

# PROTECTION OF THE RIGHTS OF CUSTOMARY LAW COMMUNITIES IN THE ZONATION PLAN FOR THE COASTAL AREAS OF SMALL ISLANDS IN WEST PAPUA

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## ABSTRACT

*West Papua Provincial Regulation Number 13 of 2019 concerning the Zoning Plan for Coastal Areas and Small Islands has accommodated the rights of MHA, namely the right to recognize MHA, the right to natural resources, the right to a 12 mile management area, the right to the capture area. between traditional and modern fishermen, the right to guidance and competence in managing natural resources under their authority, and the right to take legal action with investors. These rights contribute to minimizing vertical and horizontal conflicts between MHA and the government and employers.*

**Keywords:** Protection, Rights of Customary Law Communities.

## INTRODUCTION

The Unitary State of the Republic of Indonesia, which was proclaimed on August 17, 1945, is a nation state, whose goal is to prosper its people (welfare state). The formed nation state unites citizens from various ethnic groups, religions, races and groups. The nation state consists of 1,340 ethnic groups, 6 religions namely Islam, Catholicism, Christianity, Hinduism, Buddhism, Confucianism and belief. There are 4 races, namely the Malay Mongolian race, the Weddoid race, the Negroid race, and the Melanesoid Papuan race. Indonesia's diverse population is spread over 17,491 islands from Sabang to Merauke, and from Miangas to Rote Island. Indonesia as an archipelagic country has the second longest coastline in the world, namely 99,093 km, with a territorial sea area of 282,583 km<sup>2</sup>, in addition to the Exclusive Economic Zone (EEZ) of 2,936,345 km<sup>2</sup>, and the continental shelf of 2,749,001 km<sup>2</sup>. From a marine natural resource management perspective, it turns out that two-thirds of Indonesia's territory is ocean. The total area of Indonesia is 5,455,675 km<sup>2</sup> and the sea area is 3,544,744 km<sup>2</sup>. This tremendous potential provides space and opportunities for exploration, exploitation, management and conservation of natural resources, research, protection, marine conservation, shipping, and fisheries.

With regard to the management of marine areas, the Government has established several regulations, including: Law Number 32 of 2004 concerning Regional Government (Law

32/2004) and Law Number 27 of 2007 in conjunction with Law Number 1 of 2014 concerning Regional Management Coastal and Small Islands (RZWP3K) has brought fresh air to the management of coastal areas and small islands. The law is the legal umbrella for local governments to develop and optimize coastal areas and small islands (Mohammad et al., 2020).

The government has observed that in the past decade there has been a tendency for damage to coastal areas and small islands because these areas are indeed classified as vulnerable due to the activities of people in the use of natural resources and the accumulation of various exploitative activities that are partial or sectorial in nature. The area or as a result of laws and regulations related to the use of resources that are not oriented towards conservation efforts (Nurul, 2013). Article 16 paragraphs 1 of Law Number 1 of 2014 states that the permanent use of space from some coastal waters and small islands must have a location permit. The implementation of management affairs is divided between the Government and the Provincial Government, as regulated in Article 14 of Law Number 23 of 2014 concerning Regional Government. In the attachment of Law Number 23 of 2014 letter Y states that: *"the management of marine space up to 12 miles outside of oil and gas, as well as the issuance of permits and utilization of sea space below 12 miles outside of oil and gas are the authority of the Provincial Government"*.

This has consequences for the Provincial Government to stipulate a Regional Regulation on the Zoning Plan for Coastal Zone and Small Islands (RZWP3K). The follow-up to the zoning plan regulation is stipulated in the Regulation of the Minister of Marine Affairs and Fisheries Number 23 of 2016 concerning the RZWP3K Completion Process. The preparation of the RZWP3K in Indonesia, of course, has different characteristics, because the Indonesian people who inhabit this archipelago live in tribal communities, different customs, as well as individuals, each community is unique because each community has a unique background, environment in which they live. which are relatively different such as geographical location, climate and so on which ultimately shape certain attitudes and behaviors in the relationships between individuals or groups and form social structures and role systems that are different from one another (Ahmad et al., 2017). So that the preparation of the RZWP3K should take into account the existence of the Customary Law Community, in various regions of Indonesia, especially in West Papua, which in fact still exist. The existence of customary law communities existed before the birth of the Indonesian state; these customary law communities have their own customary law both in the system of governance and in the management of land and natural resources. The existence of Customary Communities is a fact that cannot be denied by the state. a follow-up to the recognition of customary law communities as regulated in the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 8/permen-kp/2018 concerning Procedures for Determining the Management Area of Customary Law Community in Utilizing Space in Coastal Areas and Small Islands, and Minister of Internal Affairs State Regulation Number 52 of 2014 concerning Guidelines for Recognition and Protection of Customary Law Communities.

