TRADITIONAL LAW IN THE FACE OF STATE LEGAL POLITICS

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Abstract

The legal policy of state recognition of customary law communities during the guided democracy period, the New Order period (New Order), until the reformation period, was carried out carefully by providing four conditions as regulated in the UUPA, the 1945 Constitution of the Republic of Indonesia, and the forestry and plantation law . So the nature of the legal product is still not responsive, because it is not based on Pancasila and does not accommodate the aspirations of indigenous peoples and international legal instruments , the formulation problem study This is How political law current state recognition This to public law customs and rights right traditional ? How future state recognition to public law customs and rights right traditional ? method study This use normative law , results study This describe that The legal policy for state recognition of indigenous peoples in the future needs to accommodate the aspirations of indigenous peoples, international legal instruments that regulate indigenous peoples, and the interests of the state which remains guided by Pancasila as a guide.

Keywords *: Legal Politics, State Recognition, Customary Law Communities.*

INTRODUCTION

Indonesia is known as a country that has a high level of diversity, both in terms of culture, ethnicity, religion, race and class. Judging from the ethnic diversity in Indonesia, there are 366 ethnic groups [1]with different levels of progress and prosperity. The government has indeed carried out development programs in all fields, especially those carried out since the New Order, and have had different effects for each ethnic group. Most have moved from a subsistence pattern of fulfilling life to a modern pattern of fulfilling life, but the reality shows that there are still several communities or ethnic groups who derive their lives from the natural surroundings, either because of limited knowledge and technology or because they deliberately preserve and hold strong the culture inherited from their grandmothers. -ancestor to be one with nature. Communities that choose to live in unity with nature, for example Baduy Sedulur Sikep, Kesapuhan Banten Kidul Ciptagelar, Naga Village, and many more outside Java. Communities that are often referred to as customary law communities (MHA), [2]customary law communities receive less attention from the government so that their living conditions are worrying and marginalized from development. One example is the orang jungle (kubu tribe) community in Jambi who were evicted from the forest where they live, because the forest has become a transmigration location or is controlled by investors.[3]

The degradation of MHA's lives is largely caused by land tenure conflicts, which customary law communities call customary land rights, which have spread in line with the needs of the government and investors in HPH (Forest Tenure) and HTI (Industrial Plantation Forest) various government and private sector projects that utilize community land. often reap conflict. The need for an umbrella to recognize and respect customary law communities is explicitly contained in article 18 B paragraph (2) of the 1945 Constitution and implicitly contained in article 28i paragraph (3) of the 1945 Constitution [4]. uniform regarding legal recognition of customary law communities so that there are no standard provisions for

[1] Soleman Selamatne Taneko, Customary Law An Introduction ; Crews in the predicted future, Bandung Erasco, 1987, p. 24.

[2] The term customary law community is a translation of rechtsgemenschap which was first introduced by Cornelius Van Vollenhoven, which was later defined by his student, Ter Haar, as units that have their own orderly and eternal structure and have their own management and wealth, both material and immaterial. .

[3] The term indigenous people is a translation of indigenous peoples which has developed in the international arena, for example in the United Declaration on the Ring of Rights of Indigenous Peoples (UNDRIP) which is preferred by movements and observers (Omop) of indigenous peoples such as the Alliance of Indigenous Peoples of the Archipelago (AMAN).

[4] Kompas 23 June 2011

recognizing the existence and rights of customary law communities. This is [5]different from the Philippines which already has an instrument for legal recognition of indigenous peoples on land which is given in the form of a certificate known as an Ancestral Certificate. Domain Title (CADT) which is regulated in the Indigenous Peoples' Rights Act (IPRA) 1997. Since 1954, Malaysia has had a Native Title Act, which was then updated in 1974 with different conditions. Australia also has a Native Title. Act 1993 to protect Aboriginal people.

