the Law, the law is able to be enforced, even though there are obstacles in its enforcement. Law enforcement includes 3 (three) elements, that are legal certainty, legal benefits and legal justice. The method used is normative juridical, which is to discuss the recognition and legal protection of indigenous people on land and natural resources (Salim, 2008: 15).

LITARATURE REVIEW

Based on information and literature searches conducted on the results of previous research and specifically related to writing about "Legal Recognition and Protection of Indigenous People on Land and Natural Resources" the same research title was not found, but research on the work scientific that highlights the same field with different themes, that are: (1) Mawardi, with the theme Implications of Indigenous People's Rights in the Management of Forest Land in North Lombok District; (2) Muslim Andi Yusuf, with the theme of Legal Certainty of the Rights of Indigenous People on Land and Natural Resources; and (3) Rosmidah, with the theme The Recognition of the Customary Rights of the Indigenous People and the Obstacles of the Implementation;

RESULTS AND DISCUSSIONS

Recognition to the Indigenous People in the Constitution

The concept of indigenous people in Indonesia was introduced by Cornelius Van Vollenhoven, which examined deeper on the indigenous people. Ter Haar, van Vollenhoven's student, gave an understanding of indigenous people who were regular community groups, settled in a particular area, had their own power, and had their own wealth in the form of tangible and intangible things, where the members of each unit experienced life in society as a natural thing according to nature and no one among the members has the mind of the tendency to dissolve the bond that has grown or abandoned it in the sense of breaking away from that bond forever (Sembiring, 2017: 154).

Regarding the indigenous people, the formation is theoretically due to the bonding factor that binds each member of the indigenous people. The bonding factors that make up indigenous people theoretically are due to genealogical factors (descent) and territorial factors (region) (Sari, 2009: 25). Indigenous People also appear to us as legal subjects (*rechtssubjecten*) who can fully participate in the legal relationship (Ter Haar, 1987: 6). The community is able to be said to be an alliance that limits the existence of regular mobs that are permanent by having their own power, as well as their own wealth in the form of tangible and intangible objects (Ter Haar, Ibid).

Indigenous peoples such as *desa* (villages) in Java, *marga* (clans) in South Sumatra, *nagari* in Minangkabau, *kuria* in Tapanuli, *wanua* in South Sulawesi are community units that have the equipment to be able to stand alone who have the legal unity, the unity

of authority and the unity the living environment is based on mutual rights to land and water for all its members. The familial laws (patrilineal, matrilineal, or bilateral) influence the system of government, especially based on agriculture, livestock, fisheries and collection of forest products and water products, added with a little bit of hunting wild animals, mining and handicrafts. All the members are equal in their rights and obligations. Their livelihood is characterized as communal, where mutual cooperation, helpfulness, feels and always has a big role (Sebiring, 2017: 16).

In the development of the term indigenous people, the term customary people was also formulated and reinforced by the Congress of Indigenous People of the Archipelago in March 1999. According to the Congress of Indigenous Peoples of the Archipelago, indigenous people are communities that live based on ancestral origins over generations, customary territory, which has sovereignty over land and natural wealth, socio-cultural life, which is regulated by customary law, and customary institutions that manage the sustainability of people's lives. If we look at the law in Indonesia, defining indigenous people in various regulations found various terms to refer to indigenous people. The term starts from remote indigenous communities, customary people, indigenous people, customary law community, and traditional communities that show pluralism of indigenous peoples (Yusuf, 2015).

As an effort to understand the context of the legal protection of indigenous people, it is necessary to examine how the Indonesian

constitution actually regulates the recognition and guarantee of the rights of indigenous people. This is very much related to the modern state, the constitution, and the protection of indigenous people. Modern countries emerge together with the notions of democracy, human rights and constitutionalism. In a modern state, the constitution is a document that contains the agreement of all components within the country to achieve a common goal that outlines ideals, rights that should be fulfilled and the government's obligation to fulfill these rights. The constitution is present as a reflection of social relations within its citizens. Therefore the constitution is able to also be referred to as a monuments, an anthropological document because it expresses the cosmology of a nation, embodies the ideals, hopes and dreams about building a country.

In relation to the basic rights of indigenous peoples in the life of the state, they also experience challenges that are not easy. Since constitutionalism requires the positivisation of human rights into constitutional norms, as a form of social contract, at that time the rights of developing indigenous people were written into constitutional texts. The rights of indigenous people are natural rights born from social processes and passed on from generation to generation. When indigenous people are sheltered by a country, the challenge is the need to positivise these rights into a written constitution. Positivisation of community rights is an attempt to reconcile the modern laws used to organize state life (secondary rules) with the original laws that exist within society communities (primary

rules). Although basically the existence of human rights depends on their positivisation into written law, but the development of state life that relies on written law makes positivisation of human rights a very important issue.

