Volume 7 Number 1, March: pg. 65-76.
Fakultas Hukum, Universitas Lampung,
Bandar Lampung, Lampung, Indonesia.
E-ISSN: 2598-3105 P-ISSN:2723-2581
http://jurnal.fh.unila.ac.id/index.php/cepalo

LEGAL PROTECTION OF INDIGENOUS INSTITUTIONS IN THE FRAME OF THE RULE OF LAW (PERSPECTIVE OF LEGAL PROTECTION THEORY)

Safrin Salam

Universitas Muhammadiyah Buton, Indonesia, E-mail: safrin.salam@umbuton.ac.id

Submitted: January 28, 2023; Reviewed: March 09, 2023; Accepted: March 27, 2023
DOI: 10.25041/cepalo.v7no1.2898

Abstract

Indigenous institutions in Indonesia are a local wisdom inherited from the ancestors of the Indonesian State. This research is normative legal research, namely legal research conducted by researching and examining statutory regulations, starting from Article 18b paragraph 2 of the 1945 Constitution, 18B paragraph (2), Article 28D paragraph (1), Article 28G paragraph (1), and Article 28I paragraph (3), and the organic regulations under them. The results of the study show that the arrangements for protecting traditional institutions in Indonesia, namely that the State is obliged to protect the natural rights of humans themselves, namely customary law communities, are based on the Decision of the constitutional court no. 35/puu/ix/2012, namely customary rights in both private law and public law. John Locke's theory of protection is related to regulations issued by the State to provide legal protection for rechtgemeschappen, which needs to be studied juridically and sociologically. While the harmonization of customary institutional protection norms in Indonesia, namely by carrying out a legal review (reviewing) of legal regulations against Permendagri with Article 18b, Paragraph 2 of the 1945 Constitution, Article 6 of Law Number 39 of 1999 concerning human rights, Constitutional Court Decision Number 35/puu-ix/2012 Permendagri Number 52 of 2014 concerning the recognition and protection of customary law communities, and Circular Letter Number 3/se/iv/2014 regarding the determination of the existence of customary law communities and ulayat lands.

***Keywords**: Legal Protection, Indigenous Institutions, Indigenous Peoples*

A. Introduction

Local wisdom is all knowledge, belief, understanding, insight, customs, or norms that guide human behavior in community life and ecology. As a pearl of local wisdom inherited from the Indonesian State's ancestors, Indigenous institutions in Indonesia create the Indonesian State's identity as a country with abundant cultural and customary wealth, making Indonesia rich in local wisdom. This local wisdom cannot be separated from the culture of the community that supports it. [1]

The reform of the recognition of the existence of indigenous peoples in Indonesia is now starting to enter a new phase with the increasing response from the central government and regional governments to provide apparent legitimacy for the legal recognition of customary law communities. Article 18 b paragraph 2 of the 1945 Constitution. Article 18B Paragraph 2 of the 1945 Constitution is the basis for protecting the existence of indigenous and tribal peoples;

[1] C Alus, "Peran Lembaga Adat Dalam Pelestarian Kearifan Lokal Suku Sahu Di Desa Balisoan Kecamatan Sahu Kabupaten Halmahera Barat," *Jurnal Acta Diurna* 3, no. 4 (2014): 1–20.

however, along with the development of the mandate that has been regulated in the provisions of Article 18 b paragraph 2 of the 1945 Constitution which regulates that the existence of indigenous peoples must be regulated in the Act. This provision is a form of recognition and protection of customary law communities. [2] The phrase governing customary law communities that must be regulated into this law, which then the central government has not responded positively to the constitutional mandate regarding the existence of indigenous peoples; as a result, the status and rights of indigenous peoples have become blurred. Law Number 5 of 1960 concerning Basic Agrarian Regulations, better known as UUPA, was formed from several laws and regulations made by the post-reform central government. The provisions contained in the UUPA, especially Article 3 of the UUPA, which recognizes customary rights attached to customary law communities, are a form of recognition by the government at that time regarding the traditional rights of indigenous peoples over the control of natural resources. This is a form of existence from the existence of customary law. [3]

