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RESEARCH ARTICLE

INDIGENOUS PEOPLE IN THEIR EXISTENCE OF IN EVIDENCE-BASED POLICY MAKING BY GOVERNMENTS

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Abstract

Indigenous Peoples are a problem that is relatively unknown to the wider community because they are located in remote areas, and only certain areas have Indigenous Peoples problems. They are a very vulnerable group in our society and in the country in general. This happens because they lack access to development and even their rights tend to be neglected. Apart from that, the alignment of the constitution with them in the laws and regulations is not in line with the practice in the field. This research uses the normative research method where the conceptual and statutory approaches are used, but also the legal materials that are obtained in the field will also be input in this research. It is hoped that this research can contribute ideas to policy makers so that it becomes a recommendation for making policies based on conditions in the field or evidence (evidence-based policies).

Introduction:-

In general, encouraging financing that is more pro-poor with development policies that are right on target, namely by developing local economies in disadvantaged areas, improving quality education services, improving quality health services, improving infrastructure facilities according to local needs, increasing accessibility with growth centers as well as strengthening community and local government institutions in the management of local resources is a goal that can be done to achieve the development goals of underdeveloped areas. Limited access to basic health facilities is due to the distance and isolation of settlements, the limited number of health workers. The low level of education is caused by more or less the same factors, namely the limited educational facilities and personnel who reach the settlements of the Customary Law Community, especially for groups that are still very isolated. Meanwhile, their level of living is closely related to their access to natural resources.

So far, there have been many implementations of various programs for indigenous peoples, but the expected results have not met the expected targets. Two factors contributed to the slow and unsuccessfulness of these programs, such as the level of understanding of the indigenous peoples towards the programs provided and the very minimal element of assistance. The programs that have been and are temporarily provided to indigenous peoples do not reduce their demands for recognition of their existence and rightstraditionally. This demand collides with various prevailing laws and regulations, because the overlapping existence of various laws on natural resource management which also belong to indigenous peoples and the Indonesian government is not serious about dealing with a number of obstacles that have existed so far. Barriers to regulation and elaboration in statutory regulations can be seen in the Basic Agrarian Law of 1960 Article 3, where there is only limited recognition of customary rights, the recognition given is conditional, because ethnic groups in Indonesia are not independent (anymore), then the right to control rests with the state as the 'supreme ruler'. According to Fauzi, this practice is called "the negotiation of customary

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lands". After the issuance of the UUPA in 1960, the Basic Forestry Law (UUPK) No. 5 of 1967, Law no. 5 of 1990 concerning the Conservation of Living Natural Resources and their Ecosystems, and as a substitute for the 1967 UUPK is Law No. 41 of 1999 on Forestry that is not better, on the contrary marginalizes indigenous peoples. Article 1 point 6 according to the Forestry Law states "Customary forests are state forests within the territory of indigenous peoples". The existence of indigenous peoples in Indonesia in fact has existed since the time of their ancestors to the present. Customary law communities are territorial or genealogical community units that have their own assets, have citizens who can be distinguished from members of other legal communities and can act internally or externally as a legal entity (legal subjects) that are independent and govern themselves.

Many experts argue that the notion of indigenous peoples must be distinguished from indigenous peoples. The concept of indigenous peoples is the meaning of referring to certain communities with certain characteristics. Whereas customary law community is a juridical technical meaning that refers to a group of people who live in a certain area (ulayat) where they live and in a certain environment, have wealth and a leader who is in charge of protecting group interests (outward and inward), and has a legal rule (system) and governance. In fact, every province in Indonesia has indigenous peoples with their own characteristics that have existed for hundreds of years. The 1945 Constitution has confirmed the existence of customary law communities. In Article 18 B paragraph (2) of the 1945 Constitution as a result of the second amendment states that the state recognizes and respects indigenous peoples 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. -law. The provisions of Article 18 B paragraph (2) of the 1945 Constitution are strengthened by the provisions of Article 281 paragraph (3) of the 1945 Constitution that traditional cultural and community identities are respected in line with the development of the times and civilization. The reality that until now indigenous peoples have not been prosperous and even their rights have been taken over in the name of development is a reality. There are not many laws and regulations that regulate indigenous and tribal peoples for their rights to be protected.

Problems:-
How does the government in making evidence-based policies below to the existence of Indigenous People?

