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Dehumanisation Of Moronene Hukaea Laea Indigenous Community In Setting The Boundary Of Ulayat Rights

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ABSTRACT

The determination of the area of customary rights of indigenous peoples is a form of protection for indigenous peoples, a step to overcome vertical conflicts between the Moronene Hukaea Laea indigenous people and conservation or national park managers. This study aims to capture the extent to which the position and existence of Perda no. 4 of 2015 on the recognition of the customary rights of the moronene indigenous people of Hukaea Laea. This type of research is descriptive analysis with a qualitative approach, the research location is in Watu-Watu Village, Lantari Jaya District and Rawa Aopa Watumohai National Park, Bombana Regency and the data collection of this study is through direct interviews and deductive conclusions are drawn. Based on the results of this study, the forms of

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dehumanization of the Moronene Hukaea Laea indigenous people include: (1) In 1997 the Moronene Hukaea Laea indigenous people experienced intimidation by the universe broom group such as burning houses and land and in 2002 repeated home destruction and eviction ulayat areas by the government because the Moronene indigenous people are in conservation areas or national parks, the pretext of expulsion and arrest of customary leaders and indigenous peoples of Moronene Hukaea Laea has based on a negative stigma that the existence of indigenous peoples is a group that destroys ecosystems and ecology. (2) In 2015 the stipulation of Regional Regulation No. 4 of 2015 is not substantive because it only regulates the existence of indigenous peoples, not the absolute determination of territory by the Hukaea Laea indigenous people. This is indicated by the policy of the Minister of Forestry which concluded that based on the total population of the Hukaea Laea Indigenous Peoples, only 6,000 hectares could be controlled. Based on this policy, the local government shows inconsistency towards the indigenous Moronene Hukaea Laea after placing its position as a mediator between the Minister of Forestry, conservation area managers, and the Hukaea Laea Indigenous Community.

A. Introduction

Conflicts over the boundaries of customary rights and marginalization of indigenous peoples are forms of dehumanization. Inequality in determining the customary rights of indigenous peoples after the legal standing was established in Perda no. 4 of 2015 only describes the existence of living but not on the absolute ownership rights of indigenous peoples. Determination of ulayat rights based on the conclusion of the minister of forestry after the end only ulayat rights can be obtained as customary areas is only 6,000 ha out of a total of 29,164 ha. According to Jabalnur, the approach to determining the customary rights of indigenous peoples is legitimized by Law no. 1990 concerning Conservation, Natural Resources, Biological and Ecosystems and the Basic Agrarian Law (UUPA).¹ Therefore, the inequality in the recognition² of

¹Jabalnur, "Konsep Pengelolaan Wilayah Hak Ulayat Masyarakat Hukum Adat Moronene Hukaea Laea", *Halu Oleo Law Review*, Vol. 4, No. 1, Maret 2020, p. 1–15.

customary land³ ownership rights of the Hukaea Laea indigenous peoples in the Perda is not found to be in definitive agreement as a strong basis.⁴

Strengthening exploitation, discrimination, and marginalization of customary rights of indigenous peoples is legitimized² by legislation, including Law No. 7 of 2004 concerning Natural Resources and Law no. 39 of 2014 concerning Plantations. Likewise, the results of the judicial review of the LoGA that PMK No.35/PUU-X/2012 indirectly cannot give exclusive rights to indigenous peoples⁵ even though the policy is completely left to local governments to formulate regulations according to their respective regions. Seeing the state system in Indonesia, the rules are carried out hierarchically so that the objectivity provisions of the local government to determine customary rights according to the historical context of customary lands of indigenous peoples are a major obstacle and are at a dilemmatic point.

The legal position of the protection of the customary rights of indigenous peoples. Based on the constitutional and legal standing at the level of a Regional Regulation as the basis for recognizing the customary rights of indigenous peoples, its position is still clear, moreover, the position of centralized legislation cannot conflict with one another, both vertically and horizontally, so that the recognition of the customary rights of the community will always be marginalized.^{6,7,8} The steps for resolving disputes and protecting the territory of customary rights of indigenous peoples according to the historical context are difficult to fulfil. Because the acculturation of national law with traditional law (customary law) cannot be synchronized because they have their respective interests so that they cannot produce legal products that are

²La Ode Angga, "Formulasi Model Pengelolaan Hak Ulayat Laut di Provinsi Maluku", *Masalah - Masalah Hukum*, Vol. 47, No. 1, Januari 2018, p. 32–39.