Based on the general provisions of the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 8/permen-kp/2018 it is stated that the management area of the Customary Law Communities is a water space whose marine resources are utilized by the Customary Law Communities and become the territory of the Customary Law

Communities . Meanwhile, in the Regulation of the Minister of Home Affairs Number 52 of 2014 it is stated that Customary Territory is customary land in the form of land, water and or waters along with natural resources that exist on it with certain limits, owned, utilized and preserved from generation to generation and in a sustainable manner. To meet the needs of the community this is obtained through inheritance from their ancestors in the form of customary land or customary forest.

The existence of the Customary Law Community at the constitutional level up to the implementing regulations has recognized the existence of the Customary Law Communities with its customary area as a living space (*lebensraum*). However, this recognition has not been fully realized at the practical level. In reality, conflicts often occur between customary law communities, traditional fishermen, local fishermen and modern fishermen. Regional management must also provide clear boundaries between ownership, utilization authority and management authority (between the community, the private sector, and government agencies). In relation to the coast, the rights of coastal communities, namely the customary rights of the sea which they have guarded for generations, are often not recognized. As a result, the ownership (customary sea rights) is easily evicted by the interests of tourism investors, aquaculture and other interests (Heryanti, 2019).

For this reason, in this legal research, various government policies, especially in West Papua Province, are studied, namely Regional Regulation Number 13 of 2019 concerning the Zoning Plan for Coastal Areas and Small Islands (RZWP3K) of West Papua Province, on December 31, 2019, the Regional Gazette of the Year 2019 Number 13, has accommodated the rights of the Customary Communities in the Provincial Regulation. For this reason, in this study the formulation of the problem is formulated as follows: To what extent does the government's policy accommodate the rights of Customary Law Communities (MHA) in the RZWP3K, and can the policy minimize the various conflicts that have occurred between traditional and modern fishermen?

This research is a normative legal research through a qualitative descriptive study that analyzes the content (content analysis) of various norms in the RZWP3K which regulates and accommodates the rights of the Customary Law Communities. In order to explore and find out the background of the accommodation policy, interviews were conducted with resource persons who knew and understood matters relating to academic studies up to the promulgation of the *Perdasi*. There were 5 (five) resource persons, namely the Head of the Department of Fisheries and Maritime Affairs, Experts from the Faculty of Fisheries and Maritime Affairs, Papua University Manokwari representing the RZWP3K Team, the West Papuan House of Representatives as many as 2 people, the Legal Bureau of the West Papua Regional Secretariat as many as 1 person. The data and information obtained were then analyzed and presented in a descriptive analysis, so this research is said to be a qualitative descriptive normative research.

## LITERATURE REVIEW

### The Right to Control the State

The Right to Control the State is regulated in the Constitution of the Unitary State of the Republic of Indonesia as referred to in Article 33 paragraph (3) of the 1945 Constitution which states that: Earth and water and the wealth contained therein are controlled by the state and used for the greatest prosperity of the people, in the meaning of nationality, welfare, and independence, in society and the Indonesian legal state which is independent, sovereign, just and prosperous. In the form of the right to control the state as an organization of power, all people have the authority to regulate and administer the allocation, use, supply and maintenance of earth, water and space, determine and regulate legal relations between people and earth, water and space; determine and regulate legal relations between people and legal actions concerning earth, water, and space. The right to control the state in its implementation can be delegated to autonomous regions and customary law communities and their customary rights in accordance with national interests, government regulations and other higher regulations. Based on the legitimacy of the UUPA No. 5 of 1960 which states that the entire territory of Indonesia is the unitary homeland of all Indonesian people who are united as the Indonesian nation which includes earth, water and space and the natural resources contained therein constitute national wealth. The implementation of the state's authority to regulate, administer, use and maintain coastal areas and small islands is reflected in the Zoning Plan for Coastal Zone and Small Islands.