Materials and Methods:-

This study uses the Normative Research method with Legislative Regulations as Primary Legal Materials. Field research as a secondary legal material that enriches primary legal materials with the approach used is the Law and Concept approach.

Discussion:-

Recognition and protection of the rights of customary law communities is indeed important, because it must be recognized that traditional customary law communities were born and existed long before the Unitary State of the Republic of Indonesia was formed. However, in its development, these traditional rights must conform to the principles and spirit of the Unitary State of the Republic of Indonesia through normative requirements in the laws and regulations themselves. On many sides, these normative requirements become an obstacle to the existence of the rights of customary law communities, because: First, in the practice of implementing development, the formulation of the phrase "as long as it is alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia" means that the presence of rights customary law communities as recognized institutions as long as they do not conflict with the spirit of development, so that there is an impression that the government is ignoring the rights of customary law communities. While factually in the community there is a spirit of reaffirming the rights of customary law communities. Second, in the 1945 Constitution it is stated that the traditional rights of customary law communities are respected as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law.

The problem that arises is the law on what or how to regulate the recognition of the rights of the customary law community. That is, it is still unclear what the form of law or the substance of the regulation will be. So that there are those that are regulated in law, but there are also general regulations at the local level that are outlined in the respective regional regulations. In providing an interpretation of Article 18 B paragraph (2) of the 1945 Constitution, according to Jimly Asshiddiqie, it is necessary to pay attention to that recognition. this is given by the state (i) to the existence of a customary law community and its traditional rights; (ii) The recognized existence is the existence of

indigenous peoples; (iii) the customary law community is alive (still alive); (iv) In a certain environment (lebensraum); (v) Such recognition and respect are given without neglecting the measure of worthiness for humanity in accordance with the level of development of the nation's existence; (vi) Such recognition and respect must not reduce the meaning of Indonesia as a country in the form of the unitary state of the Republic of Indonesia. This provision gives recognition and respect to customary law communities (adatrechtgemeenschappen) which is a basic concept or pillar of customary law.

Various problems arise related to the weak recognition of indigenous peoples as legal subjects who have special and special rights. Then rampant violations of the rights of customary communities by the state, especially customary rights. Thus, development laws and policies in Indonesia should pay special attention to the rights of indigenous peoples. The push for the government to immediately issue policies that are implementable to the recognition and protection of indigenous peoples continues to roll. The existence of indigenous peoples' territories in Indonesia is evidenced in several sources, including: that according to the results of research conducted by Van Vollenhoven, there are 19 customary law areas, namely (1) Aceh,(2) Gayo, Alas, Batak and Nias (3) Minangkabau, Mentawai, (4) South Sumatra, Enggano, (5) Malay, (6) Bangka, Belitung, (7) Kalimantan, (8) Minahasa, (9) Gorontalo, (10) Toraja, (11) South Sulawesi, (12) Ternate Islands, (13) Maluku, (14) West Irian, (15) Timor Islands, (16) Bali, Lombok, (17) Central Java, East Java, Madura, (18) Solo, Yogyakarta, (19) West Java, Jakarta.

The main principle is the Right of Indigenous Peoples to Identify Themselves because it is impossible for other parties outside the community of the indigenous peoples concerned to know them better than the indigenous peoples themselves. However, in order to avoid other parties claiming to be indigenous peoples but in fact do not comply with the basic criteria of indigenous peoples, a verification process is required. The verification process is interpreted as a touchstone for each indigenous community. With this verification process they will be assessed whether they meet the basic criteria as indigenous peoples or not. In principle, this verification process must be carried out by an independent institution to avoid acts of manipulation and arbitrariness which are counterproductive to the purpose of this law. in indigenous peoples.