³Miranda Nissa Hilal Liani and Atik Winanti, "Hak Masyarakat Hukum Adat Dalam Pelaksanaan Pengadaan Tanah Ulayat Bagi Pembangunan Untuk Kepentingan Umum", *SALAM: Jurnal Sosial dan Budaya Syar-i*, Vol. 8, No. 1, 2021, p. 159–172.

⁴Sahrina Safiuddin, "Hak Ulayat Masyarakat Hukum Adat dan Hak Menguasai Negara di Taman Nasional Rawa AOPA Watumohai", *Mimbar Hukum*, Vol. 1, No. 1, 2020, p. 63–77.

⁵Ninir Siagian, "Tinjauan Yuridis Batas-Batas dan Luas Enklave Terhadap Hak Tanah Ulayat dalam Kawasan Kehutanan/Konservasi Sumber Data Alam Dolok Surungan Menurut Hutan Register Tahun 1974 (Studi di Desa Sibargot Kecamatan Pintu Pohon Metanti Kabupaten Tobasa Samosir)", *Departemen Hukum Kependataan Program Studi Kekhususan Hukum Perdata Bw Fakultas Hukum Universitas Sumatera Utara*, 2018, p. 11.

⁶Agung Hermansyah and Romi Armezi, "Konstitusionalitas Pengaturan Hak Ulayat dalam Peraturan Nagari", *Nagari Law Review*, Vol. 1, No. 1, 2017, p. 97–106.

⁷Ahmad Redi et al., "Konstitusionalitas Hak Masyarakat Hukum Adat Atas Hak Ulayat Rumpun di Provinsi Lampung", *Jurnal Konstitusi*, Vol. 14, No. 3, September 2018, p. 463.

⁸Asrul, "Politik Hukum Undang-Undang Nomor 6 Tahun 2014 Terkait Dengan Penguatan Hak Ulayat", *Jurnal Katalogis*, Vol. 5, No. 3, 2017, p. 45–54.

strong in protecting the customary rights of indigenous peoples.⁹¹⁰¹¹² The failure to formulate legislation on indigenous peoples is due to a paradigm battle in the legal system and protected interests in the customary lands of indigenous peoples.

The legal standing of Regional Regulation No. 4 of 2015 specifically stipulates that the Hukaea Laea indigenous peoples regarding customary rights have not found a legal certainty regarding maximum area ownership rights other than recognition of their existence as indigenous peoples. Seeing the phenomenon of the indigenous people of Moronene Hukaea Laea, state control as a conservation forest or national park is a real threat to the extinction of indigenous peoples. Thus, the research questions are (1) How is the portrait of dehumanization in the customary rights area of the Moronene Hukaea Laea Indigenous People? (2) What is the Position of the Indigenous Rights of the Moronene Hukaea Laea Indigenous Peoples in Perda No. 4 of 2015? The two questions are the starting point in viewing or re-photographing the position of the customary rights of the Moronene Hukaea Laea indigenous people after the regulation at the level of regional regulation no. 4 of 2015.

Based on this research regarding the customary rights area of the Hukaea Laea indigenous peoples, there is an imbalance in the recognition as the owner of the territory based on the historical context of the existence of the Hukaea Laea indigenous people. Inequality of customary rights of Moronene Hukaea Laea is based on the position of the Lean Hukaea Community which is not optimally legitimized in Regional Regulation no. 4 of 2015 under the historical context of the Moronene Hukaea Laea Communal Land. So that the non-optimal recognition of customary rights land areas in Regional Regulation no. 4 of 2015, can have implications for dehumanization, exploitation, discrimination, and marginalization of the community in defending their customary land rights as in the historical context.

⁹Ahmad Muddin and Hardianto Djanggih, "Penyelesaian Sengketa Tanah Ulayat yang Telah Bersertifikat Berdasarkan Hukum Adat Malind-Anim", *Arena Hukum*, Vol. 14, No. 1, 2021, p. 150–166.

