

The Urgency of Pouring Out Rule of Law Principles to Realize Equitable Integration in Protecting Indigenous Peoples, Food Security, and Sustainable Development

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Abstract

This study aims to find out the urgency of incorporating rule of law principles to realize equitable integration in protecting indigenous and tribal peoples, food security, and sustainable development. The research method used is classified as normative or doctrinal legal research with a juridical-normative approach. The normative legal research method uses existing literature research methods. In collecting research data, using secondary legal materials in the form of books, journals, articles, and other written works, both from print and internet media related to this research. The results of this study are that indigenous peoples as individuals are not much different from other individuals, needing the right to live, the right to food, the right to clothing and the right to housing, education, and other rights.

I. Introduction

Indonesia is a country of law, this is explicitly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) that "Indonesia is a country of law". As a constitutional state, it is actually the law that leads the administration of the state by adhering to the principle of the rule of law, and not of man, thus any power exercised by the state must be based on law. Indonesia is also a constitutional state, this is because Indonesia uses a continental European legal system which is commonly referred to as the civil law legal system. The prevalence in the civil law system is that it has a source of law that originates from the codification of written law (written code). Furthermore, in the civil law

system there are 3 (three) sources of law, namely statutes, regulations, and customs that are not against the law (custom). The judge's decision in the civil law system is often considered not a law.¹

Indigenous peoples are a group of people who live for generations in a unified form of attachment in terms of ancestral origins and/or shared residence in a geographical area, cultural identity, certain customary laws, which are still respected, have a strong relationship with land and the environment, as well as value systems that define economic, political, social, cultural, and legal institutions.

It is important to recognize and protect the rights of customary law communities, because it must be recognized that customary law communities existed long before the formation of the unitary state of the Republic of Indonesia. However, in the process of development, these traditional rights must be adapted to the principles and spirit of the Republic of Indonesia through the normative requirements of the law itself. Recognition is a written statement made by the state to accept and respect the law of indigenous peoples and all the rights and identities associated with them. Protection is an effort to safeguard and protect indigenous peoples and their rights so that they can live, grow and develop in accordance with their human dignity and worth.²

The Indigenous Peoples Law Bill (RUU) is one of a number of bills that put forward provisions intended to protect the rights of indigenous peoples and the legal recognition of indigenous peoples. In the 1945 Constitution of the Republic of Indonesia, Article 18B paragraph (2) states that "The state recognizes and respects community units according to customary law and their traditional rights as long as they are still alive and in accordance with the times, community and the principles of the Unitary State of the Republic of Indonesia." the Republic of Indonesia according to the law". This means that the state recognizes and respects customary law communities in accordance with the principles of the unitary state of the Republic of Indonesia. With the passage of the Indigenous Peoples Bill, the protection and respect for the rights of the community is guaranteed.

The right to food, clothing and housing will have a positive correlation with human rights (hereinafter referred to as HAM). Human rights to food, which include basic rights, were originally regulated in a set of international legal instruments called the International Bill of Human Rights which contained therein; Declaration Universal Declaration Of Human Rights, (DUHAM),

¹ Engels, RHJ. 1978.. Syarat-syarat Eksonerasio dan Syarat-syarat untuk Pengecualian Tanggung Jawab, termuat dalam Compendium Hukum Belanda, Leiden.

² Syawali, Husni. dan Imaniyati, Neni Sri. 2000. Hukum Perlindungan Konsumen, MandarMaju, Bandung.

International Covenant on Civil and Political Rights (ICCPR), International covenant on Economic, Social, and Cultural Rights (ICESCR). Observing various facts and cases experienced by indigenous and tribal peoples, especially to enjoy human rights like other human beings, it can be drawn that the enjoyment, protection and fulfillment of their rights is still limited to recognition on paper, in contrast to the ideals Human rights are based on principles, and the consensuses that have been made, by dignified human beings but the good faith and morals of each party are not ready to recognize them as indigenous and tribal peoples in equality and dignity along with the rights inherent therein. Food security is directly proportional to the welfare and prosperity of a nation.