The existence of UUPA as a legal umbrella for the recognition and protection of the rights of indigenous and tribal peoples over the control of natural resources (water, land, space, and the natural resources contained therein) is interpreted as a form of recognition of state law against laws that live in a society (*living law*), namely customary law which is considered as the law governing customary law communities. However, in its development, the UUPA as the primary agricultural law in Indonesia during the New Order government was distorted by the government at that time, creating several sectoral laws, namely Law Number 41 of 1999 concerning Forestry. The results of research by J. Thontowi show that the status of indigenous peoples and other traditional rights cannot be implemented considering the internal factors, in the form of laws and regulations which contradict each other regarding the regulation of the protection of legal communities and external factors, namely state institutions such as the Ministry of Forestry, the Ministry of Mines which is complete with formal evidence can easily reject the claims of indigenous peoples and their traditional rights. [4]

In addition to national recognition, the existence of indigenous peoples is also recognized internationally through the provisions of International Law. [5]

Obstacles to recognizing and protecting the existence of Rechtgemeschappen as a legal entity that should be recognized and protected by State Law by external factors and internal factors provide legal uncertainty regarding the existence of legal recognition and protection of indigenous and tribal peoples in Indonesia. After the enactment of the Sectoral Law in addition to Law Number 5 of 1960 concerning Basic Agrarian Regulations, one of the legal products that regulate forms of recognition of the rights of indigenous peoples over natural resources is Law Number 41 of 1999 concerning Forestry, which the provisions of Article 1 point 4 and Article 5 stipulate that Customary Forest is a State Forest controlled by customary law communities. The concept of the customary forest, which translates as state forest controlled by customary law communities, is a political form of state forestry law for state intervention in regulating rights -the rights of customary law communities in which, in the end, the provisions of Article 1 point 6 and Article 5 of Law Number 41 of 1999 concerning Forestry, and on the Decision of the Constitutional Court Number 35/PUU-IX/2012 were declared contrary to the 1945 Constitution, and therefore these provisions do not have binding legal force, based on the

[2] Herlina Manik, "Eksistensi Lembaga Adat Melayu Jambi Dalam Penyelesaian Sengketa Masyarakat Adat," *Jurnal Selat* 6, no. 2 (August 26, 2019): 213–24, https://doi.org/10.31629/selat.v6i2.1323.

[3] Z F Aditya, "Romantisme Sistem Hukum Di Indonesia: Kajian Atas Konstribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia," *... Rechts Vinding: Media Pembinaan Hukum ...*, 2019, http://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/305.

[4] Jawahir Thontowi, "Perlindungan Dan Pengakuan Masyarakat Adat Dan Tantangannya Dalam Hukum Indonesia," *Jurnal Hukum IUS QUIA IUSTUM* 20 (2013): 21–36, https://doi.org/10.20885/iustum.vol20.iss1.art2.

[5] Rosemary Hill et al., "Working with Indigenous, Local and Scientific Knowledge in Assessments of Nature and Nature's Linkages with People," *Current Opinion in Environmental Sustainability* 43 (April 2020): 8–20, https://doi.org/10.1016/j.cosust.2019.12.006.

principle of the sum was a) Customary forest is separate from State Forest; b) Customary forest is private forest; c) The definition of customary forest is a forest that is in the territory of customary law communities, and; d) customary forest is a right owned by customary law communities. [6]

Thus the status of customary forests after the Constitutional Court Decision No. 35/PUU-IX/2012 is as forests within the territory of customary law communities while still paying attention to the rights of customary law communities as long as, in reality, they still exist. Their existence is acknowledged and does not conflict with national interests by the development of society and the principles of the Unitary State of the Republic of Indonesia regulated in law. [7]

Traditional rights to natural resources must be recognized and protected. Along with the birth of the Constitutional Court Decision Number 35/PUU-IX/2012, *rechmenschappen*, as a legal partnership that has received recognition of its traditional rights, should receive a positive response from the central government and regional governments at the implementation level. The existence of the Decision was not forwarded into regulations that were more responsive to the position of indigenous peoples in the Indonesian constitution. Even now, with the existence of the Constitutional Court Decision Number 35/PUU-IX/2012, it is the basis for examining the regulation of recognition of indigenous peoples in several regulations, namely Regulation of the Minister of Home Affairs Number 5 of 2007 concerning Guidelines for the Arrangement of Social Institution's jo. Regulation of the Minister of Home Affairs Number 39 of 2007 concerning Guidelines for Facilitating Community Organizations in the Field of Culture, Palaces, and Customary Institutions in the Preservation and Development of Regional Culture jo. Regulation of the Minister of Home Affairs Number 52 of 2007 concerning the Preservation and Development of Customs and Socio-Cultural Values of the Community and Regulation of the Minister of Education and Culture Number 77 of 2014 concerning Guidelines for Fostering Institutions of Belief in the One and Only God and Customary Institutions as well as Permendagri number 52 of 2014 concerning recognition and protection of customary law communities.