¹⁰Al Jamil Febriani, "Penyelesaian Sengketa Tanah Ulayat Antara Masyarakat Adat Senama Nenek Dengan PTPN V di Kenegerian Senama Nenek Kecamatan Tapung Hulu Kabupaten Kampar Provinsi Riau", *Fakultas Hukum Universitas Sumatera Utara (Medan)*, 2017, p. 1–25.

¹¹Ali Amran, "Penyelesaian Sengketa Tanah Ulayat Melalui Lembaga Adat di Minangkabau Sumatera Barat", *ADHAPER: Jurnal Hukum Acara Perdata*, Vol. 3, No. 2, 2017, p. 175–189.

¹²Abdilbarr Isnaini Wijaya, Iwan Permadi, and Imam Rahmat Safi'i, "Penyelesaian Sengketa Tanah Ulayat Pada Proyek Pembangunan Jalan di Papua Barat (Studi Kasus di Kabupaten Sorong Papua Barat)", *Jurnal Jatiswara*, Vol. 33, No. 3, November 2018, p. 310.

B. Method

The type of research used is descriptive analysis research. The purpose of this study is to photograph the historical context and geographical position of the indigenous Moronene Hukaea Laea regarding dehumanization such as exploitation, discrimination, and marginalization of the existence of the Hukaea Laea indigenous people in their ulayat lands. In addition, observing comprehensively the position of customary rights of the Moronene Hukaea Laea indigenous peoples in Regional Regulation no. 4 of 2015 as legal standing. This research approach uses a qualitative approach. This approach observes the behavioural aspects of exploitation, discrimination, and marginalization in the customary rights area of the Moronene Hukaea Laea indigenous people. Then the location of this research is Watu-Watu Village, Lantari-Jaya District and Rawa Aopa Watumohai National Park, Bombana Regency. While the data collection technique is using direct interview techniques with parties who have capabilities according to their fields and drawing conclusions based on deductive research.

6 C. Result and Discussion

1. Portrait of the History of the Hukaea Alaea Indigenous People in Bombana Regency

The customary rights area of indigenous peoples is a source of wealth both materially and customary (understanding), the position of ownership of indigenous peoples is not only focused on natural resource wealth but is a whole (holistic) in it, including teachings, identity, area (region) and management and traditional awards. The genealogy of indigenous peoples that long before independence their existence has been identified as living in an area is a customary territory. The existence of indigenous peoples has a role in maintaining ulayat areas voluntarily and taking natural resources according to their needs by prioritizing customary rules.

The indigenous Moronene Hukaea Laea, as the oldest tribe, inhabiting Southeast Sulawesi. The word moronene comes from a type of plant that resembles (resembling) a resam tree which has the characteristics of the bark on the trunk and can be peeled and then used as rope and the

leaves can be used as rice wrappers and others.¹³ The word moronene consists of two words "Moro" is resembling and "Nene" is a resam tree. Moronene's philosophy is as gatherers, farmers, and hunters who live in fertile places and without any disturbance.¹⁴

According to the Moronene, the Hukae Laea area, including Lampopala and its surroundings, is Wowohara, that is, an area that was once inhabited by their ancestors and often visited by Moronene people for pilgrimage and to collect natural resources. Tobu Hukae Laea is an old village inhabited by the sixth generation (see Stambum To Moronene in the table above) of the Moronene people in 1920. The Hukae Laea area became part of the Rumbia district led by Lababa. The name Hukaea is taken from the name of a large melinjo tree while Laea means big. In addition to moving to the upper reaches of the Laea river in 1937, the descendants of Sangia Wambakowu also moved to the lower area of the upper Laea river, then moved their settlements to be closer to their cultivated land.¹⁵

2. Geographical Portraits of the Indigenous Moronene Hukaea Laea

The geographical situation of the Hukaea Laea indigenous peoples has a customary area that is dominated by savanna, tropical and lowland rainforests and mangrove debt. The border of the ulayat area of the moronene indigenous people of Hukaea Laea is located in the western part bordering the PT. Barito Pacific Timber and Mount Mandoke, the north is right on the Watumohai and Tawanuala mountains, the east is bordering the Tiworo strait, and the south is bordering the village of Lambakasi, Lkawala, Lantari Jaya, PT. Barito Pacific Timber. This information was compiled and obtained based on the 2019 document from the customary institution of the Tiotongani Wonua Tabu Hukaea Laea.