### Rights of Customary Communities

Rights are some of the powers granted by law to a person with the intention of protecting the interests of that person. This right is the allocation of certain powers to people who act in the context of that interest. In the Indonesian dictionary, rights have an understanding of something that is right, belonging, belonging, authority, power to do something (because it has been determined by law, rules, etc.) right power over something or to demand something, degree or dignity. The 1945 Constitution has regulated regarding the recognition and respect for MHA as referred to in Article 18B paragraph (2) that the state recognizes and respects the unity of the Customary Communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. The existence of customary law communities has not only received constitutional juridical protection, but the protection is even stronger because it is emphasized in Article 28I concerning Human Rights. In addition, juridical, village autonomy which is authentically autonomous is recognized by the state (Jawahir, 2013).

The rights of MHA in the United Nations Declaration on the rights of Customary Communities, which consists of 46 articles have accommodated the rights of MHA which were ratified by the United Nations General Assembly (MU PBB) in its 61st session at the United Nations Headquarters in New York on Thursday, September 13 2007, by a majority of 144 countries in favors, 4 votes against (Australia, Canada, New Zealand and the United States) and

11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine).

This Declaration establishes the individual and collective rights of Customary Communities, as well as their rights to culture, identity, language, employment, health, education, maintaining and strengthening institutions, cultures and traditions, pursuing the development of Customary Communities according to the needs and aspirations of Customary Communities.

On the other hand the declaration "*prohibits discrimination against Customary Communities*", and "*promotes the full and effective participation of their right to remain different and to pursue their own vision of economic and social development*". The purpose of this Declaration is to encourage countries to work with Customary Communities in solving global problems, such as development, multicultural democracy and decentralization. Under Article 31, there is a major emphasis that Customary Communities can protect their cultural heritage and other aspects of their culture and traditions, which is very important in preserving the heritage of Customary Communities.

With regard to Customary Law Communities (MHA), it is said that community groups are bound to each other, because they feel the same fate, common goals, have shared responsibilities, feel as a group together because they come from the same ancestor, or feel as a unit as a result of agreement, in the interest of the community in order to build common prosperity, even to consolidate strength to face attacks from outside the community. In various literatures it is stated that such a community is called a legal society.

The legal community is a community that is organized, fixed and has authority, wealth in the form of objects (Ter, 1979). According to Iman Sudiyat "*Rech gemeenschap*" is translated as a legal alliance (Iman, 1981). Meanwhile, Ter Haar defines the legal community as an organized group that is permanent and has power, and its own wealth, both in the form of objects. Kusumadi Pujosewojo, interpreting "*rechts gemeenschap*" varies from the smallest, namely the village to the largest, namely the state, (Marthinus, 1995) as a social unit (fellowship) that has an inner bond and feels as one because they live in the same legal order.

Iman Sudiyat (1981) argues that the legal community as a unit that lives in one legal system, requires facilities to implement, maintain and maintain its legal system, it is deemed necessary for the legal community to have legal authority (legal authority) and legal coercive efforts. Furthermore, the legal community has wealth and can enter into relationships in legal traffic like other legal subjects. The wealth is not only used for the benefit of the legal community itself, but the wealth is also used for the interests and prosperity of its citizens. Legal partnerships according to Surojo Wignjodiporo (1995) that partnerships are units that have an orderly and eternal structure and have their own administrators, and their own wealth, both material wealth and immaterial wealth or a community that establishes laws for itself and subsequently binds itself to that law. Thus the legal community is a group of people or humans who bind themselves to live together in an area because it is based on heredity (geneological) and territorial factors (territorial) and has the highest authority who is appointed based on the power or sovereignty of the highest superior and has the power to control the territory with the previously determined boundaries.

Furthermore, according to Muazzin (2014) customary law is a law that always lives and develops in society, which always follows the times, guarantees order for the community, and is able to provide justice. Customary law aims to create peace and increase welfare for the community. In addition, the rights of Customary Communities are individual rights and communal rights.

Theoretically according to Maria (2005) there is a difference in understanding between the legal community and the customary law community. Customary law communities are communities that occur spontaneously in certain areas, whose establishment is not determined or ordered by a higher authority or other authorities, with a very large sense of solidarity among members, who view non-community members as outsiders, and use the territory. As a source of wealth that can only be fully utilized by its members. Utilization by outsiders must be with permission and the provision of certain rewards, in the form of recognition and others.

