

Strengthening Rights to Traditional Land Of Pesisir Barat Communities Based On Integrated Coastal Zone Management

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Abstract

The existence of rights to customary land of coastal communities is a recognition of the existence of the community in its customary law area which must be fulfilled and protected and respected by the government. However in fact, protection right on soil custom Public coast not yet running optimally. Study this aim for generate reinforcement model right on soil custom Public Pesisir Barat Lampung based on integrated coastal zone management so that capable ensure continuity protection right on soil custom. With use method study law normative (doctrinal research) and secondary data, found that: Management source power the coast and sea in the Pesisir Barat Lampung must conducted based on draft integrated coastal zone management which involves elements from level government and society local (community based development) where strategies and policies in manage source power coast and sea with method must based on to, first the process and properties natural coastal areas that will managed must understood, second, condition social, economic, cultural and political, and third, understand needs moment this and will come, in Thing this is not could ignored that is right on soil custom Public west coast. Policy development must integrated with permanent community based _ law custom that has law custom, as part from system law proper national _ recognized existence.

Keywords: Indigenous Land, Coastal Communities, ICZM.

INTRODUCTION

The right to customary land is an authority which according to Customary Law owned by Public law custom certain on region certain which is environment life para citizens for take benefit from sourcenatural resources, including the land in the area for survival and customary law community life. The existence of customary land rights is confession existence Public law custom in something region law custom, which must be met, protected and respected by the government.

Article 18 B Paragraph (2) of the 1945 Constitution: "The State recognizes and respects" units Public law custom along with rights traditional as long as it is still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated by law." In customary law communities, land is known as a geographical unit and social life that has been inhabited, controlled and managed by the legal community for generations custom good as buffer life nor as identity which inherited from ancestors they.

The implementation of integrated coastal zone management is still relatively under-implemented in natural resource management, including soil custom in the coastal areas of Indonesia. Consideration of the management of coastal and marine resources in marine spatial planning must be carried out by considering the strategic environmental conditions in each region. Policies and strategies in spatial planning based on integrated coastal zone management are produced from a process that is structured and implemented through various stakeholders.

Findings the need addressed with wise for maximizing model strengthening right on soil custom Public Pesisir Barat Lampung which appropriate based integrated coastal zone management. Development coastal areas should still pay attention to the rights of coastal indigenous peoples. Coastal area development will not be

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accepted by coastal village communities well if you never pay attention rights and aspects social culture Public local.

METHODOLOGY

This research is a normative legal research (doctrinal research) which using only secondary data. The legal research model is a study comprehensive and analytical to ingredient law primary and ingredient law secondary. Considering that this research is a normative legal research, then approach use approach legislation (statute approaches), analytical approach (analytical approach) and conceptual approach (conceptual approaches). the one who studies phenomenon related law_with right on Public law custom in community area_law custom coast inner west Lampung Thing this related with coastal zone management.

RESULTS AND DISCUSSION

Land Rights of the Coastal Indigenous Peoples of West Lampung based on Integrated Coastal Zone Management

West Lampung Coastal Management Policy based on Integrated Costal Zone Management, including the extraction of articles from:

Legislation and documents related to structuring policy coastal area.

The purpose of structuring the Pesisir Barat Lampung.

Activities that have been and will be carried out in relation to setting West Coast area of Lampung.

Concept of saving the Pesisir Barat Lampung.

Protection of Land Rights of Indigenous Peoples of the Pesisir Barat Lampung.

Coastal areas are currently under increasing pressure from erosion, pollution, climate change, urbanization, and tourism. The pressure is directly or indirectly have an impact on the entire existing ecosystem, besides animal wild which life there but also for economy and well-being man. For this reason, coastal management is considered to be very crucial. Therefore, an integrated and comprehensive management is needed. A draft which offered in management coast is ICZM (Integrated Coastal Zone Management). ICZM is something approach which thorough which known in management region coast. ICZM is something guidelines for manage area coast by integrated. Methodology from ICZM this has developed by careful since a number of decade which then. Draft this need ability institutional for handle problems intersectoral such as across disciplines, the authorities of the institutions government, and institutional boundaries.