The geographical conditions of the customary lands of the Hukaea Laea indigenous people are the Lahalo, Rapando, and Laea rivers. This river empties into the Tiworo Bay, and that expanse of nature is one of the wealth of indigenous peoples that have been preserved for generations. Based on the classification of the land area projected in 2019 by the Bombana Government, 29,164 hectares in total. Areas include:

¹³Abdul Muthalib, 1991, *Struktur Bahasa Moronene*, Departemen Pendidikan dan Kebudayaan, Jakarta.

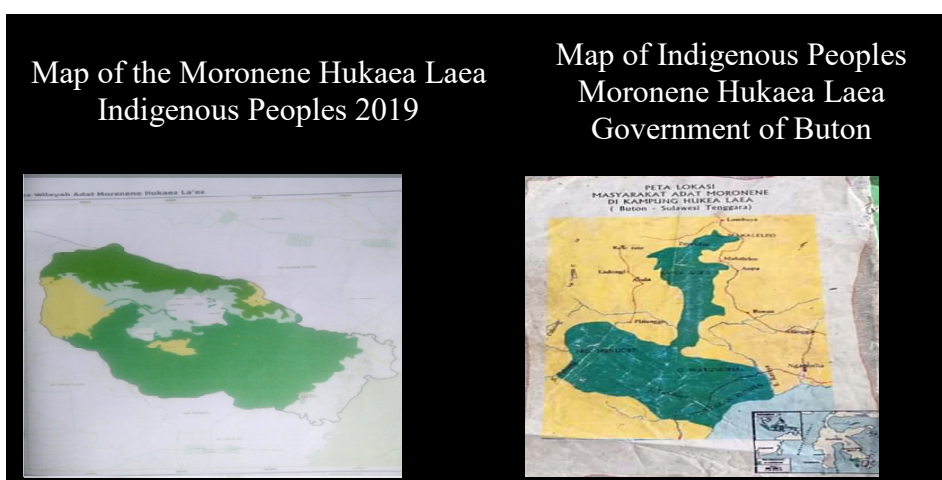
¹⁴BRWA, *Wilayah Adat Hukae Laea-Moronene*, <https://brwa.or.id/wa/view/aktTRkNPczdMWmc>, accessed 2019.

¹⁵*Ibid.*

Moronene Hukaea Laea Indigenous People's Customary Land Areas in 2019¹

No	Hucae Laea wilayah regional classification	Area (Ha)
1.	<i>Inalahi Pue</i> "The Jungle Core Zone Has Never Been Cultivated"	4.623,44 Ha
2.	<i>Inalahi Popalia</i> "Sacred Forest"	2.599,50 Ha
3.	<i>Inalahi peumaa</i> "forest plantation"	2,420,31 Ha
4.	Surrounding forest in the middle of olobu (grassland)	1,077,56 Ha
5.	Turtle people/Plantation type Hukaea Laea	1,195,34 Ha
6.	Mangrove (bako)	2.593,75 Ha
7.	Traditional salt pond	221,88 Ha
8.	Traditional fish pond	92,19 Ha
		29.164 Ha

Based on data from the Customary Territory Registration Agency (BRWA) that the area of customary land of the Moronene Hukaea Laea indigenous people is 29,164 hectares.¹⁶ The data is included only as a projection of the Bombana government as regulated in Perda no. 4 of 2015, but the determination of recognition with absolute ownership by the indigenous Moronene Hukaea Laea is not yet final. Comparing the customary land rights of the Moronene Hukaea Laea indigenous people, there are many changes related to the power rights of indigenous peoples, this can be seen as a comparison of the 2019 version of the map after the division and the old map before the expansion and still under Buton's territory. The comparison can be seen as follows:



¹⁶*Ibid.*

3. Portrait of Dehumanization of Customary Rights Territory of Indigenous Peoples Moronene Hukaea Laea

The determination of indigenous peoples' territories as conservation areas (National Parks) began in the Watumohai Forest in 1976 based on the Minister of Agriculture Decree No. 648/Kpts/10/1976, in 1978 continued in the Oapa Rawa forest as a Nature Reserve. In 1983 the local government took the initiative after conducting research and then the area of Rawa Aopa and TB Watumohai was agreed to be a conservation area (National Park).¹⁷ In 1985, the Swamp Forest was again designated as a Wildlife Wildlife Sanctuary based on the Decree of the Minister of Forestry No.138/Kpts-II/1985. After that, in 1989 the Minister of Health again declared TNRAW as a National Park based on SK No.444/Kpts-II/1989 and in 2011, TNRAW was restored as a conservation forest management unit based on SK No.775/Menhut-II/2011.171 based on the original rules. PP No. 44 the Year 2004.¹⁸

Indigenous Secretary Darmon, marginalization event in 1997, Hukae Laea indigenous people received inhumane treatment. The treatment was marked by the burning of Hukaea Laea's assets, starting from their residences and agricultural fields and the expulsion from their homes by the broom group. In this incident, there was a collective relationship between the local government and the conservation area manager so that indigenous peoples experienced discrimination and marginalization, including the arrest of the customary leader of Hukae Laea and other communities due to resistance to defending the position of ulayat rights that had been passed down from their ancestors.

Exploitation and discrimination of the Hukae Laea indigenous people, In 2002 the same incident happened to the indigenous peoples by cutting down the houses of the people forcibly so that the Hukae Laea indigenous people were forced to disperse to seek protection. In that event, the indigenous people of Hukaea Laea headed to Tahu Ite and others continued their mission to fight for their customary rights in the DPRD. The dehumanization incident of the indigenous people of Hukaea Laea, strictly speaking, the Buton government (Bupati Buton) at that time did not get the support and protection of indigenous peoples as citizens and the government

¹⁷Jabalnur, op.Cit.

¹⁸*Ibid.*

argued that the area they lived in was a conservation program or a national park.

According to PKPLH Bombana M. Arwin, the exploitation of the indigenous people of Hukaea Laea caused difficulties in determining the size of the customary territory, the factors that hindered (1) Agreement on conservation area management (2) Agreement of three authorized ministers (3) Agreement of Indigenous Peoples of Hukaea Laea Then, the results of the negotiations did not get a solution after the minister visited the location to see the customary rights area of the Hukaea Laea indigenous people and the central government concluded from the total ratio of indigenous peoples, 6,000 Ha out of 29,164 Ha would be used as the territory of the Hukaea Laea community.

Based on the interview with the Head of the Moronene Customary Community, Hukaea Laea, that he strongly rejects the forestry minister's stipulation that stipulates customary lands that are not in accordance with the context of the inheritance of their ancestors who have been passed down from generation to generation he temporary determination of the central government (minister) regarding the territory of the Hukaea Laea indigenous community was rejected by the customary leader because the customary area was a legacy from the past from their ancestors. that Likewise, observing the government's conclusion is a failure to acculturate the will of indigenous peoples with the LoGA. Because article 3 of the LoGA regulates categories of ownership rights based on individuals.¹⁹ Based on such a policy, the local government could not take comprehensive steps towards setting boundaries according to the historical context of the Hukaea Laea indigenous peoples because of the centralized policy.

The unclear regulations regarding the position of the Hukaea Laea indigenous people from the past to the present, negative accusations and stigma against the Hukaea Laea indigenous people as a community group as destroyers of forest ecosystems and geological conditions. Thus, the indigenous people of Hukaea Laea are increasingly being squeezed and threatened due to the increasingly massive power of conservation areas or national parks. According to Simarmata, in resolving disputes over the customary rights of indigenous peoples, the government should play a role in

¹⁹Boedi Harsono, 2003, *Hukum Agraria Indonesia, Sejarah Pembentukan UUPA, Isi dan Pelaksanaannya*, PT. Djombang, Jakarta.

protecting indigenous peoples from being stigmatized as rebel groups or even destroyers. Because, knowing and understanding the situation and condition of indigenous peoples is the local government itself, so there needs to be an objective and coherent study.²⁰

Therefore, the policy of the local government to only give the right of existence (recognition) is an absolute provision of the local government as the protector of the community. However, the policy of protecting the community with the status of indigenous peoples is not enough just to admit that they live because there are long historical events as evidence that can explain their position as heirs of the ulayat area. So without a clear determination of the customary land of the indigenous peoples, it is very risky for events like 1997-2002 to happen again to the Hukaea Laea indigenous people. Due to observing the existing regulations (1) the absence of legal certainty of national and regional customary rights (2) accusations and negative stigma still range as a criminal group (3) exploitation and marginalization of customary territories continues (4) space for indigenous peoples to be increasingly squeezed and can lead to the embezzlement of history and the loss of history and the land in which they live.