This research attempts to analyze and make discoveries about the strengthening of traditional institutions as a community structure that provides legal recognition and protection for indigenous and tribal peoples. In terms of legal substance, the four regulations do not regulate the legal subject rules of traditional institutions more conceptually, namely customary law communities; in fact, these regulations only regulate material and non-material customary institutional wealth. This can be examined in Chapter IV Activity Procedures, particularly Article 6, Article 7, and Article 8 of Ministerial Regulation Number 39 of 2009 Concerning Guidelines for Indigenous Institutions, which regulates program proposals submitted by traditional institutions to local governments to gain legitimacy and financial assistance from local governments. The same provisions are also stipulated in Ministerial Regulation Number 42 of 2009 concerning Guidelines for the Preservation of Indigenous Institutions. In Chapter III the Scope of these regulations, particularly in Article 7 paragraph (1) and paragraph (2) of Ministerial Regulation Number 42 of 2009 concerning Guidelines for the Preservation of Indigenous Institutions only regulates the assets of customary institutions which will later receive protection, development, utilization by the owner of the wealth. Existence Based on these legal provisions, the central government seems to be somewhat mistaken in interpreting and understanding rechtgemenschappen which conceptually separates Indigenous Peoples and customary institutions as a unified whole that cannot be separated.

Legal politics The conceptual separation of customary law community legal units and customary institutions has resulted in various regions responding in various ways regarding the

[6] (Greetings, 2016)

[7] Bambang Wiyono, "Kedudukan Hutan Adat Pasca Putusan Mahkamah Konstitusi Nomor 35/Puu-Ix/2012 Dan Hubungannya Dengan Pengelolaan Hutan Di Indonesia," *Aktualita* 1, no. 1 (2018): 60–76.

recognition and protection of customary institutions, even in the context of requirements being made more bureaucratic which makes the existence of customary law communities and customary institutions slowly begin to disappear due to conflicting norms. -good norms regulated in the 1945 Constitution and the organic regulations below it. Conflicts in regulation of norms between Article 18b paragraph 2 of the 1945 Constitution and Regulation of the Minister of Home Affairs Number 5 of 2007 concerning Guidelines for the Arrangement of Social Institutions jo. Regulation of the Minister of Home Affairs Number 39 of 2007 concerning Guidelines for Facilitating Community Organizations in the Field of Culture, Palaces and Customary Institutions in the Preservation and Development of Regional Culture jo. Regulation of the Minister of Home Affairs Number 52 of 2007 concerning the Preservation and Development of Customs and Socio-Cultural Values of the Society and Regulation of the Minister of Education and Culture Number 77 of 2014 concerning Guidelines for Fostering Institutions of Belief in the One Almighty God and Traditional Institutions in Indonesia have lost noble values as local wisdom of national identity.

The novelty of the study show that the arrangements for protecting customary institutions in Indonesia, namely that the State is obliged to protect the natural rights of humans themselves, namely customary law communities, are based on the Decision of the constitutional court no. 35/puu/ix/2012, namely customary rights in both private law and public law. This research is normative legal research, namely legal research conducted by researching and examining statutory regulations, starting from Article 18b paragraph 2 of the 1945 Constitution, 18B paragraph (2), Article 28D paragraph (1), Article 28G paragraph (1), and Article 28I paragraph (3), and the organic regulations under them.

B. Discussion

1. Customary Institutional Protection Arrangements in Indonesia

As a legal entity, the existence of indigenous peoples, which in some literature is known as *rechtgemenschappen* (legal alliance) in some areas, the form of the nomenclature began to change along with the birth of various regulations governing the relationship between regional government and central government, especially after the implementation of Law Number 23 Year 2014 jo . Law number 9 of 2015 concerning Regional Government, hereinafter referred to as the Regional Government Law. With the promulgation of the Regional Government Law which does not regulate juridically and sociologically regarding *rechtgemenschappen* , the existence of indigenous peoples is getting smaller. Examining the legal position of indigenous peoples after the Constitutional Court Decision No. 35/PUU/IX/2012 further emphasizes that customary law communities are recognized and must be protected by state law, indigenous peoples are recognized as legal subjects who have the same legal status as Indonesian citizens . From the other side, empirically, customary institutions are recognized by the community and are a priority in managing and resolving all problems in society. [8]. In the aspect of decision-making arrangements, indigenous peoples have their own characteristics according to their respective customary laws. [9]customary decisions are related to customary institutions and the natural resource environment. [10].