Maria Sumardjono argued that the composition of the legal community in Indonesia can be divided into 2 groups, namely: (1) those based on genealogical ties, and (2) those based on the regional environment (territorial). A legal community is genealogical if a person becomes a member of the alliance because he belongs to the same lineage. In this case, there are three basic kinds of relationships, namely:

1. Relationships based on patrilineal lines, such as Kei, Batak, Nias, Sumba, Ambon, Ternate, Arfak, Maybrat, Biak people.
2. Relationships based on the maternal line (matrilineal) for example family in Minangkabau.
3. Relationship based on father and mother line, for example in Kalimantan.

Meanwhile, the existence of a territorial law community is based on a certain area of residence, and is divided into three types, namely:

1. Village fellowship, namely a group of people who feel bound to a place of residence. Example: villages in Java and Bali, ohoi Soa in Kei.
2. Regional alliance, if there are several villages in the area, each of which has a similar structure and government, each is independent but is part of the area, has its own assets and forests around it. Examples: Curia in Angkola and Faam in South Sumatra, ohoi orangkai in Kei.
3. The union of several villages, namely when several village association bodies located close to each other enter into an agreement to maintain common interests where there is no association of *beschikkingsrecht*. Examples: the association of huta-huta in Batak, Ohoirat in Kei.

Maria S.W.Sumardjono (2005) stated that: Theoretically, there is a difference in understanding between the legal community and the customary law community. Kusumadi Pujosewojo defines a legal community as a society that is settled, bound and subject to its own legal system. Meanwhile, customary law communities are communities that arise spontaneously in certain areas, whose establishment is not determined or ordered by higher authorities or other authorities, with a very large sense of solidarity among members, who view non-community members as outsiders, and use territory as a source of wealth that can only be fully utilized by its members. Utilization by outsiders must be with permission and the provision of certain rewards, in the form of recognition and others.

Gottfried stated that the customary law community in Papua is a pluralistic society. The people who live on the north coast of Cenderawasih Bay, such as the Waropen and Biak people, are different from the Mimika people, the Asmat and Marindanim people in the south are also different from the Moni or Dani people in the Jaya Wijaya mountains. Even in adjacent areas, there are differences such as in the village of Nura-marew in the Mamberamo River area on the north coast; there are differences between groups of people who live west of the Mamberamo River, and residents east of the Mamberamo River, which is the interior of West Sarimi. The Jayapura customary law community, namely the people in Jayapura Bay and around Lake Sentani, know Ondoafi, whose job it is to oversee the clearing of land or sago forests, because he is considered a customary expert who knows a lot about the history of all land in his area. In the implementation of the village administration, the Government appoints a village head official called "*Korano*". This official was accompanied by Ondoafi, the secretary, several foremen, and a religious teacher and his deputy (Elder) (Koentjaraningrat, 1988).

Ethnic Tobati, Sentani Genyem (kemtuk gresi), Arso and all the Customary Communities of Jayapura, in their customary government structure, recognize the highest authority, namely Ondoafi. Ondoafi's position was inherited from generation to generation to the eldest son in the family. Ondoafi is the figure of the owner and first occupant of the land occupied. As Ondoafi, he has rights which include control rights, protection rights, regulatory rights and profit sharing rights. Ondoafi informally in life in the village, his existence is recognized and received recognition as a customary leader, who has the authority to resolve customary problems, including: customary rights, land, inheritance, marriage and other customary issues, even though there is now a village government, but the Ondoafi still exist and influence.

In terms of population distribution and life characteristics, the Papuan customary law communities are divided into five major groups: (1) the North Coast customary law communities living in Biak, Yapen Waropen, Nabire, Manokwari, and Sorong Coastal Districts, (2) East Coast customary law communities in parts of Yapen Waropen to Jayapura and even part of the population of Papua New Guinea, (3) Customary Communities of the central highlands in Jayawijaya Regency, parts of Nabire, Jayapura, Merauke, and Fak-Fak, (4) customary law communities the western mountains (bird's head hinterland) covering the interior of Sorong and Manokwari regencies. Ter Haar, stated that in the interior of Irian Jaya (Papua) there are clans (kangaroo clan, Kauwerawet, pig clan and so on) each of which inhabits its own area, but near the seaside there are several small groups, named Keret which standalone each inhabiting a particular land. The residences of these families are in the village area headed by a village head (korano). The head of this village has little power over people outside his own group.

