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Recognition of the Existence of Traditional Legal Communities from the Perspective of Legal Philosophy

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Abstract:

Purpose – The existence of customary law communities occurs naturally, which has natural consequences for obtaining their rights. The granting of their rights as legal subjects must be based on genuine awareness that they have the right to obtain them, not motivated by compassion, which is preceded by requests or requests through violent movements. The state was obligated to maintain the living space of existing communities long before the Indonesian state was formed.

Methodology – In this writing, the author uses normative juridical methods by studying customary law communities ontologically, epistemologically, and axiologically.

Findings – Recognition of its existence should be followed by legal certainty. Constitutive recognition of the existence of customary law communities is necessary. The stipulation of the Law on Indigenous Peoples is a form of state action in interpreting justice, as stated by Ulpianus.

Implication – The existence of customary law communities should be seen as a community whose existence is beyond doubt because it has been epistemologically tested concerning current reality.

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INTRODUCTION

The Indonesian state is legal as regulated in the 1945 Constitution of the Republic of Indonesia (UUD 1945) Article 1 Paragraph (3) after the third amendment was ratified on November 10, 2001. Confirming this constitutional provision means that all aspects of life in society, state, and government must always be based on law.

Indonesia as a state of law must pay attention to several essential elements which are principles in the implementation of a state of law, namely: First, there is a recognition that the people and rulers respect and uphold the law and the constitution, whereby all actions taken by the government or state must be based on applicable law. Moreover, has existed before (nullum dictum, nulla poena sine praevia lege); Second, the recognition and respect of human rights, complete with guarantees of protection for violations of the human rights of citizens (presumption of innocence); Third, there is the principle of an independent and impartial judiciary which guarantees the equality of every citizen under the law, and guarantees justice for everyone, including against abuse of authority by those in power (equality before the law).

In a rule of law, one of the most important pillars is protecting and respecting human rights. Since birth, every human being has free and fundamental rights and obligations. The birth of a state and exercising a state's power must not reduce the meaning of freedom and human rights. One of the characteristics of the failure of the rule of law is when the state fails to protect and uphold the human rights of its people.

Human Rights (HAM) are the rights possessed by humans that have been obtained and brought with them at the same time as their birth and presence in society. This right exists in humans without distinction of nation, race, religion, class, or gender because it is fundamental and universal. The basis of all human rights is that all people must have the opportunity to develop following their talents and ideals (Budiardjo, 2003). Human rights are human freedoms that are not granted by the state. This freedom comes from God, which is inherent in

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individual human existence. The government was created to protect the implementation of human rights. The state must not revoke human rights as a gift from God.

One of the human rights that every human being has is the right to life. The right to life is for humans to maintain their lives and avoid and protect them from things that destroy life itself. The right to life is part of the recognition of human existence both as individuals and as a community. Recognition of this existence includes recognition of its existence and all the rights attached to it for its survival.

Recognition of the existence of individuals with all their rights and obligations is something that faces less serious a challenge than recognition of the existence of a community. Even though both are the same thing from the perspective of justice, even in a legal state, recognition of the existence of a community with its communal rights faces serious challenges.

METHODS

This article discussed Recognizing the Existence of Indigenous Law Communities from a Legal Philosophy Perspective. In this writing, the author uses normative juridical methods by studying customary law communities ontologically, epistemologically, and axiologically. The author limits this topic by looking at the existence of customary law communities according to the theory of justice put forward by leaders of the natural law school, which first appeared in Ancient Greek philosophy and was then developed in the Middle Ages. All analysis results are directed at answering a question that asks whether there needs to be recognition of the existence of customary law communities.

RESULT AND DISCUSSION

Natural Law School of Justice Theory. Justice has been a matter of debate, and even if we trace further back, we will find that this theme has long been in the thoughts of Ancient Greek philosophers such as Aristotle and Plato. The theme of justice is an old topic of discussion as old as discussions about truth and beauty. In philosophy, the theme of truth is included in the branch of epistemology, beauty is included in the branch of aesthetics, and justice is included in the branch of ethics and morals. It shows that justice is fundamental in human life and is the basis for the birth of various social institutions, including legal institutions.

Terminologically, the most muscular definition of justice is as expressed by Ulpianus (Amin, 2019), namely a permanent and continuous will to give to each person what is due to him (iustitia est constans et perpetua voluntas ius suum cuique tribune). Justice expresses relations of right and not charity. Giving rights in the context of this definition is not a gift of love but a necessity because other people have the right to get it.

Thomas Aquinas, one of the philosophers who developed the theory of justice in the natural law school, defines justice firmly in Summa Theologiae parsSecunda Secundae Questions 58 articles 1: "the attitude according to which a person is constant and with the eternal will of his rights for each" (Latin: Justicia est habitus secundum quem aliquis constant et perpetua voluntate ius suum unicuique tribute). Because Thomas' philosophy is under the influence of Aristotle, this definition refers to Aristotle's definition, which says that "it is a habit of justice in which a man is said to be able to carry out just actions according to his will" (Latin: justice is a habit whereby a man is said to be capable of doing just action following his choice) (Arum, 2019).