Integrated Coastal Zone Management (ICZM) is coastal and marine area management by integrated with notice whole related sectors for reach destination sustainable development. Management of coastal and marine areas by integrated known with management based on approach by comprehensive in the form of policy from authority necessary institutions and laws in development and planning something area coast and sea.

Implementation integrated coastal zone management is relatively still not enough held in management source power nature in the coastal areas of Indonesia. Consideration management resource coast and sea in setting room sea must conducted with consider condition environment strategic in every its territory. Policies and strategies in setting room based on integrated coastal zone management, generated from a process that is structured and implemented through various stakeholders.

According to Bappenas, concept Integrated Coastal Zone Management is coastal area management West Lampung by integrated with notice all aspect related to coastal areas West Lampung cover aspect economic, social, environmental and technological. Through application draft the expected could overcome various obstacles that arise lately this in management area coast West Lampung.

Destination end draft Integrated Coastal Zone Management no only for chase growth economy (economic growth) term short, but also guarantee growth economy that can enjoy by fair proportional by all parties (stakeholders) and maintain power support as well as quality environment coast West Lampung so that

development could in progress by sustainable. In skeleton reach destination the so element essential from draft Integrated Coastal Zone Management is integration and coordination.

Every policies and strategies in utilization resource coast must based on to

Good understanding about natural processes (eco-hydrological) that take place in the area coast Moderate West Lampung managed;

Condition economic, social culture and politics Public law custom;

Needs moment this and what will come to goods/products and services environment Coastal West Lampung.

Management source power the coast and sea in the Pesisir Barat Lampung must conducted based on draft co-management involving elements from level government and society local (community based development). strategy and policy in manage source power coast and sea with method must based on to, first process and properties natural coastal areas that will managed must understood, second, condition social, economic, cultural and political, and third, understand needs moment this and will come. In Thing this is not could ignored that is right on soil custom Public west coast.

This UU No. 27/2007 Jo. Law No.1/2014 concerning "Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands" Article 21 states that: 1) Utilization of space and resources of Coastal Waters and waters of small islands in the territory of the Customary Law Community by the Customary Law Community is under the authority of the local Customary Law Community. 2) Utilization of space and resources of Coastal Waters and waters of small islands as referred to in paragraph (1) is carried out taking into account national interests and in accordance with the provisions of laws and regulations."

The status of control and utilization of coastal areas is also closely related to land use and spatial planning. Individuals and/or legal entities can control and utilize coastal areas if they are in accordance with the regency/municipal spatial layout plan. For this reason, it is necessary to have good spatial planning accompanied by land use management to provide access to people who want to take advantage of coastal areas. In general, the stages in spatial planning are starting with the land consolidation process, then land use management until finally at the spatial arrangement stage. This means that land consolidation and land use are the most important supports in the spatial planning process.

In Government Regulation No. 16 of 2004 concerning Land Use Management, Article 3 explains that the objectives of land use are: a. Regulating the control, use and utilization of land for various needs for development activities in accordance with the Regional Spatial Plan; b. Realizing the control, use and utilization of land in accordance with the direction of the function of the area in the Regional Spatial Plan; c. Realizing land order which includes control, use and utilization of land including land maintenance and control of land use; d. Guarantee legal certainty to control, use and utilize land for people who have a legal relationship with the land in accordance with the determined Regional Spatial Plan. Based on what has been described, it can be seen that the coastal land can essentially be owned or entitled by a person or legal entity. The ownership and control of coastal land and the use of coastal areas must of course pay attention to and be adjusted to the district/city spatial planning plan.