## RESEARCH RESULTS AND DISCUSSION

### Description of MHA in West Papua

West Papua Province consists of 12 (twelve) regencies and 1 (one) city, with a population in 2019 of 963,600 people. Of this amount, the number of Customary Communities of Papua is estimated to be 60 percent of the total population of West Papua. The Customary Law Community in West Papua consists of Customary Communities Papu tribes in the Doberay

customary territory, the Bomberay customary territory and the Saireri customary territory of West Papua Province. The Doberay Customary Territory.

### **Accommodation of MHA Rights in RZWP3K**

Analysing the accommodation of community rights in the RZWP3K is preceded by an analysis of the various community nomenclatures used in this regulation, as they relate to the accommodation of MHA rights. The Provincial Regulation RZWP3K regulates community matters, including:

#### **Nomenclature Confusion**

1. Communities are communities consisting of Customary Law Communities, Local Communities and Traditional Communities who live in coastal areas and small islands.
2. Customary Law Community is a group of people who have lived for generations in certain geographical areas in the Unitary State of the Republic of Indonesia because of their ties to ancestral origins, strong relationships with land, territory, natural resources, have customary government institutions and customary law orders in Indonesia. Customary territory in accordance with the provisions of the legislation.
3. Local Communities are groups of people who carry out their daily life based on habits that have been accepted as generally accepted values, but are not completely dependent on coastal resources and certain small islands.
4. Traditional Communities are traditional fishing communities whose traditional rights are still recognized in carrying out fishing activities or other legal activities in certain areas located in archipelagic waters in accordance with the provisions of laws and regulations.
5. Stakeholders are users of coastal resources and small islands who have a direct interest in optimizing the utilization of coastal resources and small islands, such as traditional fishermen, modern fishermen, fish raisers, tourism entrepreneurs, fisheries entrepreneurs and the community.

The confusion in the use of nomenclature between communities, Customary Communities, local communities, traditional communities and stakeholders, creates multiple interpretations and can be misused to undermine the authority of Customary Communities. There should only be one nomenclature, namely Customary Communities, because Customary Communities are people who inhabit coastal areas and small islands, these are people who have adapted to modern values due to openness of information and communication, they are also those who have a livelihood in farming, gardening, and fishing. (fishermen) which due to the progress of the times, they are no longer confined to traditional knowledge and equipment but already have skills in farming, gardening, fishing with modern new innovations and modern equipment. This ambiguous nomenclature has a negative impact on the capacity development of Customary Communities, so that when a member of the alliance has the capacity, competence, which enables him to take part in the management of coastal areas, beaches and small islands by using modern equipment, and adequate capital, for the benefit of the rulers who businessmen and entrepreneurs in power, the classification of the members of the alliance is categorized as not Customary Communities. This is dangerous and will slowly but surely erode the existence of Customary Communities in natural resource management. which in Article 4 RZWP3K covers an area of 12 (twelve) nautical miles measured from the coastline towards the high seas and/or



towards the archipelagic waters; and landward covering the district administration area in the coastal area.

### **Rights of MHA in RZWP3K**

The rights of Customary Communities in the management of coastal areas and small islands include: Obtain priority access to parts of coastal waters and small islands following the predetermined space allocation.

Article 21 of the Perdasi RZWP3K West Papua describes that the customary territory in West Papua includes the Bomberai customary area, the Doberai customary area and part of the Saireri customary area which has management areas in coastal waters and small islands, which are managed by customary law communities which are given to the community. Customary law in accordance with the provisions of laws and regulations, and which is also regulated in Article 4 of the Perdasi RZWP3K covering an area of 12 (twelve) nautical miles measured from the coastline towards the high seas and/or towards archipelagic waters, and towards the land covering the administrative area district in the coastal area.