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Food security talks about the availability of food either through self-sufficient activities or policies on food import activities, citing the limitations of food security in the 1996 Rome Declaration, it is emphasized that food security occurs when all people continuously, both physically, socially and economically have access to sufficient, nutritious and safe food that meets their dietary needs and food choices for an active and healthy life. The next important note regarding the right to adequate food is also regulated in DnHAM, Article 25 paragraph (1) that: "Everyone has the right to a standard of living adequate for health and well being of himself and of his family, including food, clothing , housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control", Article 25 paragraph (1) that: " Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, shelter and medical care as well as social service needs, and the right to security in the event of unemployment, illness, disability, widowhood, old age or lack of livelihood in a state beyond his control. Once again, with such a concept, it is everyone's right, regardless of space, time and place as a consequence of human rights morality for everyone.⁴

II. Research Methods

The research method used is classified as normative or doctrinal legal research with a juridical-normative approach. The normative law research method uses existing literature research methods. In collecting research data, using secondary legal materials in the form of books, journals, articles

³ S., Otje Salman. Susanto. Anton F. 2004. Teori Hukum (Mengingat, Mengumpulkan dan Membuka kembali), Refika Aditama, Bandung

⁴ Barbara Vis. (2010). *Politics of Risk-taking: Welfare State Reform in Advanced Democracies*, Amsterdam University Press, Amsterdam

and other written works, both from print and internet media related to this research. Because this research is a normative research, the data collection technique used was a study of documents or library materials and the legal material analysis technique used was deduction techniques (from general to specific) and interpretation (interpretation) in analyzing existing legal materials.

III. Results and Discussion

The right to food, clothing and housing will have a positive correlation with human rights (hereinafter referred to as HAM). Human rights to food, which include basic rights, were originally regulated in a set of international legal instruments called the International Bill of Human Rights which contained therein; Declaration Universal Declaration Of Human Rights, (DnHAM), *International Covenant on Civil and Political Rights* (ICCPR), *International covenant on Economic, Social, and Cultural Rights* (ICESCR), dan Optional Protocol to the International Covenant on Civil and Political Rights 1966⁵ Human rights legal instruments that are fought for to uphold respect, protection and fulfillment of human dignity, are not merely extracted from the Western system of values and norms but have a solid foundation of all cultures and religions. Therefore, Eko Riyadi emphasizes that human rights are the crystallization of various value systems and philosophies and all aspects of life. This is based on the world view of human rights which is universal for the existence and protection of human life and dignity. It can be said that this universal view and conception of human rights lays down the moral foundations of human rights which are not limited by space, time, place, and are owned by everyone.

The human rights of indigenous and tribal peoples as individuals are not much different from other individuals, requiring the right to life, the right to food, the right to clothing and the right to housing, education and other rights. However, collectively or as a community, there are other rights that distinguish them from the aspects of recognition, protection, promotion and fulfillment. It is the territory, land, water, cultural identity, their spiritual relationship with the universe and the environment they live in. It should teach each party to respect and value them in differences

without exception, because that is the essence of their wholeness. Cases that befell indigenous peoples in various parts of the world and even in Indonesia, the power of law that has legitimized their rights seems powerless, weak, dealing with the authorities, capitalists and the interests of a strong and developed country.

Observing the various facts and cases experienced by indigenous peoples especially to enjoy human rights like other human beings, it can be drawn that the enjoyment, protection and fulfillment of these rights they are still only a recognition on paper, contrary to the ideals of human rights based on principles, and the consensuses that have been made, by human beings who are dignified but the good faith and morals of each party are not ready to recognize them as indigenous and tribal peoples in equality and dignity along with the rights inherent therein. Food security is directly proportional to the welfare and prosperity of a nation. Food security talks about the availability of food either through self-sufficient activities or policies on food import activities, citing the limitations of food security in the 1996 Rome Declaration, it is emphasized that food security occurs when all people continuously, both physically, socially and economically have access to adequate, nutritious and safe food that meets their dietary needs and food choices for an active and healthy life.