Hence, the existence of indigenous peoples and their traditional rights become a dilemma. On the one hand because it requires positivisation, the existence and traditional rights will only be recognized if it's regulated in the written law made by state institutions. In *a contrario*, it can be said that, if it is not legally recognized, the existence of the indigenous people is considered to be lost or not-existed. Whereas the existence of indigenous people and their traditional rights as other human rights are the rights inherent in indigenous people. The traditional rights of indigenous people are rights which are *otohton* (autonomous) or original rights which are a sign of the existence of an indigenous community. The traditional rights of indigenous peoples are not entitlements, so that without being written in the constitution or in the form of other written laws made by the state, the traditional rights of indigenous people remain to be institutions that live within indigenous peoples (Steny, 2009).

The discussions about indigenous people and their traditional rights in the discussion of the 1945 Constitution then resulted in Article 18 of the 1945 Constitution which links the existence of indigenous people to the government system. Article 18 of the 1945 Constitution which states:

"The division of the Indonesian region into large and small regions by forming a government structure is stipulated by the Law by considering and remembering the basis of deliberation in the system of state governance, and the rights of origin in regions that are Special."

Based on the aforementioned Article provisions, the issue of origin rights or customary rights is reduced to a matter of governance. The privileges of the old kingdom and the composition of the alliance of indigenous people and their origin rights are respected in order to sustain the central government. The local kingdom and the alliance of indigenous people are expected to be subordinate governments that are integrated with the superiors' government (BPHN, 2014: 20).

One of the issues discussed later is how to place indigenous peoples along with their traditional rights into the framework of a new constitution carried out through amendments to the 1945 Constitution conducted in 1999-2002. The most important progress in recognizing customary rights in the Constitution in Indonesia is found as a result of the second amendment to the 1945 Constitution. The progress is seen in Article 18 B verse (1) and verse (2) and Article 28 I verse (3) of the 1945 Constitution. Article 18 verse (2) stipulates that, "The State recognizes and respects the indigenous people units and their traditional rights as long as they are alive and suitable with the development of society and the principles of the Unitary State of the Republic of Indonesia, which is regulated in law".

This provision is the legal basis for indigenous peoples' rights, Article 18B verse (2) constitutes a constitutional basis for indigenous people who declare declaratively that the state recognizes and respects the existence and rights of indigenous peoples, then recognition of the rights of indigenous people is confirmed by the provisions of Article 28I verse (3) of the 1945 Constitution, which states, "Cultural identity and the rights of traditional communities are respected in accordance with the development of times and civilizations". If it is associated with the provisions of Article 33 verse (3) of the 1945 Constitution, it turns out that it has a close relationship with the provisions of Article 18B verse (2) of the 1945 Constitution, Article 33 of the 1945 Constitution states that, "The earth, water and natural resources contained therein are controlled by states and used for the greatest prosperity of the people".

The formulation of the provisions in the regulation still provides limitations or requirements so that indigenous peoples are recognized as indigenous people, as long as they are still there, in accordance with the development of society, the principle of the Unitary State of the Republic of Indonesia is regulated in the Law. Even though it has recognized and respected the existence of the indigenous people along with their customary rights in a declarative manner, Article 18B verse (2) of the 1945 Constitution includes several requirements that should be fulfilled by a community to be categorized as customary (legal) communities and customary rights that are able to be utilized. These requirements cumulatively are: (1)

As long as they are alive; (2) In accordance with the development of the community; (3) In accordance with the principles of the Republic of Indonesia; (4) Regulated in the Law.

Therefore, it is able to be concluded that the recognition and legal protection of indigenous people has been stipulated in the constitutional basis, regarding the existence and traditional rights of the indigenous people found in Article 18B verse (2) of the 1945 Constitution which states that: The state recognizes and respects the unity of the indigenous people along with their traditional rights as long as they still exist and are in accordance with the times, do not conflict with the principles of the Unitary State of the Republic of Indonesia, and are regulated in law. This provision limits the existence and traditional rights of the indigenous people, including their rights to land and natural resources.

