



PROCESS AND FORM OF SPATIAL PLANNING FOR ECOLOGICAL, ENVIRONMENTAL SUSTAINABILITY AND CUSTOMARY RIGHTS GUARANTEE: THE PERSPECTIVE OF ARFAK TRIBAL PEOPLE ON NATIONAL SPATIAL PLANNING

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ABSTRACT

Customary Law Communities in Indonesia especially Arfak Community in West Papua has local wisdom about spatial planning. Local wisdom of customary law communities spatial planning needs to be explored through in-depth research and study in the framework of national and regional spatial plannings, in order to synergize and minimize the seizure of space that often occurs due to the implementation of development that is not populist and democratic. Spatial planning of Arfak Community in West Papua, at the time formerly done by the ancestors through rituals to get directions from the ruler of the universe in order for sustainability and cosmic balance. Currently in the context of national development, the process and form of spatial planning is done based on deliberation of customary law communities with consideration land, forests adalah mother (mama) and ecological considerations, such as protected areas, production areas and cultivation area.

Key words: spatial planning, customary law communities, local wisdom, environmental sustainability, customary rights.

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1. INTRODUCTION

1.1. Preliminary

In these rapid technological and science progress, globalization, and the increasingly use of online devices (Budiharseno, R. S. (2017; Nugroho *et al.*, 2017), there are still customary

people that their rights have been not fulfilled well. The United Nations Declaration on the Rights of Indigenous Peoples states that indigenous peoples are equal to all other societies, recognizing the rights of all human beings. Indigenous peoples have the right to defend and strengthen their political, legal, economic, social and cultural institutions. On the other hand, the constitutional existence of indigenous peoples with their traditional rights is recognized in the Republic of Indonesia. The manifestation of the traditional rights of indigenous peoples in Indonesia, grows and develops in the interaction of indigenous communities which are inherited and maintained for generations. Although the existence of Indigenous Peoples and their traditional rights seemingly does not get a proportional space in the practice of government in Indonesia, even the implementation of village legislation from 1979 to the beginning of the Reformation Order (*era reformasi*) did not firmly acknowledge the existence of various institutions and customary institutions, the development of the state administration since the Reformation Order has contributed to the existence of Indigenous peoples and all their traditional rights. This is a new thing for indigenous peoples, although various traditional rights that are always packaged in local wisdom titles are not developed, and are almost de-authorized during the new order in power in the Indonesia (1966-1998). In order to re-establish the existence of indigenous peoples with all their local wisdom, it is necessary to continually re-invent and reformulate the values of local wisdom that can contribute to the development of humanity in general and the development of the Indonesian nation (Din et al., 2017), especially in national and regional spatial planning, in order to minimize the seizure of space either vertically or horizontally (Lisdiyono, 2008), especially by plantation and mining companies that have massive presence in Indonesia (Kurniawan, 2017). To this end, this study explores the norms about the process and form of spatial planning of Arfak Customary Law Communities who inhabited the bird's head region in West Papua Province.

2. PROCESS AND PROCEDURES OF DISTRICT SPATIAL PLANNING

According to Belifante and Batuah (1983: 75), the plan is a whole of the relevant regulation that seeks to fully realize a certain orderly state and a whole-related action which strives that can be organized a certain orderly circumstance. On other hand, space according to Arba (2017: 23) is a container that includes land, sea and air space, including space in the earth as a unity of territory where humans and other living creatures, perform activities, and maintain their survival. Trisnaamidjaja stated that space is the physical being of the region in geographical and geometric dimension which is a container for human being in carrying out its life activity in a decent quality of life (Yusuf, 1977: 6). Spatial term is well planned structural and utilization of space (Wahid, 2014: 7). Ridwan and Sodik (2016: 24-25) stated that planning is a process, while the result is a plan.