Based on Regional Regulation of West Lampung Regency Number 1 of 2012 concerning Spatial Planning of West Lampung Regency of 2010 – 2030, Coastal Zone is a certain coastal area designated and or determined by the government based on certain criteria, such as physical, biological, social and economic characteristics to be maintained its existence. The Regional Action Plan for Pesisir Barat Regency shall at least contain: a. directions, policies, and strategies in achieving the target of traditional cultural preservation; b. targets to be achieved in efforts to preserve traditional culture; c. development of cooperation, partnership, and active participation of the community and the business world; and D. the need for provision of financing borne by the Regional Government and the community. The purpose of structuring the Pesisir Barat Lampung is to: for provide: a. protection; b. development; c. utilization; d. maintenance; and e. guidance and supervision to the West Coast Region.

Government Regency The West Coast has arranged various related provisions about spatial planning which is also related to the arrangement of the Pesisir Barat Lampung through District Regulations West Coast Number 8 of 2017 concerning Regional Spatial Plan 2017–2023 for direct development in the district west coast with utilize regional space Empower use, work useful, harmonious, harmonious, balanced and sustainable in skeleton increase well-being people.

Destination setting arranged space in local regulations the that is for realize Regency west coast as destination tourism based industry agriculture and marine care aspect local wisdom and sustainability environment, one policy that is development system hierarchical and integrated settlements as well as build and improve system regional infrastructure which includes infrastructure main and infrastructure other by integrated for push regional growth

Whole Settings setting the area space not yet by explicit arrange about how right on soil adat in the west coast region, while coast west admits existence Pekon or The Indigenous Village in it there is Public law based on District Regulations West Coast Number 10 of 2021 About Change Second, on Regional Regulation Number 7 of 2016 concerning Election Peratin No. 10 of 2021 states that Pekon is another name for Traditional Villages and Villages, hereinafter referred to as Pekon, is a legal community unit that has territorial boundaries that are authorized to regulate and manage government affairs, the interests of the local community based on community initiatives, origin rights, and/or traditional rights recognized and respected in the Government System of the Unitary State of the Republic of Indonesia, which in Thing this interpreted as part from definition Public customs in the district West Coast.

Model for Strengthening Land Rights of Coastal Indigenous Peoples based on Integrated Coastal Zone Management

Reinforcement model right on soil custom Public law custom Pesisir Barat Lampung in the legal community custom the coast new (ideal) that follows draft thinking Menski is blend or link three thing.

First, Side Religious/Ethics/Morality which is field study in natural law, contains justice social from Pancasila as rule guide, justice transitional and rights basic human that includes right have treasure things, rights no discrimination and rights for different from Public other.

Second, Side State which is study from positivism law contains the 1945 Constitution of the Republic of Indonesia in particular objectives, state law, UUPA, Forestry Law and local regulations.

Third, The Society Side, which is the field study from socio legal approaches, contains laws that live in society and structures culture Public law custom.

Pluralism justice system emphasize reform of the way judge through legal culture approach. Law in Indonesia is not could separated with real culture is score important in help enforcement law. Theory pluralism law interpreted as a connecting line Among various system law in Public, including legal culture. This is what Werner Menski, a great teacher captured law from the University of London at the time researching about comparison the laws of countries in Asia and Africa. Menski conclude enforcement the laws in Asia and Africa are different with enforcement law in the West, particularly in Europe. Enforcement European law no too influenced elements non-legal, such as morals, ethics and religion.

First, **the religious/ethic/morality side**, which is a field of study in natural law, contains social justice from Pancasila as a guiding principle, transitional justice and human rights which include the right to own property, the right not to be discriminated against and the right to be different from other communities. The relationship between indigenous peoples and their lands is a discussion that has existed for a long time at the international level, in any country people consider that their relationship with land is not only an economic issue, but also a social and spiritual relationship. Professor Robert A. Williams describes the relationship of indigenous peoples to their lands as follows: Indigenous peoples have emphasized that the spiritual and material basis of their cultural identity is maintained by their unique relationship to their traditional, hereditary territories.