DISCUSSION

Political configuration and legal products

Mafud MD defines legal politics as a legal policy implemented nationally by the Indonesian government which includes: first, legal development which has as its core the creation and updating of legal materials so that they suit needs, secondly, the implementation of existing legal provisions, including the confirmation of institutional functions and training of law enforcers.[6]

The relationship between law and politics is described by Rahardjo who quotes the opinion of Talcott Parsons with his cybernetic concept in society. Parsons describes four sub-systems, namely cultural, social, political and economic, seen from the flow of energy, culture has the lowest energy, and rises higher and higher. in the social, political and highest sub-systems in the economic sub-system. Law is part of the social sub-system, thus law is codified with political and economic sub-systems [7]in the context of legal and political relations, so law is in a weaker position than politics in relation to the strength of political energy in dealing with law, Dahrendorf said that law is a reflection of the will of the power holder or synonymous with power. [8]Mafud said that the political configuration of a country will give rise to the character of certain legal products in that country. In countries with a democratic political configuration, the legal products have a responsive/populistic character, whereas in countries with an authoritarian political configuration, the legal products have an orthodox/conservative/elitist character. Responsive/populistic is a [9]legal product that reflects a sense of justice and meets the expectations of society. In the process of making it, it provides a big role and full participation of social groups or individuals in society. The results are responsive to the demands of social groups and individuals in society, whereas orthodox law /conservative/elitist is a legal product whose content reflects the social political elite, preferring that the government's desires are positivist-instrumentalist, namely being a tool for implementing the state's ideology and programs.

In contrast to responsive or conservative law, the indicators used are the law-making process, the nature of the function of law, and the possible interpretation of a legal product according to Mafud [10]MD. The development of political configuration up to 1998 (the publication of the book Political Law in Indonesia) starting from the liberal democracy period, the period guided democracy, and the New Order period in the period of liberal democracy (1945-1950), if seen from the perspective of the functioning of the pillars of democracy, it can be seen that the role of parties through parliament is very dominant, whereas the role of the executive or cabinet is very weak, so that it can almost be said to be non-functional. Even so, his legal products had a responsive/populistic character. [11]The subsequent period of leadership was marked by a tug of war between the three main political forces, namely: Seokarno, the Army and the PKI. Seokarno remained politically in the strongest position so that he transformed himself as an authoritarian leader. During this period, his legal products could be qualified as law. conservative/orthodox/elitist [12], but specifically for legal products in the form of the UUPA, it can be said to be a responsive legal product, then the authoritarian-bureaucratic New Order period gave greater weight to [13]economic development within the framework of national development. Legal products in the New Order period had a conservative character. /orthodox/elitist.

[5] Kompas 31 October 2009

[6] Moh.Mafud MD legal politics in Indonesia, Jakarta, LP3ES, 2006, p. 9.

[7] Satjipto Rahrdjo, Legal Studies, Bandung, alumni, n1982, p. 37-38.

[8] Moh. Mafud MD, Op, Cit. p. 14.

[9] Ibid p. 15.b

[10] Moh. Mafud MD, [10] Ibid p. 25-26

[11] Ibid p. 300

[12] Ibid p. 321

[13] Ibid p. 348

Padmo Wahjono in his book Indonesia, a State Based on Law, defines legal politics as basic policies that determine the direction, form and content of the law that will be formed. This definition is still abstract and is then supplemented by an article in the justice forum magazine entitled Investigating the Process of Legislative Formation. In the article, Padmo Wahjono said that legal politics is the policy of state administrators regarding what is used as a criterion for punishing something, in this case the policy can relate to the formation of law, application of law, and its own enforcement. Law as a social rule or norm cannot be separated from values. that applies in a society, it can even be said that the law is a reflection and concretization of the values that at one time apply in society, meaning that the law will more or less follow the values that are the common consciousness of a particular society and apply effectively in regulating their lives. The same thing happens in legal politics.[14]

The legal politics of one country are different from the legal politics of other countries. This difference is caused by differences in historical background and views

Oding Djuanaedi in his book Dynamics of Legal Politics in Indonesia, there are 3 (three) basic foundations of Indonesian legal politics, including:

a) **The ideological basis of legal politics** , considering that every country has a state ideology, the question will arise as to where this ideology should be positioned in law. State ideology is a system of understanding that must not be trapped as a "narrow-minded worldview." State ideology is a guiding star (leitstar) in showing which direction the law will go. [15]Hans Kelsen's conception of basic norms is a proposition that cannot be eliminated, which is the goal of all legal avenues. The propositions referred to as basic norms function as a basis and also as objectives that must be taken into account by every existing law or regulation.