Observing the MHA Management area regulated in this Perdasi RZWP3K, it has provided very good protection, for the coastal waters and small islands as far as 12 nautical miles that are within the MHA authority area in West Papua. MHA should be given the freedom in accordance with local wisdom to manage coastal waters and small islands in West Papua. In fact, it has also regulated how to protect the MHA Management area as regulated in Article 50 of the RZWP3K Perdasi as follows: Utilization of customary law community management areas is carried out by:

1. Pay attention to environmental sustainability, regional harmony and support community fishery activities; no-take/protection zones; actualization of customary activities related to the conservation of resources in coastal areas and small islands; environmental carrying capacity and capacity; avoid and minimize the possibility of negative impacts from utilization activities; economic development and community welfare; controlling community activities; and development and construction of infrastructure for the public interest.
2. Utilization of resources in accordance with the customary regulations of the local customary law community.
3. Utilization and management of resources in the territory of customary law communities is carried out by established customary law institutions.
4. The customary law community shall formulate rules for the use of resources in the managed area.
5. Carry out activities to utilize coastal waters and small islands by maximizing the potential that exists in Customary Communities in the Coastal Zone and Small Islands in a sustainable manner;
6. Propose customary fishery management areas through the Regent/Mayor to the Governor in accordance with the provisions of the legislation;
7. Carry out management of coastal resources and small islands based on customary law and local wisdom of Customary Communities;
8. Obtain benefits from the implementation of the management of coastal areas and small islands;
9. Obtain information regarding the management of coastal areas and small islands;
10. Submit reports and complaints to the competent authorities for the losses that befell him related to the implementation of the management of coastal areas and small islands;
11. Report the consequences of alleged pollution and/or destruction of coastal areas and small islands that are detrimental to their lives to law enforcement officials to be followed up in accordance with the provisions of laws and regulations;

12. File a lawsuit to the court against various problems of coastal areas and small islands that are detrimental to their lives;
13. Receive legal assistance and assistance on problems encountered in the management of coastal areas and small islands in accordance with the provisions of laws and regulations.
14. The right to obtain recognition by the local government;
15. The right to obtain priority access to parts of coastal waters and small islands which will be further regulated by a Governor Regulation;
16. The right to file a representative lawsuit to the court in accordance with the provisions of the legislation.

Ronny Bawole stated that In the RZWP3K the community is given management rights in accordance with the spatial designation as stated in the designation of conservation areas, public uses, national strategic areas and channel zones. The regulation of community rights is contained in the direction of spatial use and indications of programs that must be carried out by all stakeholders in the economic development of the community. The point is that community rights in utilization need to be regulated, organized, and managed so that every community has a positive contribution in using space in accordance with the RZWP3K. The same thing was stated by the Head of the Marine and Fisheries Service of West Papua Province and the Chair of Commission II of the DPRPB that the granting of management rights to the community is a form of recognition and appreciation in managing according to the spatial designation.

In addition to rights, MHA also has obligations in the management of coastal areas and small islands regulated in the RZWP3K including:

1. Provide information regarding the management of coastal areas and small islands;
2. Safeguard, protect, and preserve the coastal areas and small islands;
3. Submit reports on the occurrence of hazards, pollution, and/or environmental damage in coastal areas and small islands;
4. Monitor the implementation of the management plan for coastal areas and small islands;
5. Implement a program for managing coastal areas and small islands as agreed by the customary law community;
6. Build partnerships with conservation area managers for customary law community areas located in conservation areas;
7. Formulate procedures for providing recommendations for each person who will utilize resources in the allocation of space in the customary law community's management area.

The accommodation of MHA rights in the RZWP3K normatively has provided adequate protection and has taken sides with MHA. This proves the commitment of the Provincial Government of West Papua, really wants an affirmative commitment to the Orang Asli Papua (OAP). This is in line with the mandate of Law Number 21 of 2021 concerning Special Autonomy for the Papua Province (Henrikus, 2021). The rights of MHA which are accommodated in the RZWP3K show the seriousness of the government's partisanship in providing reinforcement, as well as acknowledging the existence of MHA in West Papua. Even though the rights of MHA have actually existed since their ancestors, the state's recognition of the existence of MHA in the life of the state is essential. These MHA rights are original rights given by God such as the right to live and manage natural resources, as well as rights which are the allocation of power granted by law, namely rights relating to agreements, granting permits, and others.

Article 18b paragraph (1) of the 1945 Constitution mandates that the State recognizes and respects special or special regional government units which are regulated by law. Article 28A everyone has the right to live and has the right to defend his life and life.

Article 28I paragraph (3) Cultural identity and rights of traditional communities are respected in line with the times and civilizations. Paragraph (4) The protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the Government.

Then more than twenty laws and the United Nations Declaration on the rights of Customary Communities recognize the existence of MHA, as stated in articles 26, 27, 28. 29 below.