The legal relationship between indigenous peoples and their ulayat lands gives birth to ulayat rights. These customary rights are communal rights owned by customary law communities and must be recognized and protected by the state. In line with this, countries in the world have agreed on the recognition and protection of the rights of indigenous peoples, which is clearly stated in Article 14 paragraphs (1) and (2) of the ILO Convention 169. -the right of ownership and control over traditionally occupied land must be recognized. In addition, measures must be taken to protect the rights of indigenous peoples to use land that is not only controlled by them but to which they have long had traditional access to such land. The government must identify lands traditionally held by indigenous peoples and ensure effective protection of their land ownership and tenure rights.

Second, **the state side** which is a study of legal positivism containing the 1945 Constitution of the Republic of Indonesia in particular the objectives, the rule of law, the UUPA, the Forestry Law and Regional Regulations. Existence Public customs in Indonesia are recognized by constitutional as poured in Article 18 B Paragraph (2) of the 1945 Constitution which states that the State recognizes and respects units Public law custom along with rights traditional along still live and fit with development society and the principles of the Unitary State Republic of Indonesia regulated in law. Confession to existence Public custom de jure also confirmed in the 1945 Constitution Article 28I Paragraph (3) which states, " Identity " culture and rights Public traditional respected in tune with development era and civilization. Article 33 of the 1945 Constitution of the Republic of Indonesia requires that the earth, water and wealth nature contained in it controlled by the State and used for big prosperity people. in line with provision that, must always contain soul and spirit democratic, just and sustainable. Confession to existence Public custom no only stop at the realm constitution. Amount laws arrange more carry on existence.

In Law no. 39 of 1999 concerning Human Rights, Article 6 paragraph (1): In the context of Enforcement of Human Rights, the law, society and the government shall pay attention and protect it. Article 6 paragraph (2): The cultural identity of indigenous peoples including customary rights is protected, in line with the times.

Based on Article 3 of the UUPA that the ulayat rights of customary law communities are recognized as long as in reality they still exist. The article implies that if in areas there are still customary rights of customary law communities, these rights are still recognized. On the other hand, if in areas where the customary rights of indigenous peoples do not exist, these rights are not recognized and new customary rights of indigenous peoples will not be born.

Recognition of the customary rights of existing legal communities must meet 2 (two) requirements, namely their existence and implementation. In relation to its existence, there are provisions that regulate both in the UUPA and in its explanation. Based on the logic of thinking, the first is that until now the existence of the Lampung customary law community still exists. Second, that until now, the customary rights of customary law communities that are jointly owned still exist. The third is that the customary head or traditional elders are recognized by their citizens as the bearer of the duties of the customary law community's authority in regulating, managing, controlling and using the jointly owned land. Based on the three logics of thinking, it is actually in reality that customary law communities still exist , which means : confession right ulayat Public law Lampung custom should be recognized and protected by the government and granted to Public law custom as holder rights.

Judicial review to the Constitutional Court. Article 51 of the Constitutional Court Law distinguishes customary law communities from public legal entities and private legal entities, therefore, customary law communities are actually a unique type of legal subject, called customary law communities. The peculiarity of customary law communities as legal subjects is that they are unitary/groups that make customary values and equality of traditional rights, including over certain areas, a condition of their existence. Then the constitution also stipulates the conditions for the existence of customary law communities as legal subjects that exist in living customary law communities, in accordance with the times and not contradicting the principles of the Unitary State of the Republic of Indonesia. Agrarian Constitution and Constitutional Court. The gazette of forest areas must pay attention to customary law communities. The Constitutional Court is careful in deciding on the

constitutionality of conditional recognition and the authority of the government and local governments to declare the existence or elimination of indigenous peoples.

In its consideration, the Constitutional Court referred to one of its decisions that had been issued related to the issue of the constitutionality of Article 4 paragraph (3) of the Forestry Law, namely Decision Number 34/PUU-IX/2011, dated July 16, 2012. In certain cases, there may be rights that have been attached to the land, such as property rights, building use rights, cultivation rights, and other rights to land. Such rights must receive constitutional protection based on Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution. Therefore, forest control by the state must also pay attention to such rights in addition to the rights of customary law communities that have been contained within the *a quo norm*.