Implementation of spatial planning system referring to Law No. 26 of 2007, Government Regulation No. 38 of 2007, Decree of Minister of Settlement and Regional Infrastructure No. 327/ KPTS/M/2002, and Regulation of Minister of Public Works No. 16/PRT/M/2009 (Hammar, 2008(b): 10-15, Hammar (d), 2017: 66-71) is a series of processes and procedures regarding the preparation of spatial planning system, as well as process and procedure determination (legalization) of the spatial planning system in the guidelines that elaborated in detail. The process of drafting district spatial planning is required based on the principles of cohesion, harmony, alignment and balance, sustainability, effectiveness, utilization, openness, togetherness and partnership, protection of public interest, legal certainty and justice, as well as the principle of accountability (Lisdiyono & Suatmiati, 2017).

District spatial planning drafting process covers preparation of district spatial planning, data collection, processing and data analysis, formulation conception of the spatial planning,

as well as preparation of the region regulation draft (*raperda*) about the spatial planning (Lisdiyono, 2008). Procedure of preparation of spatial planning covers the formation of team drafting district spatial planning, implementation, engagement role of community in the preparation of spatial planning, as well as discussion of district regulation draft about the district spatial planning.

Whole time required for the preparation process and determination of district spatial planning strived as effective possible, maximum for 24 months. District spatial planning drafting process needs time between 8 to 18 months and the rest used for the assignment process. The stage preparation is affected by situation and condition in the political, social, cultural aspects, defense, security, finance/ financing development region, data availability, and other factors. Thus, the estimated timere quired for every stage the preparation of the spatial planning is adjusted with situation and condition the district concerned. while the time required for the stage of determination is in accordance with the provisions and other relevant regulations. In general, the process and preparation of district spatial planning, include the following stages:

- a. District spatial planning drafting process, including (1) preparation, (2) collection of required data, (3) processing and data analysis, (4) formulation, (5) preparation of regulation.
- b. Procedure preparation of district spatial planning, including (1) formation team preparation (2) implementation preparation, (3) engagement role of society at the level district in preparation, (4) discussion of regulation of the district spatial planning.

3. SPATIAL PLANNING FORM

In Law No. 26 of 2007 is regulated classification of spatial planning based on system, main function of area, administrative area, area activity, and strategic value of area. First, spatial planning by system consists of area system and urban internal system. Second, spatial planning based on the main function of the region consists of protected region and cultivated region. Third, spatial planning by region administrative consists of spatial planning of national territory, spatial planning of province area, and spatial planning of regency/ city. Fourth, spatial planning based on area activity consists of spatial planning of urban area and spatial planning of rural area. Fifth, spatial planning based on the strategic value of the region consists of the spatial planning of the national strategic area, the spatial planning of the provincial strategic area, and the spatial planning of the district/ city strategic area.

The form of spatial planning is part of local wisdom of customary law communities in Indonesia. This is evident from some previous research, among others, which was put forward by Kawer et al (2007: 14) that Moi tribe in Kampung Maribu Papua classify the area of exploitation as follows :

- *Mama De Feng* is a land that still has large trees or dense forest. This area serves as a traditional hunt, where they can collect vegetables and fruits, material of traditional medicines and also dwell ancestor spirits of the clan ancestors. This area also has sacred zones.
- *Asu Membu* is a forest area opened and traditionally used as land or gardening place.
- *Yakusyop* is a forest area or used garden and is traditionally used for the construction of residential houses by a family or some heads of households in the territory of community clan.
- *Debet Pai* is the sago forest which is the possession of a clan. The amount and clumps of sago trees within the sago forest is controlled and owned collectively by members of clan.
- *Busyo* is a coastal area dominated by coconut trees. This area has traditionally been a place of mooring of traditional boats of the community and also a temporary cottage building for community fishing activities.

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- *Belu Ganding* is a coastal area to the sea tidal boundary. This area serves as a place for fishing and also collecting other marine products.
- *Yabaneari* is the marine waters that function as a place for collecting seafood and also the medium of sea transportation between villages and villages and the district.
- *Yabakotu* is the marine waters that serve as a collection point for marine products as well as sea transportation medium between villages and sea traffic between districts.