In a customary law community that has a leader, the concept of leadership that is built (formed) in the customary law community is a process of agreements in the customary law community. [11]In another sense, indigenous peoples are Indigenous Peoples and Local Communities (IPLC), generally defined as ethnic groups originating from and identifying with the indigenous people of a particular area, affected by changes in the global environment

[8] (Ramadhani & Safitri, 2019)
[9] (Balehegn et al., 2019)
[10] (Reed et al., 2021)
[11] (Abdullah, 2020)

because they often depend directly on nearby environment and local natural resources to meet basic life needs. [12]. Meanwhile, in UNDRIP's view, indigenous peoples are communities of people who share ancestry and cultural aspects between generations with the original (pre-colonial) inhabitants of ancestral lands in certain areas of the world. and recognizing the need for their respective communities to have autonomy in defining themselves as Indigenous People [13] Even on the other hand, indigenous peoples can adapt to changing environmental conditions.[14]

According to Jhon Locke, the concept of recognition, which later includes the concept of legal protection by the State, says that the power of the ruler given through a social contract, by itself cannot be absolute. The existence of this power is precisely to protect the natural rights referred to from the dangers that may threaten, both from within and from outside, the law made in the State is also tasked with protecting these basic rights.[15]

The concept of protection a la Jhon Locke above shows that state law is obliged to protect the natural rights of humans themselves, namely indigenous and tribal peoples, the rights referred to are based on the Constitutional Court decision No. 35/PUU/IX/2012 namely customary rights both in private law and public law. The theory of protection a la John Locke is connected with regulations that have been issued by the State in order to provide legal protection for *rechtgemeschappen*, it is necessary to examine both juridically and sociologically. The regulations are :

a. Regulation of the Minister of Home Affairs Number 5 of 2007 concerning Guidelines for the Arrangement of Social Institutions;
b. Regulation of the Minister of Home Affairs Number 39 of 2007 concerning Guidelines for Facilitating Community Organizations in the Field of Culture, Palaces and Customary Institutions in the Preservation and Development of Regional Culture;
c. Regulation of the Minister of Home Affairs Number 52 of 2007 concerning the Preservation and Development of Community Customs and Socio-Cultural Values;
d. Regulation of the Minister of Education and Culture Number 77 of 2014 concerning Guidelines for Fostering Institutions that Believe in God Almighty and Customary Institutions;
e. Permendagri number 52 of 2014 concerning Recognition and Protection of Indigenous Peoples

These regulations are a form of state recognition and protection of the State's obligation to recognize and provide protection for customary law communities as meant in Article 18b paragraph 2 of the 1945 Constitution, The effectiveness of the implementation of ministerial regulations in the context of providing recognition and protection of customary institutions in Indonesia can be assessed by the issuance of regulations -Provincial regional regulations in the regions. With the existence of these regulations by the local government, both the provincial regional government issued a number of regional regulations regarding the recognition and protection of customary institutions. The regional regulations are :

Table 1. Governor's Regional Regulations Concerning Traditional Institutions in Indonesia 2006-2018

No	Perda	No/Year	Province
1	Community institutions and customary institutions	13/2006	Kutai National Card

[12] (Reyes-García et al., 2019)
[13] (Ford et al., 2020).
[14] Diosey Ramon Lugo-Morin, "Indigenous Communities and Their Food Systems: A Contribution to the Current Debate," *Journal of Ethnic Foods* 7, no. 1 (December 14, 2020): 6, https://doi.org/10.1186/s42779-019-0043-1.
[15] Bernard L. Tanya, *Teori Hukum, Strategi Tertib Manusia Lintas Ruang Dan Generasi* (Yogyakarta: Genta Publishing, 2013).

2	customary institution	10/2008	Nanggroe Aceh Darussalam
3	Amendment to the regional regulation of Central Kalimantan province number 16 of 2008 concerning Dayak customary institutions	01/2010	Central Kalimantan
4	Riau Malay customary institution	01/2012	Riau
5	Preservation of Balinese cultural heritage	04/2014	Bali
6	Guidelines for community organization facilities in the field of culture, palaces and regional cultural development in the province of South Kalimantan	O89/2014	South Kalimantan
7	Jambi Malay customary institution	02/2014	Jambi
8	Implementation of customary institutions	02/2016	Gorontalo
9	Formation of management of traditional Malay institutions	41/2018	Belitung Islands