Both of these constitutional foundations, that are Article 33 and Article 18 of the 1945 Constitution are located in different chapters so as to give the impression of not interconnected. Whereas among them are very closely related. The state's control on land and natural resources is reciprocal with the rights of indigenous people over land and natural resources. In the doctrine of human rights, all rights are in the hands of citizens, in this case including indigenous people with their communal rights, while the state is an entity that is given the responsibility to recognize (*to recognize*), to respect (*to promote*), protect (*to protect*), and fulfill (*to fulfill*) all the human rights of the citizens. At this point there is also an affirmation that the

true struggle of indigenous people in defending and reclaiming their homeland is an act of citizenship.

Recognition and Protection of the Law of the Indigenous People in Legislation

Other sectoral legislation has also provided a legal basis for the rights of indigenous peoples, including the following:

- a) Law Number 5 of 1960 concerning on Agrarian Principles (UUPA)

Firm recognition of the acceptance of the concept of customary law contained in Article 5 of the UUPA which states that, the law that applies to earth, water and space is customary law as long as it does not conflict with national and state importance. Furthermore, the existence of indigenous people is also contained in Article 3 of the UUPA, which is stated in a straightforward manner in the proposition, "by taking account the provisions in Articles 1 and 2 of the implementation of customary rights and similar rights from indigenous people, as long as in reality there are still , it should be in such a way that it is in accordance with national and state importance based on national unity and should not contradict with higher laws and other regulations ".

This law provides a legal basis that indigenous people are able to manage forest resources and other natural resources

in indigenous territories. This is able to be seen in Article 2 verse (4) of the UUPA which states "The right to control from the above mentioned countries can be authorized to self-supporting regions and indigenous people, only necessary and not in conflict with national importance, according to the provisions of the Government regulations. This provision is able to be understood that the rights of indigenous people to forest resources and other natural resources that located in indigenous territories are the rights that originate from the delegation of state control rights. The enactment of Article 2 verse (4) also provides requirements for indigenous people and in this case the state is able to eliminate the rights of indigenous people.

b) Law Number 41 of 1999 concerning on Forestry

In Article 1 verse (6) the Forestry Law states "Customary forests are state forests within the territory of indigenous people". Although customary forests are said to be state forests, there is state recognition of indigenous people. In Article 67 verse (2) states that "The inauguration of the existence and abolition of indigenous people as referred to in verse (1) is stipulated by Regional Regulation.

c) Law Number 18 of 2004 concerning on Plantations

Article 9 verse 2 of the Plantation Law states that "In the event that the land required is the customary land rights of indigenous people which in fact it is still exist, preceding the granting of rights as referred to in verse (1), the right applicant

is obliged to conduct deliberations with indigenous people holding customary rights and citizens who hold rights to the related land, to obtain an agreement regarding the submission of land, and the compensation. This provision positions indigenous people as subjects over an area, and first conducts deliberations on indigenous people holding customary rights, with compensation or certain agreements in the importance of plantation concessions.

d) Law No. 22 of 2001 concerning on Oil and Natural Gas

Protection of indigenous peoples is contained in Article 11, Article 33 and Article 34 of Law No. 22 of 2001 concerning on Oil and Gas. In Article 11 of the Oil and Gas Law which regulates the Cooperation Contract/ *Kontrak Kerja Sama* (KKS) in the upstream oil and gas business, it is determined that the KKS should make several basic provisions, one of which is concerning the development of the surrounding community and the guarantee of the rights of indigenous people. With this provision, all KKS held by the Oil and Gas Company should contain information on how to protect the rights of indigenous people if the concession area of the Oil and Gas Company is above or located near the area of indigenous people's life.

Furthermore, Article 33 and Article 34 of the Oil and Gas Law regulate oil and gas management in relation to land rights. Article 33 verse (3) of the Oil and Gas Law states that oil and natural gas business activities are not able to be carried

out at cemetery, places that considered as sacred place, public places, public facilities and infrastructure, nature reserves, cultural heritage, and land owned by indigenous people. It is clear that in principle Oil and Gas business activities are not be able to be carried out on the land of indigenous people. The complete Article 33 verse (3) of Law 22 of 2001 concerning Oil and Gas states, that

"Oil and Gas business activities are not able to be carried out on: a. cemetery, sacred place, public place, public facilities and infrastructure, nature reserve, cultural heritage, and land owned by indigenous people; b. field and state defense buildings and surrounding land; c. historic buildings and state symbols; d. buildings, houses, or factories and surrounding land, except with permission from Government agencies, community agreements, and individuals related to it ".

