

THE CONFERMENT OF CUSTOMARY DAYAK TITLE IN CENTRAL KALIMANTAN: AUTHORITY AND LEGAL IMPLICATIONS

Ibnu Elmi AS Pelu, State Islamic Institute of Palangka Raya

ABSTRACT

This paper aims to describe the phenomenon of the proliferation of customary Dayak titles, and the authority to grant customary titles in Dayak communities in Central Kalimantan and their legal implications. The approach method in this paper uses a legal moral approach and a multidisciplinary approach. This paper concludes that the idea of authority and the legal implications of granting customary Dayak titles is based on a respect and reverence for someone. At the level of system, the authority to grant customary titles in the Dayak tribe has undergone a cultural transformation, which is an open authority by the council of Dayak customary and has the authority to be closed by traditional Dayak leaders. Open authority in granting customary titles through the council of Dayak customary is the highest authority in the Dayak customary law. While in the context of the application, authority and legal implications of granting customary Dayak titles that is more contextual in strengthening the recognition and existence of law and indigenous peoples in the life of the nation.

Keywords: Conferment of Adat Title, Customary Dayak Degree, Central Kalimantan, Authority, Legal Implications.

INTRODUCTION

Lately there has been a phenomenon of giving customary titles in multicultural communities in Indonesia. Customary title is a gift from a certain tribe of people to someone who is deemed to have merit and dedication to the tribe who gave the title. One tribe that takes part in giving customary titles is the Dayak tribe. The Dayaks are a tribe of people living in Kalimantan especially in Central Kalimantan. The island of Borneo is divided based on the Administrative region which governs its territory consisting of East Kalimantan, the capital city of Samarinda, South Kalimantan with its capital city Banjarmasin, Central Kalimantan the capital of Palangka Raya, West Kalimantan the capital of Pontianak, and North Kalimantan the capital Tanjung Selor. J.U. Lontaan in Hamid Darmadi (Darmadi, 2016; McCarthy et al., 2007; Schiller, 2007).

Related to the customary title, several people have granted the customary title of the majority tribe that lives on the island of Borneo. Among them are high-ranking regional officials, ministers, even high-ranking state officials who also get customary titles from traditional Dayak institutions. Therefore, giving the Dayak customary title is a tradition even became a sacred ritual for the Dayak people. In addition to the ritual of giving customary titles, Dayak tribesmen have various traditional ceremonies which are usually held by Dayak tribes, those are; tiwah

ceremonies, manajah antang ceremonies, marriage ceremonies, death/balian, mapalas/treatment ceremonies, pregnancy ceremonies, sangiang ceremonies, menetek pantan ceremonies, mamapas lewu and laluhan ceremony. For the Dayak people, the sacredness of traditional rituals including the granting of customary titles requires ceremonial action (Haug, 2014). The awarding of the title of Dayak has a unique style to be explored on the side of the background and the criteria for obtaining the title in the indigenous Dayak community.

Problems with the provision of other customary titles are related to the object of customary title or the criteria of someone who will get a title. The Dayak traditional leader, Sabran Ahmad stated that the granting of the customary Dayak title was a sacred and honorary ceremony in the Dayak indigenous people. Therefore, the criteria for someone who is awarded the title are those who have great merit for the Dayak indigenous people and are intended for Dayak people who have taken part in developing the Central Kalimantan region. So that everyone can't obtain the customary Dayak title by the community. In addition to the aspects of traditional Dayak institutions and persons who obtain customary titles, legal issues that become crucial points in this paper are related to the legal implications of granting these customary titles. The awarding of the customary Dayak title has actually had an impact on the strengthening of kinship relations and kinship relations within the Dayak tribe. However, over time, there have been several immigrant figures who obtained customary titles by Dayak community. The phenomenon of giving customary Dayak titles and legal implications is the focus of research in this paper. This paper aims to analyze the authority and legal implications of awarding customary Dayak title with a legal moral approach, a multidisciplinary approach and a legal philosophy approach. To improve how far the authority and legal implications of giving customary title, this paper uses several theories such as the theory of soul-nation, the theory of authority, the theory of prismatic society, and its implications for the relationship of granting customary Dayak titles.