The Universal Declaration of Human Rights as an instrument that contains moral statements about the human rights of the world community has positioned the concept of the right to food in Article 23 paragraph (1) of the Human Rights Declaration by stating "everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including the right to food, clothing, housing, and health care and necessary social services, and is entitled to security in the event of unemployment, illness, disability, becoming a widow or widower, reaching old age or other circumstances resulting in a lack of livelihood which are beyond his control. The concept clearly illustrates food security as a basic right of human rights including other social security which is the right of every person, and he/she has the right to obtain it in any situation and condition. This is understandable because food security will be closely related to the right to life and sustainability of life, and more than that to improve the quality or quality of life which describes the level of welfare achieved. The concept of the right to food that is carried out in the Universal

Declaration of Human Rights actually accommodates human rights principles such as universality, non-discrimination, equality and human dignity, and to fulfill this requires the state as an organization of power that protects its people. Indigenous peoples and the right to food are within this scope. Here appears the obligation of the State in the fulfillment of these rights.

In the Constitution of the Republic of Indonesia it has clearly and firmly formulated and accommodated Indonesian human rights, as regulated starting from Article 27 to Article 34 of the 1945 Constitution. The regulation of human rights in the constitution is an acknowledgment that is stipulated in the sources highest law for a rule of law country like Indonesia. The right to food is a constitutional obligation of the State. This is as formulated in Article 28I paragraph (4); protection, promotion, enforcement and fulfillment of human rights is the responsibility of the State, especially the government. The text in this constitution is intended to emphasize the purpose of forming the Republic of Indonesia as outlined in the Preamble to the 1945 protect all of Indonesia's bloodshed, promote public welfare, educate the nation's life and participate in carrying out world order based on independence, eternal peace and social justice.. The goal of living as a nation will be implemented through its obligation to fulfill the civil, political, socio-economic and cultural rights of every member of society. Food as one of the fundamental rights and is a human right that is continuously debated because it is related to so many convoluted issues, by adopting the opinion of Mutaqin in the writings of Gusti Nur A. Shabia, it is said that the right to food and nutrition is a right that is realized when every man, women and children, individually or in community with others, have physical and economic access at all times to adequate food, or when they have the means to obtain food.

The right to food and nutrition is a right born as a basic human need as a living being and is a binding obligation that is confirmed by international law. Observing the concept of food security as contained in both Law No. 7 of 1996 which was in force and Law No. 18 of 2012 which is the current positive law, it can be read clearly and it is clear that there are quite prominent differences. Law No. 7 of 1996 is very simple and the scope of its meaning is limited compared to Law No. 18 of 2012 which is very broad in scope. Substantively, the Food Law, whose scope of regulation

starts from individual food security to a state with physical, social, economic, health, religious and cultural accessibility, and must be continuous and uninterrupted, to meet the targets and goals as expected in NN Food, so it cannot Food security should not go hand in hand with food sovereignty and food self-sufficiency, so that the ultimate goal of realizing food security can be realized. In the Food Law, food sovereignty is the right of the state and nation to independently determine Food policies that guarantee the right to Food for the people and which give the right for the community to determine a Food system that is in accordance with the potential of local resources. Meanwhile, food self-sufficiency in this NN is defined as the ability of the state and nation to produce various kinds of food from within the country that can guarantee the fulfillment of sufficient food needs down to the individual level by utilizing the potential of natural, human, social, economic and wisdom resources local dignity.⁶

IV. Conclusion

Food security and food sovereignty of indigenous peoples are not converted or taken over by the State and multinational companies. International and national legal instruments have formulated the state's responsibility to protect and fulfill their right to food. Various situations and conditions that hinder the implementation of state responsibilities must be found a way out. If the state does not immediately carry out its responsibilities regarding fundamental rights such as the right to food, then the state will be deemed to have committed a violation and according to international law can be prosecuted..

⁶ Johnny Ibrahim. (2009). *Hukum Persiapan Usaha. Filosofis, Teori, dan Implikasi Penerapannya di Indonesia*. Cetakan Pertama: Bayumedia, Malang

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