The unclear legal standing of the Hukaea Laea indigenous community, one of the impacts that can occur is as a form of arrest, stunting because it is always considered to be encroaching and destroying conservation areas.²¹ In fact, in the history of the indigenous people of Hukaea Laea, the area is the territory of their power and inheritance from their ancestors. This allegation can be proven that in the rules of the Hukaea Laea indigenous people, as the substance of the content, all customary activities must ensure continuity, forests, rivers, water creatures, and traditional processing and capture systems and wood mining, etc., are only appropriate to be used. This explanation is evidence of the documents of the indigenous people of Moronene Hukaea Laea in determining the management and utilization of natural resources in customary areas. In the

²⁰Markus Simarmata, "Hukum Nasional yang Responsif Terhadap Pengakuan dan Penggunaan Tanah Ulayat", *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, Vol. 7, No. 2, Agustus 2018, p. 283.

²¹Utami Diah Kusumawati, *Etnis Moronene Terancam, Pemda Didesak Terbitkan Perda*, <https://www.cnnindonesia.com/nasional/20150311163956-20-38451/etnis-moronene-terancam-pemda-didesak-terbitkan-perda>.

stipulation that indigenous peoples must not be excessive in their use and must pay attention to all forms of elements that exist in the customary area.

4. Customary Rights of Indigenous Peoples Moronene Hukaea Laea In Regional Regulation no. 4 the Year 2015

The existence of Regional Regulation No. 4 of 2015 regulates the customary community of Hukaea Laea, looking at the content of articles and verses with field and historical facts that substantially, the issue of customary rights of indigenous peoples has not been fully legitimized in the regulation so that the position of Hukaea Laea has not received justice and legal certainty. According to Retno (Bappeda), explaining the weakness of Perda No. 4 of 2015, the recognition of the boundaries of the customary rights of the Hukaea Laea indigenous people as their right of power, some complications must be based on negotiations between the management of conservation areas or national parks, the new ministry can determine the boundaries of the territory of the Hukaea Laea indigenous peoples.

The de facto decision of the Constitutional Court No. 35/PUU-X/2012 has classified the existence of indigenous peoples and given the autonomy to local governments to determine separate regulations regarding customary rights of indigenous peoples. However, in any area, it is very difficult to find regulations that objectively give an absolute position to indigenous peoples. Because again that most of the territory of indigenous peoples has been controlled by the State, rather than the decision of the Constitutional Court regarding the full control of customary rights by indigenous peoples. So that complexities and vertical stresses are unavoidable.

The authority of the local government as a subject can at least maximize the position of the Hukaea Laea community based on the historical records of the Moronene tribe and produce objective regulations. As M. Arwin (PKPLH) and Retno (Bappeda) stated that the local government's position is that in determining the customary rights of the Hukaea Laea indigenous people, the government positions itself as a mediator with the Moronene Hukaea Laea indigenous people and the conservation area managers. So that the settlement and end of customary land rights conflicts cannot be resolved properly and so is the position of Regional Regulation No. 4 of 2015 is only able to reach the right to settle.

Widiayani emphasized that the potential for the dehumanization of the community is difficult to avoid because many excuses can be used, for example, the area or territory is used for the public interest and there is no clarity on the legal umbrella for indigenous peoples. Because the level of the Regional Regulation cannot be used as an absolute legal force because some higher laws and regulations can invalidate the provisions of the Regional

Regulation.²² So that disputes over the customary rights of indigenous peoples will continue under the pretext of laws and regulations.