Customary Title in the System of Dayak Indigenous Law

Dayak community is indigenous people who inhabit the island of Borneo and almost all of West Kalimantan, Central Kalimantan, East Kalimantan, South Kalimantan, and North Kalimantan which are in the territory of the Republic of Indonesia. Dayak tribes that develop in Kalimantan are Dayaya Kayau, Ulu Aer, Mbaluh, Manyuke, Skadai, Melayu-Pontianak, Punau, Ngaju, and Mbaluh (National Library, 2012). Dayak ngaju are the most Dayak tribes in Kalimantan (Jay, 1989). The tradition of giving customary titles is also owned by the Dayak indigenous system. The Dayak tribe has its own concept in giving customary titles to someone.

The awarding of customary titles in indigenous Dayak communities is respect given by indigenous peoples. The mechanism of the process of obtaining titles and nicknames from indigenous peoples (Dayak tribes) through a series of ceremonies and strict judgments. The title or position given to someone by one of the Dayak Customary Councils must not be arbitrary, because a title or position is an honor and sacred. For Dayak tribes, it is not easy to give a customary title to someone. Before giving a title to someone, they must first look at their merit, contributions, interests and loyalty to the Dayak Indigenous people and their origins. The next stage is the selection and consideration process to give the title of custom/honor. The selection

stage in granting customary titles is intended so that the title or position is not given to the parties who do not make any contribution to the Dayak indigenous people.

In general, the legal concept of granting customary titles in Dayak is embodied in regional regulation No. 16 of 2008. In the regulation, it regulates customary officials who are authorized to appoint customary titles, the criteria of those who are entitled to obtain customary titles. A person who obtains a Dayak customary title is usually a figure and leader in the Dayak community who has a great contribution, attention and service to the Dayak community. The names of the titles are varying according to the achievements and services provided to the Dayak people. The titles in the customary Dayak system are generally divided into 5 levels (National Library, 2012), namely: Tamanggung, Pangkaliman, Patih, Singa and Damang.

But in the past few decades, customary titles have shifted the criteria for customary title recipients. If in the past, the title of adat was given to traditional Dayak leaders who had services and real contributions to the Dayak community, and then the customary title could now be given to anyone including national figures. Shifting criteria for recipients of customary titles in the social construction of the Dayak customary law community is indeed considered normal, because customary in various theories has always experienced dynamics in its development (Madon et al., 2001; Murray, 2000). Moeliono (2002), states that customary is dynamic and changing over time. During histories, many social groups in Indonesia developed their own local customs. The name of the customary Dayak Title that has been given to figures, and officials in the archipelago, including:

1. Raja Dayak Raja Haring Hatungku Tungkel Langit.
2. Raja Marunting Batu Pangumbang Langit, Teras Rangkang Duhuna Pasihai, Rujin Negara Kesatuan Republik Indonesia.
3. Mantir Hai Panambahan Antang Randan Karambang Pulau Menderah Danau Hambalat Nusa Hapamantai Tambun Tisan Mandui Asep Sandawa Laut Nyaruntai Paluru Barantai.
4. Temanggung Antang Basehai.
5. Damung Paning Maleh.
6. Dau Mening, dll.

The phenomenal customary title is the title of Raja Dayak Raja Haring Hatungku Tungkel Langit. The title means the king who is nice, wise and prioritizes the interests of the people in every decision. This title is the highest and rare title, because it is only given to someone who has the greatest service in the life of the Dayak community. The title of Raja Dayak Raja Haring Hatungku Tungkel Langit has been pinned to the President of the Republic of Indonesia, H. Joko Widodo. The next customary title is the title of Raja Marunting Batu Pangumbang Langit, Teras Rangkang Duhuna Pasihai, Rujin Negara Kesatuan Republik Indonesia. This title means a leader who is able to increase dignity. This title is also a title of nobility in Dayak customs. The title of Raja Marunting Batu Pangumbang Langit, Teras Rangkang Duhuna Pasihai, Rujin Negara Kesatuan Republik Indonesia is pinned to the Vice President of the Republic of Indonesia, H. Jusuf Kalla. Not only the President and Vice President of the Republic of Indonesia, the Indonesian Army Commander and Chief of Police also received the customary Dayak title, the title of Mantir Hai Panambahan Antang Randan Karambang Pulau Menderah Danau Hambalat Nusa Hapamantai Tambun Tisan Mandui Asep Sandawa Laut Nyaruntai Paluru Barantai which means brave citizens of Dayak communities are