The implementation of the state's goals must of course be based on Pancasila as the basis of the Republic of Indonesia, while the law as a tool to achieve these goals, apart from being based on the five principles (Pancasila principles) to achieve the state's goals, must also function and always be based on the four principles of legal ideals (recthsidee).) :

1. Protecting all elements of the nation and its integrity.
2. Realizing social justice in the economic and societal fields.
3. Realizing popular sovereignty (democracy) a rule of law state (nomocracy)
4. Creating tolerance on the basis of humanity and civility in religious life.

Based on the thoughts above, the basis of Indonesian political and legal ideology is Pancasila as a guideline and basic principle that must be stated in every law formation and in the context of law enforcement.

b) **The Constitutive Foundation of Politics and Law** The constitution is the back bone in every state structure. The term constitution has actually existed since Greek times where there was the Athenian constitution. emperor. [16]In the Indonesian vocabulary, the term constitution has two meanings, namely all the provisions and regulations regarding the state and the Constitution of a country. According to the Big Indonesian Dictionary, the Constitution means a law that is the basis for all laws and other regulations in a country that regulate the form, system of government, division of powers, authority of government bodies.

When referring to the Preamble to the 1945 Constitution of the Republic of Indonesia, legal politics should be aimed at implementing 4 state goals including: (1) protecting all people and the nation. (2) promoting general welfare. (3) to make the nation's life more intelligent and (4) to participate in implementing world order.

These four state goals are the wishes of the founders of the Indonesian nation. It is hoped that after independence these 4 state goals must be fought for and upheld [17]without exception to build the lives of the Indonesian people and nation towards a better life.

c)**The Sociological Foundation of Political Law** is the importance of law for the life of society, because it is the basic elements that exist in society that require it. The main elements in question are (1) every individual human being has the desire to live together, (2) live and live together in

[14] Moh Maahfud MD, *Building Politics and Law Upholding the Constitution* , PT. Raja Grafindo Persada, Jakarta, 2010, p. 13

[15] Shidarta, The Dangers of Legal Education as Ideological Indoctrination of the Bigots, in http:// busness-law.binus.ac.id/2017/06/25/bahaya-pendidikan- Hukum-as-ideological-indoctrination-kaum-bigot/accessed at September 2017

[16] Charles Howard McIIIwain, Constitutionalism : Ancient and Modern, Cornell University Press, 1947. p. 23.

[17] Oding Djuanaedi, Dynamics of Legal Politics in Indonesia p. 32

society is a holistic unity and (3) life and social life is a system and each sub-system influences each other.[18]

d. State Legal Politics in Recognition of Customary Law Communities and Their Traditional Rights

Before discussing further the state's recognition of customary law communities and their rights, it would be good to first explain the pluralism of terms relating to customary law communities. Until now there is no standard term to refer to a society that still predominantly uses its own customary law and culture. Both among customary law experts and in legal regulations within customary law study circles, the term customary law community or association of customary law communities is used, while outside of that there are still many terms used such as indigenous communities, indigenous communities, isolated communities, traditional communities, tribal communities. and so on. Experts use the term customary law community as a translation of rechtgemeenschap, which was first introduced by Cornelis Van Vollenhoven and then Vollenhoven's follower Ter Haar, [19]who said: Throughout the Indonesian archipelago, at the level of the common people, there is social interaction in groups that act as a unity towards the outside world. , physically and mentally these groups have a permanent and eternal structure, and the people of that group each experience their life in the group as a natural thing, whereas according to the nature of nature, none of them has thought about the possibility of the group disbanding. These groups of people also have their own administrators and have personal, worldly and supernatural property. These groups have the character of a legal partnership.

If simplified, this opinion contains the requirements for customary law communities, namely ownership, i.e. having a population, a permanent wiliyah (territorial) structure, management of tangible and intangible property and acting on behalf of their unit. Among observers of customary law communities and non-governmental organizations (NGOs) that advocate for more customary law communities, they choose the term Tribal People or Indegenous People which comes from the international convention of the Labor Organization (ILO) Number 169 of 1989 concerning Indigenous Nations and Indigenous Peoples in Countries. independent country, the convention determines that what is called indigenous people are ethnic groups living in an independent country whose social, cultural and economic conditions are different from other social groups or ethnic groups that have inhabited a country since ancient times. colonial which had its own economic, cultural and political institutions. Meanwhile, Jose Martinez, a UN special pioneer for the Commission on the Prevention of Discrimination and Protection of Minorities, provided an understanding of indigenous people by stating:[20]

Indegenous communities, people and nations are those which have a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now pravailing in tho territories or parst of them.