Source: Processed from Primary Legal Materials for 2022

Based on the table above, it shows that before and after the Constitutional Court decision No. 35/PUU/IX/2012, before the Constitutional Court Decision there were 3 regional regulations and after the Constitutional Court decision No. 35/PUU/IX/2012 the issuance of regional regulations has increased, totaling 6 regional regulations regarding customary institutions. Customary institutions from a regulatory standpoint play a major role in shaping society and realizing people's expectations. [16]. Customary institutions cannot be separated from the history of society. [17]So it is appropriate to say that the existing institution is a manifestation of the wisdom of the customary law community which has a role to integrate the values of peace in society. [18]

Increased issuance of regional regulations on customary institutions by governors at the regional level after the Constitutional Court decision no. 35/PUU/IX/2012 needs to be understood as a positive response by the governor to the existence of ministerial regulations related to customary institutions. The ministerial regulations are:

a. Regulation of the Minister of Home Affairs Number 5 of 2007 concerning Guidelines for the Arrangement of Social Institutions;
b. Regulation of the Minister of Home Affairs Number 39 of 2007 concerning Guidelines for Facilitating Community Organizations in the Field of Culture, Palaces and Customary Institutions in the Preservation and Development of Regional Culture;
c. Regulation of the Minister of Home Affairs Number 52 of 2007 concerning the Preservation and Development of Community Customs and Socio-Cultural Values;
d. Regulation of the Minister of Education and Culture Number 77 of 2014 concerning Guidelines for Fostering Institutions that Believe in God Almighty and Customary Institutions;
e. Permendagri Number 52 of 2014 Concerning Recognition and Protection of Indigenous Peoples.

[16] (Rumkel et al., 2020)
[17] (Hamamah & Sarip, 2019)
[18] (Dashor, 2020)

From these regulations, it can be seen that although previously there had been ministerial regulations governing customary institutions in Indonesia , the level of issuance of regional regulations regarding the recognition and protection of regional institutions in the regions was still not significant. This can be interpreted that the issuance of ministerial regulations is not in line with local government legal knowledge regarding the establishment of customary institutions and customary law communities, even if a juridical review of their formation, it is found that some of these regional regulations are not based on Article 18b paragraph 2 of the 1945 Constitution and regulations the ministers are:

a. Aceh Qanun Number 10 of 2008 Concerning Customary Institutions
b. Bali Provincial Regulation Number 4 of 2014 Concerning the Preservation of Bali's Cultural Heritage
c. Regional Regulation of Gorontalo Province Number 2 of 2016 concerning Implementation of Customary Institutions

As a result of the formation of regional regulations that are not based on Article 18b paragraph 2 of the 1945 Constitution and Minister of Home Affairs Regulation Number 5 of 2007 concerning Guidelines for the Arrangement of Social Institutions jo. Regulation of the Minister of Home Affairs Number 39 of 2007 concerning Guidelines for Facilitating Community Organizations in the Field of Culture, Palaces and Customary Institutions in the Preservation and Development of Regional Culture jo. Regulation of the Minister of Home Affairs Number 52 of 2007 concerning the Preservation and Development of Customs and Socio-Cultural Values of the Community and Regulation of the Minister of Education and Culture Number 77 of 2014 concerning Guidelines for Fostering Institutions of Belief in the One and Only God and Customary Institutions as well as Permendagri number 52 of 2014 concerning recognition and the protection of customary law communities makes legal subjects in the management of customary institutions obscure.

The obscurity of the subject in the management of customary institutions in the four local regulations makes the existence of rechtgemenschappen and its customary rights over customary institutions disappear. The ambiguity of rechtgemenschappen arrangements that are not regulated in customary institutions is a form of state legal politics that wants to more actively regulate the role of the State in the management of state institutions. In fact, in the context of the theory of the formation of indigenous and tribal peoples, customary law expert Ter Haar stated that throughout the Indonesian archipelago , at the level of the common people, there are associations within groups that act as a unit towards the outside world, physically and mentally. These groups have a fixed and eternal structure, and the people of that group each experience their life in that group as a natural thing, according to the nature of nature. Not one of them had any thoughts of making the disbandment possible. This group of people has their own administrators and owns property, worldly and unseen property. Such groups are legal associations.[19]

The meaning by Ter haar was later by Dominikus Rato outlining the elements of the legal alliance namely.[20]

a. There is an orderly unity of humanity
b. Settled in a certain area
c. Have rulers
d. Having tangible or intangible wealth, in which the members of each unit experience life in society as a natural thing according to the nature and
e. None of the members has the thought or inclination to dissolve the bond that has grown up or leave it in the sense of releasing it forever.