In addition to customary law communities, Moi tribe in the village of Maribu Papua, the Tobaku Customary Law Communities especially in Rantewulu Village (Tinjabate, 2008: 69-70) has wisdom in forest zoning in four groups, namely *hungku*, *ntipe*, *mangkao*, and *kalengi*. The four forest groupings can be briefly described as follows :

- *Hungku* is a forest area which is a former old village, the starting place of Tobaku people. In this forest area, there is no human activity at all because it is sanctioned by the local community. Forests in this area are primary forests functioning as regulators or water supply providers.
- *Ntipe* is a forest area that is used as a burial place of the ancestors of Tobaku people. In this forest area, it is not allowed for the community to open the land as a place of farming or gardening.
- *Mangkao* is a forest area that is customarily protected because the land contained in this area is white so it believes as a boon for the people of Rantewulu Village.
- *Kalengi* is a forest area that is generally a place for people to do activities, mainly as agricultural land and plantations.

In the case of forest use as agricultural land, the indigenous Tobaku people of Rantewulu Village use a sedentary system or *mentoli-ntoli*. This does not mean, however, that people have unlimited freedom of movement. In customary stipulations, every member of the community's family is only given a limit to open the land as much as 3 (three) times. Once the boundaries have been established, the community is required to open and re-process the ex-land that has been abandoned. To move from one field to another, it can be done if they cultivate a field for 5-10 years with the given area is 1.5 ha (Tinjabate, 2008: 70).

Before opening the forest area to be used as agricultural land, Rantewulu Village community must obtain permission from the customary chairman first and with the approval of the village head. After obtaining the permit, the people who want to open the land are obliged to perform the *mogane* ceremony, which is an event for giving the offerings that are placed on the location of the forest that will be opened. This is done with the intention of respecting the spirits who inhabit the place and can provide clues for people who want to open the land, whether the forest can be opened or not through a dream.

Different from those living in big cities in fulfilling the daily necessities (Wahyuni, & Ginting, 2017), those living in Rantewulu village community, according to Tinjabate, (2008: 70) use forest products such as timber and non-timber products. Timber forest products for the community are only used as household ingredients and some other needs, such as firewood and household appliances, while the non-timber forest products used are bamboo, rattan, resin, *gaharu* wood and various types of foliage/ fruits. The types of non-timber forest products can be utilized as household appliances and community handicrafts, consisting of pandanus (*ali*), *bakul* or *pikulan* (*kulinti*) mats, rice places (*polaman*), chicken cages (*lolako*), spoon of rice (*kola*), rattan basket (*arro*), bark cloth (*kumpe*), bamboo house wall, water container, roof of house, place of rice (*povie*), musical instrument and rattan chair.

3.1. Spatial Planning Process of Customary Law Communities

The arrangement and spatial planning of Customary Law Communities in Manokwari is not known for certain originally by the leaders of the Arfak tribal peoples, because the process of regulating the territory has been established from generation since their ancestors. The present generation is simply continuing, and preserving the division of existing territories.

Based on the narrative of the traditional figures that the division of Arfak tribal region, beginning with ritual ceremony by the elders of the custom at that time. They called for the help of the ruler of the universe to provide guidance in determining the territory, especially the settlements, and the areas of the forest that gave them a living. The ceremony is usually led by the chief. The ceremony often begins with spells or prayers so that the designation of the region can bring blessing to all tribal people. The essence of procession of spatial planning is still maintained by the determination of the customary territory or area according to its allocation, namely: (1) a certain section is designated as a settlement; (2) parts of the area around settlements are designated and utilized as areas for gardening; (3) in another region designated as hunting areas, an (4) and also stipulated that in the form of forest conservation areas, rivers and lakes can be used on a limited basis.