The definition of indigenous people here is defined as groups of people and ethnic groups who have a historical continuity with the period before the invasion and after the invasion which developed in their territory, considering themselves different from other community groups or parts of society. Meanwhile, Tribal People Cobo states as follows: *Tribal people in independent state whose social cultural and economic conditions distinguish then from other sections of the national community and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.*

Tribal people in the concept above are defined as groups of people in an independent country whose social, cultural and economic conditions are different from other groups of people and the status of that group is regulated in whole or in part by their own customs or by special laws and regulations.

Understanding Customary Law

Customs are the habits of society and community groups which gradually make these customs into customs that should apply to all members of society, so that they become customary law. [21]Customary law is law that applies and develops within the community environment in an area in its development by experts or Customary law experts provide various definitions of customary law, including:

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[18] Syamsuddin Pasamai, Sociology and Legal Sociology, PT. Umitoha Ukhuwah Graphics, Makassar, 2011, p. 159-160

[19] R. Seopomo, 1987, Chapters on Jakarta customary law, Pradnya Paramita, p. .46

[20] In Emil Ola Kleden Evolution of the struggle for the idea of Indigenous Peoples Rights in the national and international realm and advanced Training on the Rights of Indigenous Peoples (Indegenous Peoples Rights) for lecturers teaching human rights in Indonesia, organized by Pusdokham-UII in collaboration with the Norwegian Center of Human Rights, Yogyakarta, August 21-24, 2007, p. .11.

[21] HilmanHadikusuma, *Introduction to Indigenous Law* , CV Mandar Maju, Bandung, 2003, pp. 1-2

Cristian Snouck Hurgronje states that customary law is custom that has sanctions (reactions), while customs that do not have sanctions (reactions) are normative habits, namely habits that manifest as behavior that applies in society in reality between customary law and custom. customary boundaries are unclear.

Cornelis Van Vollenhoven stated that customary law is rules of behavior that apply to indigenous people and foreign eastern people which on the one hand have sanctions (so they are said to be law) and on the other hand they are not codified (so they are called custom).

R. Soepomo in his essay several notes regarding the position of customary law defines customary law as law that is not written in legislative regulations (unstatutory law) including living regulations which, although not stipulated by the authorities, are obeyed and supported by the people. based on the belief that these regulations have the force of law.

Soekanto in his book Reviewing Indonesian Customary Law states that customary law is a complex of customs, most of which are not written down, not codified and are coercive, have sanctions (from the law), so they have legal consequences.[22]

Soerojo wignjodipoero stated that customary law is a complex of norms that originate from the people's feeling of justice which is always developing and includes rules of human behavior in everyday life in society, most of which are unwritten, always obeyed and respected by the people, because have legal consequences.[23]

From the various definitions of customary law given by the scholars above, it can be concluded that customary law is unwritten law that grows and develops in customary law communities in Indonesia, which is respected and obeyed by the community because it is deemed appropriate and binding on community members. and maintained by legal functionaries along with sanctions if violations occur.

Customary Law Community

A society is a form of collective life, whose citizens live together for a long period of time, resulting in a culture of society which is a social system, which becomes a forum for patterns of social interaction or interpersonal relationships and relationships between social groups [24]in the life of existing society. Indigenous communities come before the founding of a state. [25]Indigenous communities are referred to by different terms. In the context of customary law, Ter Haar uses the term legal alliance or legal community (rechtsgemeenschap). [26]Quoting the opinion of Cornelis Van Vollenhoven, in his speech on October 2 1901, Soepomo stated that to know the law, it is especially necessary to investigate at any time and in any area, the nature and composition of legal partnership bodies where the people are controlled by the law lives in everyday life. [27]Furthermore, according to Soepomo, explanations regarding these association bodies should not be carried out docmatically, but on the basis of the real life of the community concerned.

Ter Haar in his book Principles and Structure of Customary Law emphasizes that throughout the Indonesian archipelago, at the level of the common people, there is social interaction within groups that act as a unity towards the physical and spiritual world. These groups have a system of life that experiences their life within the group as a natural thing, according to the nature of nature.