The implications of the Constitutional Court's decision No. 35 of 2012 have had a positive impact on the Hukaea Laea Indigenous Peoples although in its implementation it cannot be seen concretely in regional regulations, in terms of tracking the Regulation of the Minister of Environment and Forestry No. 32 of 2015 article 10 paragraph 2 stipulates provisions regarding ownership rights, among others; (1) maintain the function of private forests (2) carry out the principles of sustainable forest management (3) restore and improve forest functions (4) carry out security and protection of forest areas, among others, from the forest and land fires.²³ The four points in Article 10 paragraph 2 can be used as the basis for determining an area of customary rights for the indigenous Moronene Hukaea Laea, but in reality, it is not found in the phrase of the regional regulation concerning the full recognition of indigenous peoples' rights.

The provisions of Article 10 paragraph 2 of PMLHK No. 32 of 2015 and the correlation of Perda No. 4 of 2015, there is a fundamental reference regarding the determination of ownership rights that can be formulated in the Bombana Regional Regulation. However, the reality is that the Regional Regulation overrides the formulation of the full ownership rights of the Hukaea Laea indigenous people as stated in Article 10 paragraph 2 of the PMLHK. Likewise, Saifuddin Perda No. 4 of 2015 does not discuss ownership and recognition of customary rights of the Hukaea Laea indigenous peoples but includes only the recognition of residence in areas that should be fully owned by indigenous peoples.²⁴

5. Ulayat Rights of Indigenous Peoples of Hukaea Laea Based on Islamic Law Review

The right of ownership of the customary land of the Moronene tribe Hukaea Laea is a problem on the verge of an emergency for the future survival of the Moronene tribe. In this case, observing the authentic historical context of the Moronene Hukaea Laea tribe that existed before independence. According to Andi Yaqub, defending an area (area) is *al-daruriyah al-*

²²I Dewa Ayu Widyani and L. Elly AM Pandiangan, "Eksistensi Hak Ulayat Pada Masyarakat Hukum Adat Rantepao Toraja Utara", *Jurnal Hukum to-ra*, Vol. 5, No. 3, Desember 2019, p. 1–18.

²³Sitta Nabilla et al., "Implikasi Putusan MK No.35/PUU-X/2012 terhadap Eksistensi Hutan Adat Masyarakat yang Tumpang Tindih dengan Hutan Konservasi Taman Nasional Gunung Halimun Salak", *Diponegoro Law Journal*, Vol. 6, No. 35, 2017, p. 1–22.

²⁴Sahrina Safiuddin, "Wewenang Kepala Adat dalam Pengelolaan Hutan Adat Berdasarkan Peraturan Daerah", *Journal of Indonesian Adat Law (JIAL)*, Vol. 2, No. 3, 2018, p. 105–121.

khamisa.²⁵ The assertion is broken down based on the context that the ulayat land area, Suriyaman Mustari Pide is the full ownership authority by the adat community and the ulayat land area (territory) with the adat community has been bound by inner ties.²⁶ So the ulayat land of the customary community is located as al-daruriyah al-khamisa because it is a holistic element, both physically and metaphysically.

Legal stipulation (*istinbath*) in Perda No. 4 of 2015 regarding the customary rights of the Moronene Hukaea Laea community. Referring to the opinion of Imam Asy-Syafi'i Kitab Al-Umm, land ownership rights may be used and owned by people who live it, meaning that land ownership is owned by someone to manage or acquire not merely the interests and value-added to the area so that they want to have in any way. In such a description, it is reaffirmed that the right of ownership given to a person will certainly not bring harm to the people and especially the expanse of nature and everything in it.²⁷

Iman Asy-Syafi'i's opinion regarding land ownership rights, in principle, the recognition of Moronene Hukaea Laea customary rights returns to the historical context of the Hukaea Laea Moronene Tribe and customary rules that have been passed down from generation to generation as well as adab towards natural expanses implemented by the Hukaea Laea indigenous people. The logic of establishing a regional regulation under this context can be carried out objectively as long as holistic steps are accommodated as the basis for the formation of regulations.

Furthermore, Imam Ash-Shafi'i cites Ar-Rabi's opinion that if an area has had previous benefits, it cannot be acquired by anyone and gives boundaries and then controls it. Asy-Syafi'i describes sharply the area that was controlled by people long before and has settled in the area (region) and has brought benefits both to indigenous peoples as well as to the expanse of nature, even if someone is a ruler (government) it is forbidden to acquire and monopolize it. for personal gain and give it to the people who control it. Except, it can be given to anyone as long as they can care for, maintain, and be responsible for the sustainability and future of the natural expanse for the reason that they have taken beneficial actions towards nature and ecology.²⁸

However, the exception from Imam Ash-Shafi'i's explanation, eliminates the authentic position in a region, because a region has a long

²⁵Andi Yaqub, "Paradigma Lingkungan Hidup Pada Era Revolusi Industri 4.0", *Al-'Adl*, Vol. 11, No. 2, Juli 2018, p. 62–80.