Based on Chapter 1 Constitution Number 1 Year 2014 about Change On Constitution Number 27 Year 2007 about Management Region Coastal and Small Islands that:

Management of Coastal Zone and Small Islands is a process planning, utilization, supervision, and control of Resources Coastal and Islands Small between sector, Among Government and Government Area, Among ecosystem land and sea, as well as Among knowledge knowledge and management for increase well-being Public.

The Coastal Area is a transitional area between land and marine ecosystems which affected by changes on land and sea.

Then according to the Decree of the Minister of Marine Affairs and Fisheries No Kep.10/Men/2003 about Guidelines Planning Management Coastal Integrated explained that: The coastal area is defined as a transitional area between interacting terrestrial and marine ecosystems, which are seaward 12 miles from line beach and one third from w area sea for County/City and to direction land until administrative limit Regency/City.

Based on terms above Therefore, the customary law community unit in coastal areas, recognized their rights in the management of marine potential in general, carried out in a traditional manner known as marine customary rights. Compared with customary rights to land, it appears that customary rights to the sea are customary traditions that have been passed down from generation to generation and are respected by customary law communities. This has not yet been fully acknowledged by the government and entrepreneurs who are actually important partners in the development process.

The essence of a state or government is not just asking for approval or agreement, but more than that it must provide broad access to the community, including customary law community units to be able to participate in the development process, so that people are not marginalized (marginalized). However, indigenous peoples as part of the State in general, must be positioned as an integral part in the development process. This means that the active participation of the community must be responded positively by the government as a policy maker and in political and legal decisions. Customary law communities should not be built based on the will of the government solely, but must be given the freedom to be creative according to their potential, so that there is a balance.

Development policies must be integrated while still being based on customary law communities that have customary law, as part of the national legal system whose existence should be recognized.

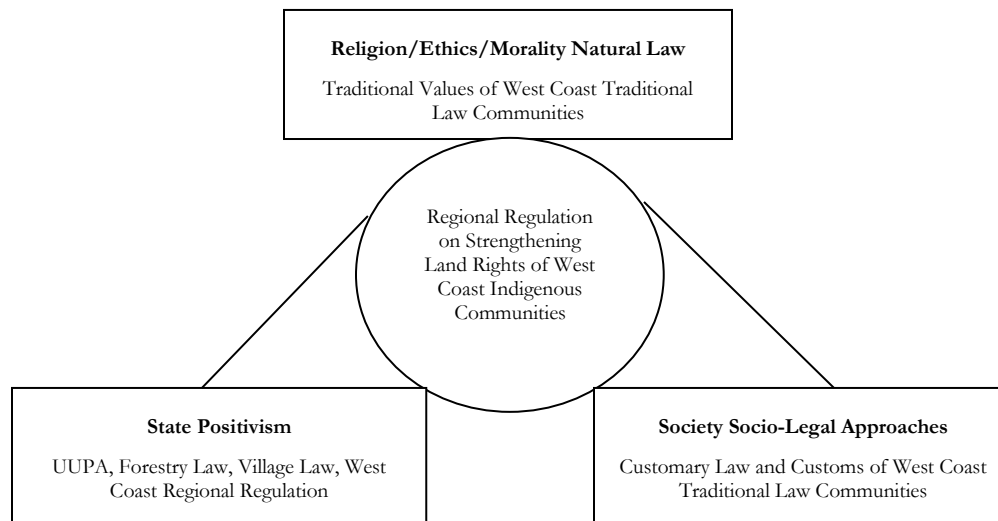
Third, **the society side**, which is a field of study that contains the laws that live in the community and the cultural structure of the indigenous peoples who are seen from perspective normative is habits or the culture contained within Public law custom West Coast need noticed as one base strengthening right on soil Public law custom west coast.

Management of coastal areas can not be separated from the status of the function and ownership of land in the area. The granting of land rights, both individually controlled and traditionally controlled for land areas that are not affected by tides, is easier to complete, because it has been regulated by the LoGA and other laws and regulations.