able safeguarding the security of the State of Republic Indonesia. The title was given by the Dayak council to Indonesian Army Commander Hadi Tjahjanto. While the Chief of Police Tito Karnavian obtained the customary title of Mantir Hai Panambahan Antang Randan Karambang Pulau Menderahdanau Hambalat Nusa Hapamantai Tambun, which meant that the brave citizens of the Dayak community were able to maintain order in the State of Republic Indonesia. Ministry officials also obtained the customary Dayak title. One of them is Susi Pudjiastuti as the Minister of Maritime Affairs and Fisheries who obtained the customary title of Dau Mening which means sunny sun.

The authority and legal implications of granting the customary Daya title are interesting from the aspects of the existence of customary law communities extensively. The Rules of granting customary titles in Dayak indigenous people originates from the people's soul (Volkgeist) of the Dayak tribe who are open and have a great spirit in giving respect and glory to the figure that has performed well and contributed to the Dayak community. According to Volkgeist theory, Von Savigny (1779-1861) states that the real law of life in civilized societies is caused by the laws and character of the nation have strong organic relationships. Relations between law and customs do not require serious activity to formulate them because they are present in real life in a nation. If you look at the spirit of giving the customary Dayak title, it is inseparable from the spirit of the Dayak indigenous people in giving respect to someone who has contributed greatly to building the Dayak indigenous people. These values of respect are the philosophy and character of the Dayak community, that the Dayak person has an open soul as well as the characteristics of indigenous communities that are communal and open. The open culture that is the spirit of inducing figures outside the Dayak tribe who are considered to have contributions and services to the Dayak community.

Considering the law of granting title is a law that reflects the personality and soul of the nation, it is believed that some of the Customary law are still relevant as material in forming the Indonesian legal system. Customary Law which no longer be maintained will be quiet over time, in accordance with the nature of customary law which is flexible and dynamic (not static). Savigny asserted in Abu-Bakar, (2013) that Customary Law is a living law, because it is the manifestation of real legal feelings from the people. In accordance with its own nature, customary law continues to grow and develop like life itself.

The Authority of Dayak Indigenous Council In The Perspective Of Customary Law

In the mechanism of granting the customary Dayak title, it is inseparable from the existence and authority of the traditional Dayak institutions. In the perspective of law, authority is described as a form of legal power. The traditional Dayak institution in giving customary titles was delegated to the leader of the Dayak council. The traditional Dayak institution in the highest social construction of the Dayak tribe is the Dayak council. This institution has derivation at the sub-district and urban village level. According to Haba, (2010) one of the characteristics of leadership in indigenous peoples is elitist. This trait has an impact on elitist decision-making processes as well, and this can be seen in most indigenous people, including the Dayak tribe in granting customary titles. In accordance with the Regional Regulation of Central Kalimantan Province Number 14 of 1998 concerning Security in the Province of the First Region of Central Kalimantan, in Chapter I article 1"letter b explains that:

“Customary institutions are a community organization, whether intentionally established or that has naturally grown and developed in the history of the community concerned or in a particular customary law community with the jurisdiction and rights to assets within the area of customary law, managing and resolving various life issues related to and referring to customs and applied customary law.”

This Dayak customary institution that safeguards the wheel of life of the Dayak tribe by adhering to the customary laws that applies. Theoretically, customary law has important elements, namely the element of behavior that is continuously carried out by the community, the elements of behavior are orderly and systematic, this behavioral elements have sacred values, elements of the decision of the tribe chief, elements of sanctions/legal consequences, unwritten elements, and elements adhered to in society (Salim, 2015). The purpose of customary law in the Dayak tribe is contained in the Regional Regulation of Central Kalimantan Province Number 14 of 1998 concerning Kadamangan in the Province of the First Region of Central Kalimantan; in Chapter I article 1 letter d which states that:

“Dayak Customary Law in Central Kalimantan is a law that truly lives in the conscience of the Dayak people in Central Kalimantan and is reflected in their patterns of action in accordance with their customs and socio-cultural patterns that do not conflict with national interests.”