²⁶Suryaman Mustari Pide, 2015, *Hukum Adat Dahulu, Kini, dan Akan Datang*, PT. Kencana, Jakarta.

²⁷Imam Asy-Syafi'i, *Al-Umm: Syuf'ah, Menghidupkan Lahan Mati, Hibah, Barang Temuan, Faradh Wasiat, Pembagian Harta Fai' dan Ghanimah*, ed. Badru, 7th ed. Pustaka Azzam, Jakarta.

²⁸*Ibid.*

journey like history and the position that takes place in it. Therefore, if there is exploitation, discrimination, and marginalization of the area and indigenous peoples, then such exceptions fall automatically. This can be seen from Imam Qardhawi as an affirmation quoting Umar Bin Khattab's opinion, that by dividing the spoils then each next generation will lose hope for its future and will also lose historical evidence as natives who live in that place.²⁹

Seeing the existence of the customary land of the Moronene Hukaea Laea indigenous people as a conservation area or national park is part of embezzlement of history and future generations will lose their inheritance, both the area as evidence of the existence of Hukaea Laea and the extinction of traditional teachings. Therefore, it is a form of destruction, exploitation, discrimination, and marginalization. According to Imam Asy-Shafi'i, there are no exceptions because it does not provide benefits for landowners as in Moronene history.

The regional government has a central position as the ruler in the region in determining or granting full rights and prohibits the ruler from exploiting the area for personal interests, let alone giving it to certain people. Based on the context of the opinion of Imam Asy-Syafi'i and Imam Al-Qardhawi that the decision of the Constitutional Court has the central role of the regional government as the basis for setting rules objectively and comprehensively as a step to recognize the customary rights of the Hukaea Laea indigenous people. This is the opinion of Umar Bin Khattab explaining that the rights of landowners must be given, especially since they are indigenous people and have lived in the area for hundreds of years. Therefore, this position must be given its rights, especially protection and security guarantees. unless the community commits acts of destruction, both among humans and with nature, such groups can divide their territory and expel them from their homes.³⁰

Position of Regional Regulation No. 4 of 2015 which regulates the Hukaea Laea indigenous community, provides a sense of security and protection as well as overall provision so that the Regional Regulation is an objective step to revitalize and then acculturate between traditional customary law and positive law at the level of a Regional Regulation. Therefore, revitalizing the Regional Regulation is a form of *Maqashid al-Shari'ah* covering the whole of the customary rights of the Moronene Hukaea Laea indigenous peoples as well as covering the entire criteria of *al-daruriyah al-khamsa*.

²⁹Yusuf Al-Qardhawy, 1999, *Pedoman Bernegara dalam Perspektif Islam*, ed. Mustolah Maufur, 1st ed, Pustaka Al-Kautsar, Jakarta Timur.

³⁰Ibid.

D. Conclusion

Based on the historical context of the indigenous Moronene Hukaea Laea in 1997-2002 they experienced dehumanization such as exploitation, discrimination, and marginalization of indigenous peoples. In this incident, the indigenous people of Moronene Hukaea Laea were persecuted by the broomstick group and the government that the indigenous people were in a conservation area or national park. Then in 2015, the local government took steps to protect the existence of the Moronene Hukaea Laea indigenous community based on the decision of the Constitutional Court. So the government issued Regional Regulation No. 4 of 2015 as the legal standing of indigenous peoples. Observing the existence and position of Regional Regulations, it can be seen that the government is inconsistent in the absolute recognition of indigenous peoples. This can be traced after the government positioned itself institutionally as a mediator between the Minister of Forestry, Conservation or National Park Management, and indigenous Peoples. Thus, it is difficult for indigenous peoples to obtain their customary rights and the dehumanization of the Moronene Hukaea Laea indigenous people will continue.

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