For example, research on the existence of the customary rights of the Alune Wemay tribe in West Seram. Or Indigenous Peoples in Aru Islands District, Tanimbar, Central Maluku and others. Where the researchers concluded that there is no customary land anymore in this Regency. The implication is that there are no more indigenous peoples in Maluku because one indicator of the existence of indigenous peoples is the existence of communal land. These findings are of course surprising because they do not represent factual realities on the ground. Regulations regarding the identification, verification and determination of the existence of indigenous peoples are in principle very centralized and become a state monopoly. It is called monopoly because these processes are carried out by the government and the determination of the existence of indigenous peoples is carried out through a Presidential Decree. It is inconceivable how many Presidential Decrees that will be issued as a result of this Law in the future. Ideally, this determination is made at the regional level through a District Head Decree. Moreover, it would be better if the responsibility to establish existence as a logical consequence of the recognition of indigenous peoples is put on the local government so that it is in line with the idea of decentralization. The regulations regarding identification and verification which in the current draft have become very tiered and have become a monopoly of the government. The weakness of this process is that the bureaucracy is too long and convoluted and does not guarantee the full involvement of indigenous peoples, while those identified are the indigenous peoples themselves. Therefore, the idea of self-identification and verification by an independent institution such as the Regional Commission for Indigenous Peoples is an idea that must be considered in order to reduce the risk of convoluted processes in the government bureaucracy, and also so that the identification process is carried out by indigenous peoples themselves. That way, the two processes, identification and verification, can find out who the indigenous peoples really are and their rights. If the entire arrangement regarding identification, verification and determination of the existence of indigenous peoples and their rights still uses the provisions in the current draft then that will be happens is as follows:

1. There will be thousands of Presidential Decrees to determine the existence of indigenous peoples and their rights
2. Since the objection process is submitted to the laws and regulations, it is not difficult to understand that objections to the Presidential Decree will be submitted to the PTUN.

If this is the case, then this bill only adds to the problem and becomes a burden to the judiciary sector. Government regulations and regional regulations (as referred to in Article 9), which will be made in principle, must be in accordance with what is to be achieved from the general objectives stipulated by the law.

Customary law communities as a unit with the land they occupy have a very close relationship. This relationship stems from a magical religious view. This magical religious relationship causes the legal community to obtain the right to control the land, utilize the land, and collect produce from the plants that live on the land, as well as hunt the animals that live there. The rights of customary communities to land are called land rights or ulayat rights, and in Van Vollenhoven's literature this right is called beschikkingsrecht. According to Bushar Muhammad, the term beschikkingsrecht in Indonesian is a new meaning. This is because in Indonesian and in regional languages all terms used mean the sphere of power, while beschikkingsrecht describes the relationship between the legal community and the land itself. Now it is customary to use the term hak ulayat as a translation of beschikkingsrecht.

Therefore, what is proposed in the input column and proposed changes should be considered in this Law because the proposals submitted contain the basic principles of the identification and verification process, and also regulate which parties (indigenous peoples and communities. KOMNAS and or KOMDA adat communities which will carry out the intended identification and verification activities. Development of legislation regarding the recognition of indigenous peoples (MHA) in the last ten years is still marked by developments in terms of numbers. During this period, a number of regions, such as Central Kalimantan and Papua, enacted regional laws regarding the recognition of the MHA. At the national level, legislation at the level of laws is promulgated, such as Law no. 6/2014 on Village. The increase in the number of legislations that regulate or contain clauses regarding the recognition of the MHA is a continuation of a practice that has been going on since the beginning of the Reform Era. The existence of indigenous peoples also cannot be justified that there are no provisions made by the State without involving indigenous peoples. Due to the misidentification of indigenous peoples, it will have an impact on the existence of indigenous peoples regarding their traditional rights in managing their natural resources that existed long before the State existed. The recognition of customary law communities is regulated in Article 18 B paragraph (2) of the 1945 Constitution which states that "The State recognizes and respects indigenous peoples 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 regulated in law ". Then the provisions of Article 18 B paragraph (2) of the 1945 Constitution are strengthened by the provisions of Article 28 Paragraph (3) of the 1945 Constitution that the cultural identity of traditional societies is respected in accordance with the development of times and civilization. In addition there are several sectoral laws that guarantee the rights of indigenous peoples, including Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), Law Number 41 of 1999 concerning Forestry, Law 39 of 2014 concerning plantations, Law Number 26 of 2007 concerning spatial planning, Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 23 of 2014 concerning Regional Government, and Law Number 6 of the year 2014 About the Village. Although there are, they are considered not to exist.

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Conclusion:-

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The existence of a number of implementing regulations regarding the recognition of Indigenous and Tribal Peoples at the national level needs to be appreciated because it initiated the administration of law implementation which was almost absent for more than a decade. However, the contents of these implementing regulations do not have an implementable character. So that various problems related to indigenous peoples are always the object of sufferers, namely the indigenous people. Policies issued by the government should be based on evidence so that they can represent the aspirations of the indigenous and tribal peoples themselves.

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