[19] Mr. B. Ter Haar Bzn., *Asas-Asas Dan Susunan Hukum Adat*, XIV (Jakarta: Pradnya Paramita, 1994).
[20] Dominikus Rato, *Hukum Adat Di Indonesia (Suatu Pengantar)* (Surabaya: Laksbang Justitia Surabaya, 2014).

Whereas the elements described by Ter Haar and interpreted by Dominikus Rato, theoretically these elements are cumulative which juridically if one of the elements within these elements then the existence of a legal partnership is lost or deemed by customary law not to exist. Based on this, when connected with the existence of regional regulations that do not regulate customary law communities as the first element in the Ter Haar-style legal alliance theory, namely the disappearance of regular human units, namely the customary law communities themselves within customary institutions, the regulatory philosophy the protection of customary institutions has deviated from the ontology of the purpose of enforcing protection of customary institutions.

The regulation of customary institutional protection is to create peace and harmonization of the existence of indigenous peoples who live in the midst of today's Indonesian society . With the removal of the unitary elements of customary law communities in customary institutional arrangements in Indonesia , it is necessary to review (review) these regulations again so that they do not gradually eliminate the existence of indigenous peoples. From this legal arrangement in the context of the theory of legal protection, according to Jhon Locke, protection is directed at purely administrative recognition, not emphasizing recognition of natural rights. Recognition like this will strengthen the legal standing of customary institutions in Indonesia. On the other hand, the legal protection of customary institutions is getting stronger because recognition is based on their existence (existence) in society so that natural rights can be recognized according to state law.

2. Harmonization Of Norms For The Protection Of Indigenous Institutions In Indonesia

Philosophically, customary institutional protection has been explained and explained by Jhon Locke through the theory of rights protection, namely that state law is obliged to protect the natural rights of humans themselves, namely indigenous and tribal peoples. The position of the State is as a body that has the power to regulate relations between citizens and between citizens and agencies within the country. Philosophically, the protection of the State for the existence of indigenous and tribal peoples has been strictly regulated in Article 18b paragraph 2 of the 1945 Constitution, which conceptually states that the State recognizes and protects traditional communities, whose current term is known as *rechtgemenchappen* . The existence of Article 18b paragraph 2 of the 1945 Constitution should be the constitutional basis for the formation of organic regulations under it in order to provide recognition and protection for indigenous and tribal peoples. Article 18 b paragraph 2 of the 1945 Constitution should be the legal basis for the formulation of regulations by which the State may not form regulations that are sectoral and have no fundamental dimensions on local wisdom values contained in Article 18b paragraph 2 of the 1945 Constitution.

The local wisdom values contained in Article 18b paragraph 2 of the 1945 Constitution have actually been made into legal products that are more responsive to the protection of indigenous and tribal peoples, namely Article 6 of Law Number 39 of 1999 concerning Human Rights, Constitutional Court Decision Number 35/ PUU-IX/2012 Permendagri number 52 of 2014 concerning recognition and protection of customary law communities and Circular Letter Number: 3 /SE/IV/2014 concerning Determination of the Existence of Customary Law Communities and Ulayat Land. These organic regulations have expressly recognized and protected indigenous peoples who should be in the regulations governing customary institutions should follow the norms set out in the regulations above.

One of these organic regulations is the Constitutional Court Decision Number 35/PUU-IX/2012 and Permendagri Number 52 of 2014 concerning Recognition and Protection of Customary Law Communities which have the same position as Minister of Home Affairs Regulation Number 5 of 2007 concerning Guidelines for the Arrangement of Social Institutions; Regulation of the Minister of Home Affairs Number 39 of 2007 concerning Guidelines for Facilitating Community Organizations in the Field of Culture, Palaces and Customary

Institutions in the Preservation and Development of Regional Culture; Regulation of the Minister of Home Affairs Number 52 of 2007 concerning the Preservation and Development of Community Customs and Socio-Cultural Values; Regulation of the Minister of Education and Culture Number 77 of 2014 concerning Guidelines for Fostering Institutions of Belief in God Almighty and Customary Institutions, the norms contained in the four regulations regulate customary law communities within the customary institutions established by the Permendagri.

The regulation of customary law communities in customary institutional regulations will further emphasize that customary institutions that are recognized and protected by the State are customary institutions that are formed based on local wisdom values contained within customary law communities, whether the form originates from the region (genealogical) or regional affinity.