In addition to the Regional Regulation, the Central Kalimantan Regional Government established Provincial Regulation No. 9 of 2001 concerning Handling of Population with Conflict Impact. Article 8 paragraph (2) letter b states that what is meant by customary law community is the local Customary Assembly; and the letter c that is meant to be obedient is respecting the customs of the Central Kalimantan Region and leaving the customs/culture that are not in accordance with the customs/culture of Central Kalimantan. In chapter 9 verse 3 explains, that what the Cross-Ethnic Community Honorary Council means is a family-based association established with the purpose of fostering unity, harmony and brotherhood. Based on these regulations, it seems that the Dayaks are an indigenous community as an autonomous community, has a regulatory system that grows and develops from the community itself with the agreement of the surrounding community. The indigenous people have their own legal system and values that apply within the boundaries of their customary territory so that they are said to be autonomous (Sugiswati, 2012).

Juridically, the recognition of the Regional Government towards customary institutions (Kedamanangan), customary land, customary rights, customary law, customs and Damang Kepala Adat have been carried out. According to Zakaria (2016) legal recognition is very important, because it will determine the existence of customary law communities, and fulfill the rights and needs of the indigenous people.

The authority of customary institutions related to granting customary titles in a policy perspective that is contained in regional regulation number 16 of 2008 concerning the Dayak Customary Institution in Central Kalimantan. According to the Dayak indigenous people, the Kedamangan Institution and its various decisions are legal and have legal power (Ilmi & Riwut, 2016). According to these rules, the awarding of customary titles to certain figures was carried out by Damang or the Customary Chief in each sub-district capital. Damang's main tasks include overseeing the application of customary law and maintaining customary institutions, resolving disputes and violating customary law, giving advice to local governments relating to customary

law, preserving and developing indigenous cultures and promoting Dayak cultural values. Based on this task, Customary must be the first place for peaceful resolution. Damang has the authority to resolve both civil and criminal cases. In criminal terminology, the customary decision of a Damang is considered "*binding*" on the parties involved, but the decision is only a "consideration" for the legal apparatus if a dispute is processed in the formal system. This means that customary decisions do not prevent formal legal actions. The court is free to ignore the results of the customary resolution (Raharjo, 2010).

In this case Damang gave a title to someone with the approval and assessment of the Dayak Customary Council. The title given by Damang or Customary Admission is not only carried out by Dayaks but also by tribes in the archipelago, such as in Jambi, Aceh including Dayak tribes in Central Kalimantan (Arzam, 2016). Those who can be given customary titles are those who have contributed to building the area, not people who have just arrived and have no services in the area, the person given the title must truly uphold the Dayak indigenous people and build according to applicable regulations. The customary title is characterized by characters or characteristics that are easy to remember, customary titles are informal, but are social in a particular community to be more familiar and easily recognized.

The phenomenon of giving the customary Dayak title to the President, Deputy President, Indonesia Army Commander and the Chief of Police was proof of the object shift in the body of customary authority. According to Rostiyanti as quoted by Rivasintha & Juniardi (2017), that the shift in old cultural values was caused by factors in the development of science and technology and the inclusion of new values from outside. As Solvay Gerke, stated that the dynamics in Kalimantan including the shift in patterns of Dayak customary giving, have been accelerated by the entry of Javanese migrants, which are integrated into the Dayak community (Gerke, 1997). Traditional ceremonies as social institutions and old cultural values in the cultural life of a community, including traditional Dayak, will gradually be influenced by new cultural values. The shift in criteria in granting customary titles also as a reaction and spirit of adaptation and a manifestation of openness of the Dayak indigenous peoples in the contemporary era. This phenomenon can also be captured as a model for the development of prismatic societies in Dayak indigenous peoples. Dayak indigenous peoples experienced a cultural transformation from the spirit of giving customary titles to Dayak figures as a form of closed authority, shifting to the spirit of giving customary titles to non-Dayak figures as a form of open authority (Putra, 2011). It cannot be denied that the communal characteristics of the open Dayak indigenous people, as according to Suwarno (2017), are strongly influenced by the life philosophy of Huma Betang, namely the longhouse as a solid symbol of the communal life of the Dayak community. By inhabiting the house and undergoing all life processes in the place, Dayak people show that they also have the instinct to always live together and coexist with other community members. In addition, the shift in the value of giving customary titles was also influenced by the flow of globalization, when technology first facilitated communication throughout the world, and continued to increase dramatically at the end of the twentieth century with new telecommunications and transportation technologies that promised unlimited communities (Prasojo, 2011).