Regarding the status of coastal land controlled by the community in Indonesia, in general, land with the status of state property rights or controlled by the state. However, the people who live in the area have been in the area for quite a long time, which is an average of approximately 30 (thirty) years. Broadly speaking, the status of coastal land occupied by the community is only given the right to use and the right to manage, on condition that all applicable rules must be complied with. In other words, if one day the government wants to take over the land, then the people who live in the area must surrender it.

The land in the coastal region has generally been occupied by the community for a long period of time and some have even been inhabited or settled in the region for generations. The hereditary control is related to the control of the coastal region by the indigenous people which is then recognized in the law.

The three sides above are processed and combined to form a new construction of rights protection on soil Public custom Pesisir Barat Lampung based on customary law values that are communal and based on Integrated Coastal Zone Management (ICZM) called "reinforcement Right on soil Public custom Pesisir Barat Lampung based integrated coastal zone management". The purpose of protecting the right to soil Public custom west coast based Integrated Coastal Zone Management (ICZM) is to protect the rights on soil custom Public west coast. Methodologically the reinforcement model This illustrates the interrelationship of all laws, both state law, community law and natural law. Draft this can be seen in the diagram below.



CONCLUSION

Reinforcement Strengthening Customary Land Rights Pesisir Barat Lampung Based Integrated Coastal Zonemanagement , including the extraction of articles from:

Legislation and documents related to structuring policy coastal area.

The purpose of structuring the West Lampung Coastal area.

Activities that have been and will be carried out in relation to setting West Lampung coastal area.

Coastal salvage design concept West Lampung.

Protection of Land Rights of Coastal Indigenous Peoples West Lampung..

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Good understanding about natural processes (eco-hydrological) that take place in the area coast Moderate West Lampung managed;

Condition economic, social culture and politics Public law custom;

Needs moment this and what will come to goods/products and services environment Coastal West Lampung.

The model for strengthening customary land rights of the West Coastal Lampung customary law community in the new (ideal) Coastal customary law community that follows Menski's concept of thought is to combine or link three things. First, **the religious/ethic/morality side**, which is a field of study in natural law, contains social justice from Pancasila as a guiding principle, transitional justice and human rights which include the right to own property, the right not to be discriminated against and the right to be different from other communities. In Thing this values custom Public custom west coast . Second, **the state side**, which is a study of legal positivism, contains the 1945 Constitution of the Republic of Indonesia in particular the objectives, the rule of law, Law Number 5 of 1960 concerning Agrarian Principles (UUPA), Law Number 41 of 1999 concerning Forestry in Article 1 Paragraph 6 of the Forestry Law Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands, Decision Court Constitution Number 34/PUU-IX/2011, Regency Regional Regulation West Coast Number 8 of 2017 concerning Regional Spatial Plan 2017 – 2023, District Regulation West Coast Number 10 of 2021 About Change Second, on Regional Regulation Number 7 of 2016 concerning Election peratin. Third, **the society side**, which is studied in juridical normative studies, in Thing this that is right on soil Public law custom West Coast.

Based on the background and main problems that have been formulated as the problem formulation, as well as the discussion and analysis that has been described previously, it can be concluded as an answer to the problem formulation as follows, (1) Environmental state administrative disputes are disputes between citizens or communities against government administration bodies/officials at the State Administrative Court as a result of decisions and/or government administration actions in the environmental field, (2) Legal protection and control Environmental management can realize sustainable development (sustainable development) has not been effective and efficient for the sake of development in realizing people's welfare due to the government's inconsistency in taking preventive policies both in the context of controlling regulatory norms and in the context of law enforcement (repressive) in resolving environmental disputes both through civil lawsuits and criminal law, as well as decisions on environmental disputes through decisions of state administrative courts, (3) The state or government should function effectively and in an integrated manner through juridical means of state administrative court decisions to prevent and deal with pollution and environmental damage and must go through a permit revocation system, and (4) In reality the licensing system has not been able to function as a controller so that a business and or activity does not cause pollution and environmental damage.

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