Based on this, a good political will is needed by the State in order to realize the ontology of customary institutional protection arrangements based on the objectives of customary law, namely Harmonization and Peace. Harmonization of regulation of customary institutional norms in existing regulations (regulations) in Indonesia is needed as an effort to maintain the local wisdom heritage of the founding fathers of the nation against customary law communities as legal entities that are recognized and protected by state law.

C. Conclusion

The regulation of customary institutional protection in Indonesia , namely in the theory of protection a la John Locke above, shows that state law is obliged to protect the natural rights of humans themselves, namely customary law communities, the rights referred to are based on the Decision of the constitutional court no. 35/puu/ix/2012 namely customary rights both in private law and public law. John Locke's theory of protection is related to regulations issued by the State in order to provide legal protection for *rechtgemeschappen , which* needs to be studied both juridically and sociologically. As for these regulations, namely: a) Minister of Home Affairs Regulation number 5 of 2007 concerning guidelines for the arrangement of social institutions; b) regulation of the minister of home affairs number 39 of 2007 concerning guidelines for facilitating community organizations in the field of culture, palaces and traditional institutions in the preservation and development of regional culture; c) regulation of the minister of home affairs number 52 of 2007 concerning the preservation and development of customs and socio-cultural values of the community; d) regulation of the minister of education and culture number 77 of 2014 concerning guidelines for fostering institutions of belief in the one and only God and customary institutions; f) Permendagri number 52 of 2014 concerning recognition and protection of indigenous and tribal peoples.

These regulations are a form of recognition and protection by the State for the State's obligation to recognize and provide protection for indigenous and tribal peoples as meant in Article 18b paragraph 2 of the 1945 Constitution, while harmonization of customary institutional protection norms in Indonesia is by carrying out a legal review of the regulation of the Ministry of Home Affairs. with article 18b paragraph 2 of the 1945 constitution, article 6 of law number 39 of 1999 concerning human rights, constitutional court decision number 35/puu-ix/2012 Permendagri number 52 of 2014 concerning recognition and protection of indigenous peoples and circular letter number: 3 /se/iv/2014 concerning the determination of the existence of customary law communities and ulayat lands.

D. Suggestion

The regulation of customary law communities in customary institutional regulations will further emphasize that customary institutions that are recognized and protected by the State are customary institutions that are formed based on local wisdom values contained within customary law communities, whether their forms come from the region (genealogical) or regional affinity .

References

A. Book

Bernard L. Tanya. *Teori Hukum, Strategi Tertib Manusia Lintas Ruang Dan Generasi*. Yogyakarta: Genta Publishing, 2013.

Bzn., Mr. B. Ter Haar. *Asas-Asas Dan Susunan Hukum Adat*. XIV. Jakarta: Pradnya Paramita, 1994

Rato, Dominikus. *Hukum Adat Di Indonesia (Suatu Pengantar)*. Surabaya: Laksbang Justitia Surabaya, 2014.

B. Journal

Abdullah, A. "Teori Terbentuknya Lembaga Adat." *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang …*, 2020. https://jurnal.ar-raniry.ac.id/index.php/Justisia/article/view/2563.

Aditya, Z F. "Romantisme Sistem Hukum Di Indonesia: Kajian Atas Konstribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia." *… Rechts Vinding: Media Pembinaan Hukum …*, 2019. http://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/305.

Alus, C. "Peran Lembaga Adat Dalam Pelestarian Kearifan Lokal Suku Sahu Di Desa Balisoan Kecamatan Sahu Kabupaten Halmahera Barat." *Jurnal Acta Diurna* 3, no. 4 (2014): 1–20.

Balehegn, Mulubrhan, Selam Balehey, Chao Fu, and Wu Liang. "Indigenous Weather and Climate Forecasting Knowledge among Afar Pastoralists of North Eastern Ethiopia: Role in Adaptation to Weather and Climate Variability." *Pastoralism* 9, no. 1 (December 28, 2019): 8. https://doi.org/10.1186/s13570-019-0143-y.

Dasor, Y W. "Revitalisasi Peran Lembaga Adat Dalam Penanganan Konflik Sosial: Studi Di Manggarai Nusa Tenggara Timur." *Sosio Konsepsia: Jurnal Penelitian Dan …*, 2020. https://ejournal.kemensos.go.id/index.php/SosioKonsepsia/article/view/1859.