Justice as a policy has a prioria materia, which consists of various things related to human relations with each other. The relationship between justice and its object is summarized in the expression: ius suum unicuique tribunes; give every one what is their right. One of the essential points when talking about justice is rights (tern ius). Thomas Aquinas saw this right as the proper object (obiectum proprium) of justice. The action or implementation of justice should be preceded by firm action that precedes a person's right to do so. From the statement above, we can conclude that rights and justice are closely related. This right belongs to every individual and is inherent in human nature. So, it does not just come from outside humans.

Thomas Aquinas divides the concept of justice into two parts (Adlhiyati & Achmad, 2019):

1. Universal justice in human relations, giving what is his right
2. Particular justice consists of distributive, exchange, and retributive justice. Distributive justice emphasizes the relative distribution of rights and obligations.

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The problem of the relationship between justice and positive law was the center of attention of Greek thinkers, as was thinking about law at that time. The following outlines several thoughts in the context of justice in law. Plato and Aristotle were chosen to represent classical thinking, which laid the foundations for justice. Thomas Aquinas explained starting from the basic ideas of Aristotle's philosophy, while John Rawls represented modern thinking, which was emphasized by mapping the two main currents of thought above.

Even though Thomas Aquinas' view emphasized the relationship between rights and obligations, he continued his attention to the assertion of the subject of rights and obligations (quem aliquis - suum unicuique tribuit). The subjects of these rights and obligations can be individuals (aliquis) or groups within a community (aliqui). According to this view, the basis of rights and obligations also confirms the owner of the rights (ius domini) and the owner of the obligations (rusticis dominus), which makes the rights and obligations run as they should.

Traditional Law Communities in Ontology, Epistemology and Axiology. Defining customary law communities must begin by looking at the meaning of the words that make up the phrase. The phrase customary law community consists of three syllables whose meaning can be reviewed. The first is the understanding of society. Scientists in the social field agree that there is no single definition of society because human nature constantly changes from time to time. In the end, these scientists gave different definitions from one another. The following are several definitions of society according to sociologists (Tejokusumo, 2014):

1. Selo Soemardjan defines society as people who live together and produce culture;
2. Max Weber defines society as a structure or action that is essentially determined by the hopes and values dominant in its citizens;
3. Emile Durkheim defined society as the objective reality of the individuals who are its members.

The life of a society is a social system in which the parts are interconnected and make these parts an integrated whole. Humans will meet other humans in a society with different roles; for example, when someone goes on a tourist trip, we will meet a tourism system, including a tourist bureau, tour manager, travel companion, restaurant, and accommodation.

Second is the legal understanding. The general definition of law is regulations in the form of norms and sanctions created to regulate human behavior, maintain order and justice, and prevent chaos. Laws are written or unwritten provisions or regulations that regulate people's lives and provide sanctions for those who violate them. From the several definitions expressed by the experts above, it can be concluded that law includes several elements, namely: regulations regarding human behavior in social interactions, official authorities implement these regulations, these regulations are coercive, and sanctions Violations of these regulations must be firm (Kansil, 2018).

Third is the meaning of custom. According to the Big Indonesian Dictionary, customs are cultural ideas, habits, and ancestral history consisting of norms, institutional values, and customary laws that are common or often practiced by a group of village people. If traditional activities are not carried out, people believe it will lead to mistakes and destruction in life in the world. Because it is considered to violate customary law (Pendidikan, 2004).

Customs are behavioral constructions of human life that take the form of habits maintained continuously by individuals and groups. Customs are ideas of cultural values, norms, habits, institutions, and customary laws commonly practiced in an area. Customs are something that has been done for a long time and is part of the life of a group of people, usually from the same country, culture, time, or religion. Customs are something that has been done for a long time and is a deeply rooted part of the life of a group. Public. Customs can also be interpreted as habits handed down from ancestors, which are still carried out in a particular society, or as an assessment or response to existing ways that are the most correct and reasonable. Customs are a part of traditional society that can never be abandoned, no matter how far that society has developed. According to the Big Indonesian Dictionary, customs are eternal codes of behavior passed down from generation to generation as a legacy so that they are firmly integrated with society's behavior patterns. Based on the views of these experts, it can be concluded that customs are rules that exist in a society that contain the rules of human life and human behavior in that society (Patmawati et al., 2021).

Customary law communities are formed from the three phrases explained above. A customary law community is a community unit in a customary territory that is autonomous, where they regulate their life system independently (including law, politics, and economics), and is also autonomous, namely a customary community

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unit that was born or formed by the community itself, not formed by other forces, for example, the village unit and its Village Community Resilience Institute.