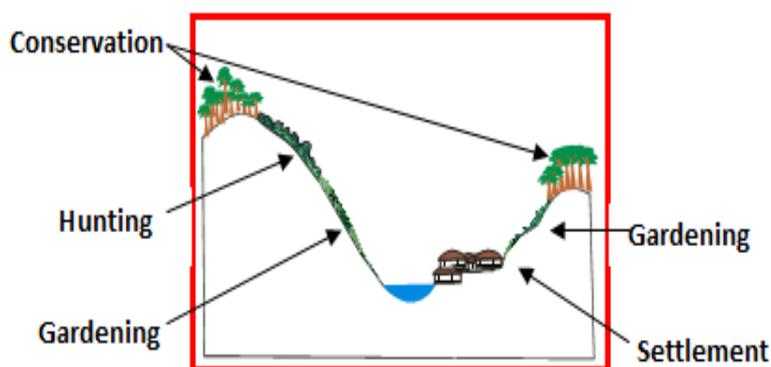


Figure 1 Sketches of Customary Law Communities of Arfak's Spatial Planning

Over time, the process of spatial planning customary law communities changes due to government and non-government organizations intervening in the conservation of natural resources (Kendi, 2017). Government interference is an obligation based on the State's Controlling Right, as Article 33 Paragraph (3) of the 1945 Constitution states that the earth, water and natural resources contained therein are controlled by the state and utilized as much as possible for the welfare of the people.

According to Bagir Manan (2001: 4) the meaning of 'controlled by the state' is that there has never been any explanation or official clarity, the one thing agreed upon is that 'controlled by the state' is not the same as state owned. This agreement relates to or a form of reaction of the domain system or concept used during the Dutch East Indies colonial period. The concept or better known as "domain principle" implies ownership. The state is the owner of the land, because it has all the authority to carry out the action of ownership (*eigensdaad*).

Constitutionally, the basic concept of the right to control land by the State is contained in Article 33 Paragraph (3) of the 1945 Constitution. From the provisions of that article and the explanation it appears that there is a relationship between the State and the earth, water and natural resources contained therein as the relationship of mastery. This means that the earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people. Soepomo in his speech on the integralistic state in front of

The Investigating Committee for Preparatory Work for Independence (BPUPKI) on May 31, 1945 stated that in essence the State controls the land entirely (Anonymous, 1992: 35).

The implementation of mastering rights as regulated in Article 2 paragraph (2) of Law No. 5 of 1960 authorizes the State to (1) arrange and administer the designation, use, inventory and maintenance of the earth, water and aerospace, (2) define and regulate the legal relationships between people with the earth, water and space, (3) determine and regulate the legal relationships between persons and legal acts concerning the earth, water and space.

To that end, the government, among others, make a general plan for the purposes of the state, the centers of community life, the development of agricultural production in the broad sense, industry, settlement and so forth. The manifestation of the general plan is known as the Spatial Plan. Budiharjo (1995: 24) suggests that spatial planning should be based on perspective toward a desirable future of state, based on data, information, science and technology that can be used, and taking into account the diversity of insights into the activities of each sector. Kartasmita (1996: 426-427) states that spatial planning in general means the process of planning, implementation, spatial use and control of the implementation or use of interconnected spaces.

The spatial planning process should go through in-depth research on local wisdom, institutions and customary institutions law communities so there is no conflict that will harm all parties. The establishment policy of protected areas and resettlement of farming community in specific regions is to shorten the span of control and avoid isolation, although there are difficulties due to the resettlement area was not in the area of customary law communities. In the case of Arfak, this condition is getting worse because the community is not free to do activities such as hunting, farming in new areas because they have no customary rights in the resettlement area. In addition, the interference of NGOs, among others, World Wild Fund (WWF), and *Yayasan Bina Lestari Bumi Cenderawasi* (YBLC), which is to foster the customary law communities in the Arfak mountains in the management of nature reserves and captive bird butterfly wings (*omithoptera paradise*) were unsuccessful in the determination of the boundary, as the people lost access to the area that gave them life (Anonymous, 2001). The process of spatial planning by the government without involving customary role law communities, potentially creates a conflict of interest. Hence, it should be undertaken that the government spatial planning process must involve customary law communities through in-depth assessment in advance of the process of the customary spatial planning law communities. This is necessary for synchronization between local wisdom of customary law communities and government policy in the implementation of sustainable development.

3.2. Customary Law Communities Setup Form

Regulations along with customary forms of spatial planning law communities is based on the main function of the area consisting of protected areas and cultivation areas (Kurniawan, 2017). In considering the division of territory of customary law communities based on religious and magical consideration related ecological sustainability of life (Lisdiyono, 2017). Protected areas serve to protect the preservation of the environment that includes natural resources and artificial resources, while the cultivation area serves to be cultivated on the basis of conditions or potential of natural resources, human resources and artificial resources (Ridwan and Sodik, 2016: 27).