- e) Law No. 4 of 2009 concerning on Mineral and Coal Mining (Minerba Law)

Unlike the Oil and Gas Law, Law No. 4 of 2009 concerning on Mineral and Coal Mining (Minerba Law) does not provide specific provisions regarding indigenous people. In the Minerba Law, the regulation is more general about the role and involvement of the community than one category that is more specific about indigenous people. This shows an inconsistency because between the Oil and Gas Law and the Minerba Law are the laws that form the basis of mining

activities in Indonesia. Moreover, mineral and coal mining activities often require wider land compared to oil and gas activities. In the explanation of the Minerba Law, it is stated that minerals and coal as natural resources contained in the earth are non-renewable natural resource; their management needs to be carried out optimally, efficiently, transparently, sustainably and environmental friendly, as well as fair so as to obtain maximum benefits for people's prosperity in a sustainable manner. In the framework of creating sustainable development, mining business activities should be carried out by taking into account the principles of the environment, transparency and community participation.

This provision clearly shows that the role of the community should be involved in every mining business activity. One of the provisions in Article 21 of the Minerba Law states that, "regents/ mayors are obliged to publicly announce WPR plans to the public openly". Community involvement is very important because many aspects need to be considered in mining activities, ranging from economic equity to considering environmental sustainability and the impact of these activities on local communities where mining business activities are carried out. On that basis, in Article 10 letter b of the Minerba Law, it is stated that, "Determination of Mining Areas is carried out in an integrated manner with due regard to the opinion of the people". The community involvement is needed for the mining business activities to

avoid problems that will arise from the mining business activities.

- f) Law No. 7 of 2004 concerning on Water Resources (Law on Water Resources) which is a substitute for Law No. 11 of 1974 concerning on Water Resources

Water in the history of human life has a central position and is a guarantee of the survival of human life on earth. Water whose existence is the mandate and gift of the Creator to be utilized should also be preserved for the sake of human survival itself. Realizing the importance of the existence of water for the life and survival of human life and sustainability of the people, water's existence as a public goods that should be controlled by the state forever, so it is correct if the founders of the state formulate and stipulate in the 1945 Constitution, especially Article 33 verse (3) which states that the Earth, water and all the wealth contained therein is controlled by the state and used for the greatest prosperity of the people.

In Law No. 7 of 2004 concerning on Water Resources, there are a number of provisions concerning the recognition of the existence of indigenous people and their rights to water resources. This is able to be seen in Article 6 which states that the control of water resources by the state is maintained by the government and/ or regional government by permanent recognizing the customary rights of the indigenous people and the similar rights, as long as they do not conflict with national

importance, laws and regulations. This provision is followed by the regulation that the customary rights of indigenous people on water resources are still recognized as long as they are still in existence and have been confirmed by local regulations.

Provisions regarding the recognition of the customary rights of indigenous people on water through Article 6 verse (2) and (3) of the Water Resources Law followed the pattern of conditional recognition as determined by Article 18B verse (2) of the 1945 Constitution. The Water Resources Law stipulates that the recognition of the customary rights of indigenous people on water is carried out as long as it does not conflict with national importance, legislation and in reality, it is still exist. Then the inauguration of this was carried out in the form of regional regulations. Meanwhile, Article 18B verse (2) of the 1945 Constitution stipulates that recognition of indigenous people and their traditional rights is carried out as long as their existence still exists, in accordance with the times, and does not conflict with the principles of the Republic of Indonesia. Article 18B verse (2) of the 1945 Constitution, delegates that the existence of indigenous people and their traditional rights are further regulated in law. The Water Resources Law is one of the laws that set out the norms in Article 18B verse (2) of the 1945 Constitution.

Requirements for recognition of the rights of the indigenous people over water in the Water Resources Law

follow the formulation of the requirements contained in the UUPA, which are not contrary to national importance and legislation. This shows disharmony because what should be the reference of a law is the 1945 Constitution and only then find conformity with the existing law. Meanwhile, in relation to the legal form of recognition or confirmation of the customary rights of indigenous peoples over water, the Water Resources Law stipulates that these are stipulated in the form of regional regulations. The legal form of recognition in the form of regional contribution is similar to the legal form regulated in Law No. 41 of 1999 concerning on Forestry which refers to the Minister of Agrarian Regulation No. 5 of 1999 concerning Guidelines for Resolving Customary Land Problems. However, in the Water Resources Law, it is still unclear whether the related local regulations are regional regulations relating to customary rights of indigenous peoples on water or include the existence of indigenous peoples as a legal subject.