The definition of customary law communities above is constructive in understanding them ontologically. Ontology is a question about the form and nature of reality and what can be known from this (Sulistyawan, 2012). The substance of customary law communities ontologically lies in two things, namely "society" and "customs." Society is a community born from a group of individuals living and living permanently in an area with specific behavioral patterns. The pattern of behavior that develops continuously among them becomes a habit and even becomes a law for them. From these behavioral patterns, customs are born, which become a guide to life for them and are passed on to their children and grandchildren.

A community formed long before a large community called a state. In this sense, customary law communities existed long before the Indonesian state was formed. Correspondingly, customs were born long before there were laws governing state life.

There are two approaches to understanding the existence of traditional law communities etymologically, namely: first, coming from nature (nature), which is accompanied by religious magical properties, or what is called an existing phenomenon; secondly, it is processed from the relationship between the customary law community itself (culture) which is attached to traditional characteristics.

The knowledge of customary law communities in Indonesia comes from existing and recognized communities in Indonesia. The Epistema Institute press release dated January 30, 2017, stated that 538 (five hundred and thirty-eight) customary law community communities had been established following Constitutional Court Decision No. 35/PUU-X/2012 on May 16, 2013. The recognition of the existence of this community is proof of the truth of knowledge, which explains that many indigenous communities have lived based on their customs long before the state was formed. Apart from that, they have inhabited certain areas of this country long before the division of territorial areas with behavioral patterns closely related to tradition. Customary law communities have built their living space through a process that involves belief in the form of awareness, where there is a relationship between a conscious subject (the community) and a recognized object (the customary territory). This awareness can be seen from various efforts to overcome the crisis in their living space, in which they slow down the rate of deforestation carried out by investors, threatening the loss of their living space.

Meanwhile, in terms of construction livelihoods, the epistemology of "truth knowledge" means that the existence of traditional law communities regarding their rights to their living space is longed for because, according to traditional law communities, truth is good. This knowledge occurs because customary law communities know their interactions with forests and customary lands as their living space. It means that knowledge of the truth is shaped by the attitudes and environment that influence it. Suppose the knowledge of this truth is studied through the correspondence theory of truth. In that case, it can be proven from the fact that the planting of the relics of their ancestors in their respective customary territories to this day, their existence is very real and can be enjoyed by them.

Correspondence truth arises when there is a match between the meaning intended by a statement and what is the fact (Mintaredja, 1997). From such truths, it has been shown that the epistemology that emerged from the minds of customary law communities was formed from the five senses' perception of the natural forest, which has given rise to a customary law mindset to build their lives by preserving the forests of their customary areas.

Meanwhile, coherence truth occurs if a proposition or the meaning of a statement of knowledge is true if the proposition has a relationship with the ideas of the previous proposition which is true (Mintaredja, 1997). In theory, the truth of coherence can be tested from the understanding of traditional law communities who view that religious magic in their community is similar to the existence of their gods. Pragmatic truth shows that an understanding can only be proper if used practically (Mintaredja, 1997). In theory, pragmatic truth can be proven by having managed their customary forests/customary lands correctly with all customary legal norms in managing them wisely and with strict restrictions.

In semantic truth, a proposition has truth value if the proposition has a meaning that refers to a characteristic characteristic of something that exists (Mintaredja, 1997). In terms of the truth of the proposition, we can see the wealth of the Indonesian state with the presence of many ethnic, linguistic, and cultural characteristics constituting national wealth. Embedding the term national wealth proves that semantically, customary law communities are recognized in Indonesia.

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Axiologically, customary law communities can be seen from how customary law communities interpret their living space in the context of social functions. For traditional law communities, social function is interpreted in terms of shared needs, especially for traditional ceremonies such as marriage, giving a name to a newborn child, a community member who is seriously ill, or the balak ceremony. The existence of many unique characteristics of customary law communities in building togetherness is axiological evidence that they have an axiological construction of customary law, emphasizing the value of togetherness, harmony, and justice.

Recognition of the Existence of Customary Law Communities from a Legal Philosophy Perspective. Starting from the thinking of the natural law school, which states that certain rights are inherent as a consequence of human nature and can be understood universally through human thought or reason, emphasized by Thomas Aquinas through his views on justice, the presence of customary law communities is not something that is forced. It exists naturally, formed from a group of individuals, forming groups and establishing customs passed down from generation to generation. The birth of a customary law community is a nature that has logical consequences for the recognition of their communal rights.

The problem in Indonesia is implementing the recognition of customary law in communities aligned with legal subjects, as emphasized by Thomas Aquinas. For rights and obligations to run as they should, there must be a strong will from the rights and owner of the obligations. Because Indonesia is a legal state, recognition of the existence of legal subjects must be through legal regulations. Therefore, it is homework for this country to look at the existence of customary law communities as legal subjects, along with its determination through applicable laws.