None of them has thought about the possibility of the group being disbanded. This group has its own management, its own property, worldly possessions and supernatural possessions. These groups are in the nature of legal associations. So, legal associations [28]or customary law communities are groups that are organized in nature. still having its own power, having its own wealth in the form of material and immaterial objects.[29]

Hazairin gave a relatively long description of customary law communities, namely social units that have the necessary equipment to be able to stand independently, namely having legal unity, unity of

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[22] Ibid

[23] SoerojoWignjodipoero, *Introduction and Principles of Customary Law* , Publisher PT Toko Gunung Agung, Jakarta 1983,

[24] SoerjonoSoekanto, Indonesian Customary Law, Rajawali Publishers, Jakarta, 1986, p. 106

[25] Fifik Wiryani, Reform of Customary Rights Regulating the Rights of Indigenous Peoples in Natural Resources Management, Serata Press, Malang, 2009, p. 1

[26] Ibid.p.11

[27] R. Soepomo, Chapters Concerning Customary Law, PT Pradaya Pramita, Jakarta, 1996, p. 45

[28] B. TerHaarBzn, Principles and Composition of Customary Law, Publisher PT Pradnya Paramita, Jakarta, 1994, p. 7

[29] Ibid. p. 7

authority and environmental unity based on collective rights to land and water for all its members if [30]each Customary law communities are studied carefully, each of which has its basis and form. According to Soepomo, customary law communities in Indonesia can be divided into two groups based on their basic structure, namely those based on ancestry (genealogy), and those based on regional environment (territorial). From the basics and forms of customary law communities above, it has developed into three types of customary law communities, namely: genealogical legal communities, territorial legal communities, and territorial genealogical legal communities.

National Legal System

National law is a law or statutory regulation that is based on the state's ideological and constitutional foundation, namely Pancasila and the 1945 Constitution, or law that is built on creativity or activities that are based on the taste and engineering of the nation itself in connection with national law. In fact, it is nothing other than a legal system that originates from the cultural values of the nation that have existed for a long time and is currently developing. In other words, national law is a legal system that emerged as a result of the cultural efforts of the Indonesian people which has a national reach, namely a legal system that covers all the people as far as it is concerned. -The national boundaries of the Indonesian state [31]need to be explained that the above definition cannot be separated from the historical context, where after independence the Indonesian nation did not yet have laws originating from its own traditions but still utilized statutory regulations left over from the Dutch colonial government based on political considerations and nationalist legal regulations. It underwent a nationalization process, such as the Criminal Code (KUHP) which was nationalized from Wetboek van Straafrechts, the Civil Code from Burgerlijk Wetboek, and others. [32]Approaches like the above are very useful in the short term because they can avoid legal vacuums. However, in the long term it is actually less effective and tends to be counter-productive if it continues to be enforced, because in essence it does not change the basic character of colonial inherited laws which tend to be repressive.[33]

Therefore, efforts to develop national law are absolutely necessary, the national legal system is a system (covering basic material and formal and sectoral) which is built based on the ideology of Pancasila, the 1945 Constitution, and applies throughout Indonesia [34]. However, it seems that the national legal system has not yet been realized, because after When we were independent, we did not yet have a complete national legal system of our own. In order to build a national legal system, the government has established a policy to utilize the three legal systems that exist (living law) in Indonesia, namely the customary law system, Islamic law and western (Dutch) law as raw materials.[35]

In this regard, according to Arif Sidharta, [36]Indonesia's national legal order must contain the following characteristics: Having a national perspective and having an archipelago perspective. Able to accommodate the legal awareness of regional ethnic groups and religious beliefs. As far as possible in written and unified form. Rational in nature which includes efficiency rationality, fairness rationality, rule rationality and rationality. The value of procedural rules that guarantee transparency, which allows rational review of the decision-making process by the government. Responsive to the development of community aspirations and expectations, is in line with the results of the seminar on national law, which has been recorded entitled "National Legal Identity" recommending that the national law that is being developed must be [37]based on Pancasila (philosophical) and the 1945 Constitution (constitutional). Function to protect, create social order, support the implementation of development, and secure the results of development. The description above can help provide an overview of the desired figure of the national legal system in the context of realizing ideal legal ideals in accordance with national legal politics.

D. Existence and Rights of Indigenous Peoples in the Constitution

In the 1945 NRI Constitution article 18 B paragraph (2) as follows: The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance

[30] Hazairin in Soerjono Soekanto, Op Cit, p. 108

[31] ImanSyaukanidanA.AhsinThohari, Basics of Legal Politics, Publisher PT Raja Grafindo Persada, Jakrta, 2012, p. 62

[32] Ibid p.63

[33] Ibid p.64.