Awarding the customary Dayak title openly by the Dayak Customary Council is a manifestation of the existence of the authority of the Dayak customary institution globally. The

strong influence of globalization is in line with the statement of Zaenuddin Hudi Prasajo, that globalization has triggered a revival of the voices of local traditions, especially those from indigenous peoples (Prasajo, 2011). The existence of Dayak customary institutions from the national level to the village level aims to guard the existence and support of the Dayak community's adaptation efforts in facing the globalization era, so that religious life, community, nation and state in the Dayak land remain conducive, enhance mutual recognition, mutual respect and protect each other, and to maintain the dignity of Dayak people both at local, regional, national and even international levels.

Legal Implication of Awarding the Customary Dayak Title in The Perspective of Recht Family

Conceptually, an understanding of the criteria for the figure entitled to obtain the customary title in the Dayak community is built through two theories, *ius soli* or *jus soli* and *ius sanguinis* or *jus sanguinis*. *Ius soli* in Latin means the right to territory. *Ius soli* is the concept of a person's right to obtain citizenship which can only be obtained by a person based on the place of birth in the territory of a country. The *ius sanguinis* or *jus sanguinis* means bloodline. *Ius sanguinis* is a citizenship rights obtained by a person (individual) based on the nationality of his biological father or mother.

Based on this theory, the ceremony of giving the customary title in the Dayak tribe has used two aspects, namely regional aspects as well as hereditary aspects. These two aspects are often used as administrative requirements in the legal system of granting customary titles. While other important requirements are struggle, services and dedication to the Dayak indigenous people. However, in a number of ceremonies conferring the title of Dayak, there were several figures that did not fulfill the criteria, both regional aspects and hereditary aspects. The figures who obtain customary titles are immigrant figures and officials at the national level.

Awarding this kind of a title, on the one hand the title is a manifestation of the strict implementation of customary law in appreciating local people and Dayak descendants because they have fought and contributed to the Dayak indigenous people, but on the other hand title awards are also used as a form of open respect for migrants which indirectly contributed to the Dayak indigenous people even though they were not Dayaks. In the perspective of legal politics, giving customary titles to important figures is also symbolic, namely as a new political tradition to strengthen ethnic and religious identity in the reform era and a manifestation of the desire of local people to get the support of these figures (Bubandt, 2014).

However, the legal moral idea of the implications of giving customary titles is an honor for the recipient and makes a close relationship with the tribal Dayak community. The kinship relationship became a family relationship for the Dayak community and also recipients of honorary degrees in the family *recht* perspective. If seen from some figures that have the customary title are national elite figures, this proves that the Dayak indigenous people are an elite tribe in the metropolitan community that has been known since 1950 (McCarthy et al., 2007). The giving of customary titles by the Central Kalimantan Dayak Customary Council became a family bond for recipients with indigenous peoples.

CONCLUSION

Based on the analysis, this paper concludes: that the moral idea of giving customary titles in the Dayak community system is based on a universal spirit of respect and honor for fellow human beings outside the Dayak tribe. The universal spirit of the giving customary title emerged as a reaction and spirit of adaptation and a manifestation of openness of the Dayak indigenous peoples in the contemporary era. This phenomenon can also be captured as a model for the development of prismatic societies in Dayak indigenous peoples. Dayak indigenous peoples experienced a cultural transformation from the spirit of giving customary titles to Dayak figures as a form of closed authority, shifting to the spirit of giving customary titles to non-Dayak figures as a form of open and contextual authority. Giving the title of Dayak custom openly by the Dayak Customary Council is a manifestation of the existence of the authority of the Dayak customary institution globally. The existence of traditional Dayak institutions from the national level to the village level intends to guard the existence and support of the adaptation efforts of the Dayak community in facing the era of globalization, so that religious life, community, nation and state in the Dayak land remain conducive, enhance mutual recognition, mutual respect and mutual protection, and to maintain the dignity of Dayak people both at local, regional, national and even international levels. On the side of legal implications, the granting of the customary Dayak title has given rise to close kinship with wider communities and tribes.