Various types of recognition by indigenous people by the government in various laws and regulations both in the constitution of the 1945 Constitution and other sectoral regulations, but the recognition given is a conditional recognition as long as it does not conflict with national and state importance, based on unity of a nation with Indonesian socialism and the regulations contained in the UUPA and other laws and regulations. At the law level, an integrated regulation

is needed regarding the existence and rights of indigenous people. So far the existence and rights of indigenous people have spread in several laws. In some of these laws there are regulations that are not harmonious starting with the use of terms, definitions, criteria, the rights of indigenous people, administration of existence, unclear mechanism or recognition of pluralism, mechanisms for resolving rights, confirmation of the concept of customary law rights, and perspective in treating indigenous people as part of components of Indonesian citizens. This lack of clarity or inconsistency result a weakening or even the removal of the rights of indigenous people, along with the laws of the people that accompany them (BPHN, 2013: 62).

CLOSING

CONCLUSIONS

Basically, legal recognition and protection of indigenous people has been stipulated in Article 3 of the UUPA and Article 18 B verse (1) of the 1945 Constitution, in addition, legal protection and recognition of the rights of indigenous people have also been determined in various legislation other sectoral legislation, such as Law Number 5 of 1960 concerning on Agrarian Principles (UUPA), Law Number 41 of 1999 concerning on Forestry, Law Number 18 of 2004 concerning on Plantations, Law No. 22 of 2001 concerning on

Oil and Gas, and Law No. 7 of 2004 concerning on Water Resources. It is just needed for harmonization in various laws and regulations relating to the use of terms, definitions, criteria, rights of indigenous people, administration of existence, so as not to cause inconsistencies in providing guarantees and protection of indigenous people.

SUGGESTIONS

The efforts to improve legislation in order to harmonize regulations regarding the existence and rights of indigenous people on land and natural resources are not easy. A number of challenges are faced in realizing this. The harmonization of laws and regulations relating to the existence and rights of indigenous people is not only a technical matter, adjusting the articles of the legislation. This harmonization also needs to be done to draw important principles from normative court decisions. Furthermore, harmonization is needed to see the conformity between the norms in the legislation and the legal principles and social realities in indigenous people.

REFERENCE LIST

- Harsono, B. (2003). *Hukum Agraria Indonesia*. Jakarta: Djambatan.
- _____. (2000). *Hukum Agraria, Sejarah dan Pembentukan Undang-Undang Pokok Agraria*. Jakarta: Djambatan.
- Badan Pembinaan Hukum Nasional (BPHN). (2014). "Peradilan Adat dalam Sistem Hukum Indonesia". Jakarta: Laporan Kajian.

- _____. (2013). "Peradilan Adat dalam Sistem Hukum Indonesia". Jakarta: Laporan Kajian.
- Bernadinus, S. (2009). *Politik Pengakuan Masyarakat Adat: Dari Warisan Kolonial Hingga Negara Merdeka*, Jakarta: Jurnal Jentera Edisi Lingkungan.
- Ihromi, T.O. (2001). *Antropologi Hukum Sebuah Bunga Rampai*. Jakarta: Yayasan Obor Indonesia.
- Muslim Andi Yusuf, M.A. (2015). "Kepastian Hukum Atas Hak Masyarakat Adat Atas Tanah dan Sumber Daya Alam". *Jurnal Cokro Aminoto Palopo* Vol.2, No.1.
- Rosyida, H., dan Bisariyadi (edt). (2005). *Inventarisasi dan Perlindungan Hak Masyarakat Hukum Adat*, Jakarta: Komnas HAM, Mahkamah Konstitusi RI, dan Departemen Dalam Negeri.
- Soekanto, S. (2005). *Hukum Adat Indonesia*. Jakarta: Rajawali Press.
- Salim, A. (2008). "Pluralisme Hukum di Indonesia; Keberadaan Hukum Islam dalam Peraturan Perundang-Undangan Nasional". *Harmoni Jurnal Multikultural dan Multireligius*, Volume VII, No. 28, Oktober-Desember 2008.
- Sembiring, R. (2017). *Hukum Penyelesaian Sengketa Hak Atas Tanah Adat di Simalungun*. Padang: Darma Persada.
- _____. (2017). *Hukum Pertanahan Adat*. Jakarta: Raja Grafindo Persada.
- Sari, D.W. (2009). *Hukum Adat Indonesia*. Bandung: Refika Aditama.
- Ter Haar, Bzn. (187). *Asas-Asas dan Susunan Hukum Adat (Beginnelsen en Stelsel van Hat Adat Recht)*, diterjemahkan oleh K.Ng. Soebakti Poesponoto. Cetakan ke-19. Jakarta: PT. Pradnya Paramita.

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