### **Article 26**

1. Customary Communities have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Customary Communities have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the Customary Communities concerned.

### **Article 27**

States shall establish and implement, in conjunction with Customary Communities concerned, a fair, independent, impartial, open and transparent process, giving due recognition to Customary Communities' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of Customary Communities pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Customary Communities shall have the right to participate in this process.

### **Article 28**

1. Customary Communities have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

### **Article 29**

1. Customary Communities have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement

- assistance programmes for Customary Communities for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of Customary Communities without their free, prior and informed consent.
  3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of Customary Communities, as developed and implemented by the peoples affected by such materials, are duly implemented.

All of these acknowledgments will not become a reality if the Regent/Mayor, even the Province does not issue a Decree on the Recognition of Tribes, Clans, so that MHA has strong legitimacy in managing natural resources in their customary environment. Recognition of MHA in the management of marine areas, if not careful, will lead to new conflicts because not all MHA in West Papua Province recognize the customary rights of the sea. According to Prof. Ronny Bawole that:

The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law (the 2nd (two) Amendment of the 1945 Constitution article 18 (b) paragraph 2).

Article 6 Point 2 *"Management of fisheries for the purpose of catching fish and raising fish must take into account customary law and/or local wisdom and pay attention to community participation"* (Law 31/2004 on marine affairs).

Article 1 Number 33: *"Customary Law Community is a group of people who have lived in a certain geographical area for generations in the Unitary State of the Republic of Indonesia because of ties to ancestral origins, strong relationship with land, territory, natural resources, possessing customary government institutions, and the customary law order in their customary territory in accordance with the provisions of the legislation."* (Law No. 27/2007 in conjunction with Law No.1/2014 concerning Amendments to Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands).

Article 70 paragraph (4) Community participation other than those referred to in paragraph (3) can be carried out through participation in: *"preserving cultural values and maritime insights and revitalizing customary law and local wisdom in the marine sector"* and Article 70 paragraph (5) Further provisions regarding the forms and procedures for community participation in Marine Development as referred to in paragraph (1) shall be regulated in a Government Regulation. (Law No. 32 of 2014 concerning the Ocean). Article 27 states:

1. Provinces are given the authority to manage natural resources in the sea that are in their territory.
2. The authority of the province to manage natural resources in the sea as referred to in paragraph (1) includes: a. exploration, exploitation, conservation, and management of marine wealth other than oil and gas; b. administrative arrangements; c. spatial arrangement; d. participate in maintaining security at sea; and e. participate in defending state sovereignty.
3. The authority of the Province to manage natural resources in the sea as referred to in paragraph (1) is a maximum of 12 (twelve) nautical miles measured from the coastline towards the high seas and/or to the archipelagic waters.
4. If the sea area between two provincial regions is less than 24 (twenty four) miles, the authority to manage natural resources in the sea is divided equally by distance or measured in accordance with the principle of the center line of the area between the two provincial regions.

5. The provisions as referred to in paragraphs (3) and (4) do not apply to fishing by small fishermen.

A similar opinion was expressed by the informants that: granting management rights to Customary Law Communities (MHA) will not create or create new ulayat sea rights, this is because the basis for legitimacy of utilization comes from regulations set, regulated and controlled by the government.

### **Effect of Accommodating MHA Rights in RZWP3K against Potential Conflict**

Accommodating MHA rights in the West Papua Provincial Regulation Number 13 of 2019 concerning the Zoning Plan for Coastal Areas and Small Islands (RZWP3K), namely:

1. Right to recognition and protection.
2. The right to use the 12 mile managed area.
3. The right to use the customary rights of the sea.
4. The right to take the proceeds in the area of Manage.
5. The right to take legal action among MHA.
6. The right to take legal action that begins with an agreement with a non-MHA community.
7. The right to obtain guidance on improving human resources.
8. The right to access in coastal areas and small islands.
9. The right to be prioritized and benefited in transactions relating to legal relations and legal actions over coastal areas and small islands.
10. The right to apply local wisdom for prosperity and sustainability.
11. The right to synergize MHA regulations with government regulations.