[34] Ibidhal.65

[35] Ibidhal66

[36] Arif Sidharta in Imam Syaukani and A. Ahsi Thohari, ibid. pg 70

[37] Ibid p.71

with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law.

Article 28 I paragraph (3) states the following: Cultural identity and community rights Traditional is respected and adapts to the times and changes.

Law No.5 of 1960 concerning Basic Agrarian Provisions

In the UUPA there is an article that mentions the existence of customary land rights, namely in article 3 which reads as follows: Bearing in mind the provisions in articles 1 and 2, and the implementation of customary rights and similar rights of customary law communities, as long as the reality still exists, it must be designed so that it is in accordance with national and state interests based on national unity and must not conflict with higher laws and regulations.

If we look carefully, the provisions of article 3 are a rubber article and give rise to ambivalence on the one hand, customary land rights are recognized but on the other hand they must not conflict with national and state interests, as well as higher regulatory laws so that the implementation of article 3 in the field depends on the tastes of the authorities. in interpreting national interests. The facts prove that in the New Order regime under the leadership of President Soeharto, many government and private projects in the name of public interests took ulayat land without compensation or inadequate compensation.

Law No. 41 of 1999 concerning forestry in article 5 paragraph (2) states that state forests as referred to in paragraph (1) letter a, can be customary forests. Furthermore, paragraph (3) of the same article states as follows: The government determines the status of forests as referred to in paragraphs (1) and (2) and customary forests are determined as long as the relevant customary law community still exists and its existence is recognized. Thus, customary forests are not considered private forests, because customary rights are not rights like property rights, business use rights, building use rights and so on. Lawmakers may follow the line of thought of the Basic Agrarian Law (UUPA) which states rights. ulayat is a temporary right.

In fact, the Forestry Law recognizes customary law communities in article 67 which reads as follows:

(1) Customary law communities as long as they still exist and are recognized as having the right to:
    a) Collecting forest products to fulfill the daily needs of the indigenous people concerned.
    b) Carry out forest management activities based on applicable customary laws and do not conflict with the law.
    c) Obtaining empowerment in order to improve their welfare.
(2) The confirmation of the existence and elimination of customary law communities as referred to in paragraph (1) is determined by regional regulations.
(3) Further provisions as intended in paragraph (1) and paragraph (2) are regulated by government regulations.

If you look closely at Law No. 41 of 1999 concerning forestry in article 67, it seems to recognize and protect customary law communities (MHA), but with the opening of HPH (Forest Control Forest) and HTI (Industrial Plantation Forest) which is often heard of, MHA is always defeated. and usually the dispute is the boundary of HTI, HPH which often enters customary forest areas which are MHA's customary land rights.

Law No. 18 of 2004 concerning plantations. In the Plantation Law, it briefly touches on the use of land for plantation businesses originating from customary land rights, as regulated in article 9 paragraph (2) as follows:

In the event that the land required is customary law community land which in reality still exists, prior to the granting of rights as referred to in paragraph (1) the applicant is obliged to hold consultations with the customary law community holding customary law rights and residents holding rights to the land in question, to obtain agreement regarding the transfer of land and compensation. In practice in the field, many customary land rights are claimed as part of plantations on the grounds that entrepreneurs already have location permits and business permits for thousands of hectares, so that in the end it becomes a conflict between investors and customary law communities. The root of the problem is that the customary law community side does not have any evidence. written in the form of a certificate and the boundaries may not be clear, on the other hand, the entrepreneur does not have a clear map from the government that issued the rights, moreover the land does not yet have rights but the plantation has already been operated.

E. Legal Politics of State Recognition of Indigenous Law Communities in the Future

The legal politics of state recognition of customary law communities in the future needs to accommodate the aspirations of indigenous peoples, international legal instruments, and be guided by the principles contained in Pancasila as guiding principles for state recognition. What customary law communities want is holistic recognition, meaning that recognition is not dividing the totality of customary

law communities, namely recognition of rights, especially customary rights, customary law communities, customs, customary institutions and customary law. This recognition has the consequence that government projects in customary law must have permission from customary law communities, by providing compensation. , as well as recognition as a legal entity and legal personality of customary law communities. In the international realm, efforts to protect customary law communities have become stronger since the publication of ILO Convention No. 107 of 1957 which has integrationist principles. This principle was later revised with the issuance of ILO Convention No. 169 of 1989 Concerning Indigenous Nations and Traditional Communities in Independent Countries, -