These two functions of protected and cultivated areas in Arfak Customary Law Communities are subdivided into three areas, namely (1) the cultivation area which is divided

into sub-settlement/shelter and agricultural sub-regions; (2) production areas in which natural resources can be taken and used in a limited way, (3) the conservation area is an area that is not allowed to take natural resources throughout to maintain human relationships with nature including with the spirits of the ancestors.

The form of spatial planning is related to the matter of the land. Land according to Arfak Customary Law Communities is a mother who give birth, feed, nurture, educate, and raise. The soil is essentially the uterus and the fruits make up and create the Arfak people. This meaning is in line with the views of the Amungme in Timika (Erari, 1999: 35). The view of spatial planning according to Arfak Customary Law Communities is Ndon region that stretches from east to west where Ndon peak is the head of mama (*Ebir faga amenya*). In this place, there are some places that are sacred, among others as a place to live ancestral spirits. According to Hammar, such a belief is shared also by people Kuri-Wamesa in Bintuni and Ihandin (Baham, Iha, Onim) in Fakfak that Nabi mountain region is the dwelling place of ancestral spirits (Hammar, 1989: 37), even the shelter of God as the Creator (Erari, 1999: 42). In the area of the slopes of Mount Arfak (*Ndon*), there is the body of mama (*efaga amenya*), ie where hunting, farming, and settled. Similarly, the Amungme and customary tribes law communities Komoro in Timika also organized areas of forests of hunting, land and settlement that are divided into mountainous areas, residential areas (areas between mountains and lowlands), and lowland areas. For Komoro Customary Law Communities, forest is home because forests are the source of life, the source of healing all sorts of diseases, and provide various types of medicines and herbs, then the forest area should not be exploited (Erari, 1999: 35).

The process of determining the form of spatial planning as regulated in Law No. 26 of 2007 on Spatial Planning, and all implementing regulations, is implemented proportionally and takes into account various objective conditions of the region, which is the customary law communities with their local wisdom. In order to avoid spatial conflict, the procedure of arranging and determining of spatial planning begins from regency/ city area so that customary local wisdom can be replicated in the district spatial planning, then proceeding to the provincial level. Thus, there is a synergy and democratic process of spatial planning at all level. The democratic process offered is (1) ongoing communication with the head of the tribe, the customary figure as the customary rights stakeholder, (2) studying and observing the form of spatial planning of customary law communities, (3) understanding the principles that live in the customary law communities, (4) physically registering the extent of the territory to be determined and determining the customary rights stakeholders in the region, (5) formulating more details for the regulation in the local regulations draft; (6) public consultation (7) process and determination in regional regulations; and (8) socialization of local regulations.

Synergy effort between settings of customary law communities and a populist and democratic national spatial planning is also based on the considerations as expressed by Maria S.W. Sumardjono pointing out according to customary law, the members of customary law communities have legal relations with the territorial land and its contents, in which this relationship is technically juridically referred to as *beschikkingsrecht* or customary rights. The authority to administer land use by the customary law communities shall be left to the customary chiefs. Likewise, the concept of the right to control the land is given by all the people (nation) with the aim to protect and preserve the interests of citizens. As a manifestation of tenure and non-ownership relationship between the state and the land, any action shall be based on prevailing laws and regulations. If this is violated, it will give the impression that the state is not a manager, but as owner (Sumardjono, 1996: 6).

4. CONCLUSIONS

The process and form of spatial planning of customary law communities is done first by the ancestors through the ritual in order to get directions from the ruler of the universe in the framework of the balance of nature. Today, the process and shape the spatial planning occurs through deliberations of customary law communities based on ecological understanding and consideration, in the form of conservation areas, production and cultivation. In the context of nation-state, the process and the determination of spatial planning of customary law communities, should synergize with district, provincial and national spatial planning. Thus, there is needed a deep assessment of local wisdom of customary law communities and its synergy with national policy to minimize the horizontal and vertical conflicts that may occur as a result of the unpopular and undemocratic determination of spatial decision.

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