REFERENCES

- Abu-Bakar, L. (2013). Revitalization of Customary Law as a Source of Law in Building the Indonesian Legal System. *Journal of Legal Dynamics*, 13(2), 13-29.
- Arzam, A. (2016). Customary degree in kerinci viewed from social sciences. *Al-Qisthu: Jurnal Kajian Ilmu-ilmu Hukum*, 14(1), 1-11.
- Bubandt, N. (2014). Towards a new politics of tradition? Decentralisation, conflict and adat in eastern Indonesia. *Antropologi Indonesia*, 74(1), 1-11.
- Darmadi, H. (2016). Dayak origins and spread in Borneo. *Social Horizon: Journal of Social Education*, 3(2), 322-340.
- Gerke, S. (1997). Ethnic relations and cultural dynamics in East Kalimantan: The case of the Dayak lady. *Indonesia and the Malay World*, 25(72), 176-187.
- Haba, J. (2010). The Reality of Indigenous Peoples in Indonesia: A Reflection. *Political Science*, 12(2), 255-276.
- Haug, M. (2014). Resistance, ritual purification and mediation: Tracing a Dayak community's sixteen-year search for justice in East Kalimantan. *The Asia Pacific Journal of Anthropology*, 15(4), 357-375.
- Ilmi, M., & Riwt, K.M. (2016). Divorce status of the dayak indigenous kedamangan institute, Pahandut district, Palangkaraya city. *Al-Hukama: The Indonesian Journal of Islamic Family Law*, 6(1), 146-169.
- Jay, S. (1989). The basir and tukang sangiang two kinds of shaman among the Ngaju Dayak. *Indonesia Circle. School of Oriental & African Studies. Newsletter*, 17(49), 31-44.
- Madon, S., Gyll, M., Aboufadel, K., Montiel, E., Smith, A., Palumbo, P., & Jussim, L. (2001). Ethnic and national stereotypes: The princeton trilogy revisited and revised. *Personality and Social Psychology Bulletin*, 27(8), 996-1010.
- McCarthy, K., Ondaatje, E., & Novak, J. (2007). Arts and culture in the metropolis: Strategies for sustainability. *RAND Corporation*. Retrieved from <https://doi.org/10.7249/MG477>
- Moeliono, M.M. (2002). *Adat and globalization: Living apart together*.
- Murray, L.T. (2000). Articulating indigenous identity in Indonesia: Resource politics and the tribal slot. *Comparative Studies in Society and History*, 42(1), 149-179.

- National Library. (2012). *List of clan/fam names, traditional titles, and nobility titles in Indonesia*. Jakarta: Perpustakaan Nasional RI.
- Prasojo, Z.H. (2011). Indigenous community identity within muslim societies in Indonesia: A study of katab kebahsan dayak in West Borneo. *Journal of Islamic Studies*, 22(1), 50–65.
- Putra, R.M.S. (2011). The meaning behind the dayak text as ethnic headhunters. *Journal Communication Spectrum*, 1(2), 109-126.
- Raharjo, T. (2010). Criminal mediation in customary criminal law provisions. *Jurnal Hukum Ius Quia Iustum*, 17(3), 492–519.
- Rivasintha, E., & Juniardi, K. (2017). Shifting of cultural values in traditional dayak ceremony viewed from the socio-economic community of Pontianak city. *Social Horizon: Journal of Social Education*, 4(1), 1-10.
- Salim, H.M. (2015). Adat Recht Sebagai Bukti Sejarah Dalam Perkembangan Hukum Positif Di Indonesia. *Journal of Criminal Law and State Administration*, 4(1), 16-31.
- Schiller, A. (2007). Activism and Identities in an East Kalimantan Dayak organization. *The Journal of Asian Studies*, 66(1), 63-95.
- Sugiswati, B. (2012). Legal protection for the existence of indigenous peoples in Indonesia. *Perspektif*, 17(1), 31-43.
- Suwarno, S. (2017). The human culture of the dayak society of central kalimantan in globalization: Has social construction. *Lingua: Journal of Language, Literature and Teaching*, 14(1), 89-102.
- Zakaria, R.Y. (2016). Strategy for recognition and protection of the rights of indigenous people's law: A socio-anthropological approach. *BHUMI: Jurnal Agraria dan Pertanahan*, 2(2), 133-159.

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