The principle of self-identification. The euphoria of the idea of the revival of indigenous peoples continues to grow so that the UN recognizes the human rights of indigenous peoples with the ratification of the United Nations Declaration on the Rights of Indegenous Peoples (UNDRIP) on September 13 2007, where Indonesia is one of the 144 countries that have signed it. the declaration. For the future of legal politics as outlined in legal products regarding customary law communities and their traditional rights, at least two things need to be done: first, to overcome overlapping and clashing interests due to sectoral egos from government agencies, it is necessary to hold a moratorium on drafting related laws with customary law communities and their traditional rights, to review the harmonization of existing regulations, while waiting for the formation of a law on customary law communities. Second, if it is regulated in a customary community law, it must contain at least four things, including:

1) Recognition of indigenous communities and their rights from local governments.
2) The use of the FPIC (Free, Prior And Informed Consent) instrument or free, prior and informed decision (KBDD) is reflected in UNDRIP (United Nations Declarations On The Rights Of Indegenous Peoples) as a condition for the use of customary land by outside parties.
3) Measurement, mapping of customary land rights, installation of boundary markers as boundaries.
4) Issuance of a certificate of ownership or use rights.

Apart from these things, the regulation of traditional rights, especially customary land rights, in a customary community law needs to prioritize the spirit of article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, namely that the Earth and water and natural resources contained therein are controlled by the state and used. as much as possible for the prosperity of the people, not like now the government acts as the (private) owner of land which freely grants concessions to HPH and HTI entrepreneurs without considering the community in general and customary law communities in particular. So the government since the New Order until now has prioritized a capitalist approach rather than a populist approach as stated in the 1945 Constitution of the Republic of Indonesia, article 33 paragraph (3).

CONCLUSION

Based on the discussion above, the following conclusions can be drawn

The legal politics of state recognition of customary law communities in the masses of guided democracy, the New Order to the Reformation were carried out carefully by providing four conditions as regulated in the UUPA, the 1945 Constitution of the Republic of Indonesia and the Forestry Law, the Plantation Law. So the character of the legal product is said to be still not responsive because it does not refer to the guiding principles of Pancasila, and does not accommodate the aspirations of customary law communities and international legal instruments.

The future legal politics of state recognition of customary law communities needs to accommodate the aspirations of customary law communities, international legal instruments that regulate indigenous people, and state interests, and continue to refer to Pancasila as its guiding principle.

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7. HilmanHadikusuma, *Introduction to Indigenous Law* , CV Mandar Maju, Bandung, 2003, pp. 1-2
8. The term customary law community is a translation of rechtsgemenschap which was first introduced by Cornelius Van Vollenhoven, which was later defined by his student, Ter Haar, as units that have their own orderly and eternal structure and have their own management and wealth, both material and immaterial. .
9. The term indigenous people is a translation of indigenous peoples which has developed in the international arena, for example in the United Declaration on the Ring of Rights of Indigenous Peoples (UNDRIP) which is preferred by movements and observers (Omop) of indigenous peoples such as the Alliance of Indigenous Peoples of the Archipelago (AMAN).
10. Ibid p. 15.b
11. Ibid p. 300
12. Ibid p. 321
13. Ibid p. 348
14. Ibid
15. Ibid.p.11
16. Ibid. p. 7
17. Kompas 23 June 2011
18. Kompas 31 October 2009
19. Moh.Mafud MD legal politics in Indonesia, Jakarta, LP3ES, 2006, p. 9.
20. Moh. Mafud MD, Op, Cit. p. 14.
21. Moh. Mafud MD, [1]Ibid p. 25-26
22. Moh Maahfud MD, *Building Politics and Law Upholding the Constitution* , PT.
23. Oding Djuanaedi, Dynamics of Legal Politics in Indonesia p. 32
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27. Soleman Selamatne Taneko, Customary Law An Introduction ; Crews in the predicted future, Bandung Erasco, 1987, p. 24.
28. SoerojoWignjodipoero, *Introduction and Principles of Customary Law* , Publisher PT Toko Gunung Agung, Jakarta 1983,
29. SoerjonoSoekanto, Indonesian Customary Law, Rajawali Publishers, Jakarta, 1986, p. 106
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