Customary law communities are communities that have universal rights and constitutional rights. Universal rights are rights that are linked to human rights, while constitutional rights are rights that arise through constitutional regulations. The rights of customary law communities must be given in the context of justice, not out of mercy. These rights must be granted by legal recognition and protection so that there is certainty regarding the justice provided.

As a legal state, Indonesia must have clear regulations regarding customary law communities. In realizing justice, customary law communities are seen as equal to other legal subjects recognized by the state. The consensus of the rule of law must be interpreted in realizing justice. With clear regulations regarding customary law communities, the justice aspired to by the rule of law is clear and only provides justice by granting rights to certain parties. Indigenous peoples must receive equal attention in recognizing their rights.

Legal justice for customary law communities will be realized if the state enacts special laws regarding the existence of customary law communities. When viewed from legislative theory, customary law communities must have special regulations parallel to the law so that everything related to their rights and obligations as part citizens has legal links as lex general.

Indigenous peoples often become victims of injustice in fighting for their rights. The dominance of state power is often the biggest challenge for indigenous peoples in fighting for their rights. In fact, due to the existence of state power, which tends to be interpreted as unlimited power, customary law communities often lose the right to recognition of their existence, recognition of their traditional territories, and recognition of their customs.

CONCLUSION

Recognition of the existence of customary law communities is a necessity. This situation is supported by the necessity to realize justice for every individual as a form of recognition of human rights. The existence of customary law communities occurs naturally, which has natural consequences for obtaining their rights. The granting of their rights as legal subjects must be based on genuine awareness that they have the right to obtain them, not motivated by compassion, which is preceded by requests or requests through violent movements. The state was obligated to maintain the living space of existing communities long before the Indonesian state was formed.

Recognition of its existence should be followed by legal certainty. Constitutive recognition of the existence of customary law communities is necessary. The stipulation of the Law on Indigenous Peoples is a form of state action in interpreting justice, as stated by Ulpianus. Customary law communities should be seen as one whose existence is beyond doubt because it has been epistemologically tested concerning current reality.

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REFERENCES

Adlhiyati, Z., & Achmad, A. (2019). Melacak Keadilan dalam Regulasi Poligami: Kajian Filsafat Keadilan Aristoteles, Thomas Aquinas, dan John Rawls. *Undang: Jurnal Hukum, 2*(2), 409-431. https://doi.org/10.22437/ujh.2.2.409-431

Amin, S. (2019). Keadilan dalam Perspektif Filsafat Hukum terhadap Masyarakat. *El-Afkar: Jurnal Pemikiran Keislaman dan Tafsir Hadis, 8*(1), 1-10. https://doi.org/10.29300/jpkth.v8i1.1997

Arum, G. A. (2019). Konsep Keadilan (Iustitia) Perspektif St. Thomas Aquinas dan Relevansinya bagi Pemaknaan Sila V Pancasila. *Lumen Veritatis: Jurnal Filsafat dan Teologi, 10*(1), 23-44. https://doi.org/10.30822/lumenveritatis.v10i1.207

Budiardjo, M. (2003). *Dasar-Dasar Ilmu Politik*. Jakarta. Gramedia pustaka utama.

Kansil, C. S. (2018). *Pengantar Ilmu Hukum di Indonesia*. Jakarta. Rineka Cipta.

Mintaredja, A. H. (1997). Dasar-dasar Epistemologi, Makalah pada Internship Dosen-dosen Filsafat Ilmu Pengetahuan se-Indonesia tanggal 21 September s.d. 5 Oktober 1997 yang diselenggarakan oleh Fakultas Filsafat Universitas Gadjah Mada bekerja sama dengan Departemen Pendidikan dan Kebudayaan Republik Indonesia, hlm. 13.

Patmawati, P., et.al.. (2021). Keberadaan Adat Rambu Solo di Mamasa, *Phinisi Integration Review, 4*(1), hlm. 115-127. https://doi.org/10.26858/pir.v4i1.19377

Pendidikan, D. (2004). *Kebudayaan, Kamus Besar Bahasa Indonesia*. Jakarta. PT.Balai Bahasa.

Riyadi, P. (2023b). Legal Science Perspective in Modern Science Concepts. Journal of Political And Legal Sovereignty, 1(1), 15–20. https://doi.org/10.38142/jpls.v1i1.33

Sulistyawan, A. Y. (2012). Mempersoalkan Objektivitas Hukum: Suatu Perbincangan Filsafat Hukum. *Masalah-Masalah Hukum, 41*(4), 505-512.

Tejokusumo, B. (2014). Dinamika Masyarakat sebagai Sumber Belajar Ilmu Pengetahuan Sosial. *Geo Edukasi, 3*(1).