Ford, James D, Nia King, Eranga K. Galappaththi, Tristan Pearce, Graham McDowell, and Sherilee L. Harper. "The Resilience of Indigenous Peoples to Environmental Change." *One Earth* 2, no. 6 (June 2020): 532–43. https://doi.org/10.1016/j.oneear.2020.05.014.

Hamamah, F, and S Sarip. "Optimalisasi Lembaga Adat Desa Meneguhkan Konstitusionalisme." *Pagaruyuang Law Journal*, 2019. https://jurnal.umsb.ac.id/index.php/pagaruyuang/article/view/1243.

Hill, Rosemary, Çiğdem Adem, Wilfred V Alangui, Zsolt Molnár, Yildiz Aumeeruddy-Thomas, Peter Bridgewater, Maria Tengö, et al. "Working with Indigenous, Local and Scientific Knowledge in Assessments of Nature and Nature's Linkages with People." *Current Opinion in Environmental Sustainability* 43 (April 2020): 8–20. https://doi.org/10.1016/j.cosust.2019.12.006.

Lugo-Morin, Diosey Ramon. "Indigenous Communities and Their Food Systems: A Contribution to the Current Debate." *Journal of Ethnic Foods* 7, no. 1 (December 14, 2020): 6. https://doi.org/10.1186/s42779-019-0043-1.

Manik, Herlina. "Eksistensi Lembaga Adat Melayu Jambi Dalam Penyelesaian Sengketa Masyarakat Adat." *Jurnal Selat* 6, no. 2 (August 26, 2019): 213–24. https://doi.org/10.31629/selat.v6i2.1323.

Mansur, Ahmad Sadly. "Tinjauan Yuridis Eksistensi Hutan Adat Pasca Putusan Mahkamah Konstitusi No. 35/PUU-X/2012 (Kecamatan Kajang Kabupaten Bulukumba Provinsi Sulawesi Selatan)." *Skripsi*, 2014.

Ramadhani, W, and I Safitri. "Implikasi Pemberdayaan Lembaga Adat Sebagai Alternatif

Dalam Penyelesaian Sengketa Pertanahan Di Aceh." *Jurnal Hukum Samudra Keadilan*, 2019. https://www.ejurnalunsam.id/index.php/jhsk/article/view/1545.

Reed, Graeme, Nicolas D. Brunet, Sheri Longboat, and David C. Natcher. "Indigenous Guardians as an Emerging Approach to Indigenous Environmental Governance." *Conservation Biology* 35, no. 1 (February 17, 2021): 179–89. https://doi.org/10.1111/cobi.13532.

Reyes-García, Victoria, Álvaro Fernández-Llamazares, Pamela McElwee, Zsolt Molnár, Kinga Öllerer, Sarah J. Wilson, and Eduardo S. Brondizio. "The Contributions of Indigenous Peoples and Local Communities to Ecological Restoration." *Restoration Ecology* 27, no. 1 (January 2019): 3–8. https://doi.org/10.1111/rec.12894.

Rosmidah. "Pengakuan Hukum, Hak Ulayat, Masyarakat Hukum Adat, Hambatan, Implementasinya." *INOVATIF | Jurnal Ilmu Hukum* 2, no. 4 (2010): 92–102.

Rumkel, L, B Sam, and ... "Hubungan Kepala Desa, Badan Permusyawaratan Desa Serta Lembaga Adat Dalam Pelaksanaan Pembangunan Desa." *Adm J Ilm …*. download.garuda.kemdikbud.go.id, 2020. http://download.garuda.kemdikbud.go.id/article.php?article=1727131&val=12559&title=Hubungan Kepala Desa Badan Permusyawaratan Desa serta Lembaga Adat dalam Pelaksanaan Pembangunan Desa.

Salam, Safrin. "Perlindungan Hukum Masyarakat Hukum Adat Atas Hutan Adat." *Jurnal Hukum Novelity* 7, no. 2 (2016): 209–24.

Thontowi, Jawahir. "Perlindungan Dan Pengakuan Masyarakat Adat Dan Tantangannya Dalam Hukum Indonesia." *Jurnal Hukum IUS QUIA IUSTUM* 20 (2013): 21–36. https://doi.org/10.20885/iustum.vol20.iss1.art2.

Wiyono, Bambang. "Kedudukan Hutan Adat Pasca Putusan Mahkamah Konstitusi Nomor 35/Puu-Ix/2012 Dan Hubungannya Dengan Pengelolaan Hutan Di Indonesia." *Aktualita* 1, no. 1 (2018): 60–76.