Can the accommodation of these rights in the RZWP3K contribute to the various potential conflicts that have existed so far, like a "*coal in the husk*" that sometimes arises due to the great anger of MHA due to the lack of respect and protection from the state? Theoretically, the various arrangements for accommodating the rights of MHA in the RZWP3K represent the seriousness of the Government and Regional Governments in affirming, protecting and taking partisan policies. Of course, this policy is normatively a conditioning for MHA. However, it still needs to be followed up operationally by the Regional Government in various policy implementations in the form of programs and activities that lead to recognition, protection and empowerment.

RZWP3K West Papua is a regional specialty to accommodate the Customary Law Communities (MHA), as well as regulate the position of MHA with other stakeholders in the utilization of MHA space, and other spaces in MHA's position as the General Community. MHA are considered to have been given respect by the existence of a regional regulation on RZWP3K that accommodates their rights, although in implementation it is necessary to strengthen capacity related to human resources and budgets, as well as other forms of incentives that can be utilized from the available resources. For this reason, it is necessary to develop the economy of local communities in their areas of management, so that they have the economic capacity independently, their activities must be connected to markets, etc. a study on positioning the Papuan people community (OAP) in small-scale fisheries in Manokwari can be a reference.

In order to minimize conflicts both vertically and horizontally, the Government and Regional Governments must do various things related to recognition, protection, and empowerment. Meanwhile, MHA must recognize and respect fellow MHA. Strategic things carried out by Regional Governments and MHA as a follow-up to the RZWP3K are as follows:

First: The accommodation of the rights of MHA shall be immediately accompanied by the acknowledgment of MHA as stipulated in the Regulation of the Minister of Home Affairs Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Customary Law Communities, that: Governors and regents/mayors shall recognize and protect customary and tribal peoples, by means of establish a district/municipality Customary Law Communities Committee consisting of:

1. District/city Regional Secretary as chairman;
2. Head of Work Unit Regional Device (SKPD) in charge of community empowerment as secretary;
3. Head of the Legal Division of the regency/city secretariat as a member;
4. Camat or other designation as a member; and
5. The head of the relevant Work Unit Regional Device (SKPD) according to the characteristics of the customary law community as a member.

The organizational structure of the Regency/City Customary Law Communities Committee is determined by the Decree of the Regent/Mayor. The recognition and protection of MHA is carried out through the following stages:

1. Identification of Customary Communities;
2. Verification and validation of Customary Communities;
3. Determination of the Customary Law Communities.

The Regent/Mayor through the District Head shall identify by involving Customary Communities or community groups by observing:

1. The history of the Customary Law Communities ;
2. Customary territory;
3. Customary law;
4. Assets and/or customary objects; and
5. Customary government institutions/systems.

The identification results are verified and validated by the district/city Customary Law Community Committee and announced to the local Customary Law Community within 1 (one) month. The regency/municipal Customary Law Communities Committee submits recommendations to the Regent/Mayor based on the results of the verification and validation as intended, and continues with the determination of the recognition and protection of Customary Communities based on the recommendation of the Customary Law Communities Committee with a Regional Head Decree.

Second: Fostering and empowering MHA in a sustainable manner so that they have the capacity and competence to manage natural resources under their authority, including regulations governing legal relations and legal actions with third parties including investors.

Third: Wisely arrange fishing areas for traditional fishermen and modern fishermen.

Fourth: From the MHA side, a shared awareness is also maintained so that the natural resources they manage can provide mutual benefits to MHA, and avoid the occurrence of various demands to outsiders due to decisions taken that are not procedural and do not involve the community together, not transparent and accountable. For this reason, strong leadership is needed that is able to act wisely and wisely in bringing just prosperity and prosperous justice to the MHA residents concerned. MHA guidance includes customary forests, fishing groups, cultivation and so on, from upstream to downstream.

## CONCLUSION

The rights of MHA which have been accommodated in the Regional Regulation of the Province of West Papua Number 13 of 2019 concerning the Zoning Plan for Coastal Areas and Small Islands (RZWP3K) are rights relating to the recognition of the existence of MHA, rights to natural resources, the right to utilize the managed area as far as 12 mile, the right to regulate fishing areas between traditional and modern fishermen, the right to be fostered to increase the capacity and competence of natural resource management under their authority, and the right to take legal action with investors. The regulation of MHA rights in the RZWP3K does not automatically eliminate conflicts that have occurred so far, but minimizes conflicts, by recognizing MHA, with natural resources that are within their authority, zoning arrangements, and sustainable development, the implementation of which is consistently in accordance with regulations and MHA local wisdom.

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