

Legal Protection Of Communities Who Have Customary Land Rights (Case Study of Decision Number 2087 K/Pdt/2012)

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Abstract. *This study examines legal protection for communities with rights to customary land through a case study of Decision Number 2087 K/Pdt/2012. Customary land disputes are complex issues and often cause prolonged conflict in Indonesia. This study aims to evaluate the extent to which court decisions in the case reflect fair legal protection for indigenous peoples and their implications for the recognition of customary land rights in Indonesia. This type of research is normative legal research using a normative legal approach method. The method of collecting data for this study is a literature study that will be analyzed qualitatively by examining court decision documents, relevant laws and regulations, and related literature. The results of this study examine how Indonesian law views the legal protection of customary land rights communities and reveals how the results of the settlement of customary land disputes in Decision Number 2087 K / Pdt / 2012 are fair in accordance with applicable regulations, the legal system to ensure that the rights of indigenous peoples are recognized and protected fairly. In addition, this study uses the theory of legal protection and the theory of legal justice as analytical tools in rejecting data that aims to continue to contribute to efforts to improve legal protection for indigenous peoples and ensure the application of the principle of justice in the national legal system.*

Keywords: Community; Customary; Protection; Land.

1. Introduction

In addition to having important economic value for indigenous peoples, customary land stores ancestral history that is passed down from generation to generation. This land is not just a physical property, but is a source of life, identity, and dignity for indigenous peoples. Understanding the importance of customary land demands a just and inclusive legal system that protects the rights of indigenous peoples to their land. The law must recognize, respect, be a strong foundation, maintain, and protect customary land as a cultural heritage and

source of life. Justice must be able to appreciate customary values and provide protection for the rights of indigenous peoples.

Indonesia, as an agricultural country that relies on the agricultural sector, places land ownership as a very important thing, especially in the context of production factors. The high value of land today is still the main driver of the occurrence of illegal land ownership, which is a problem that often occurs in society. This illegal land ownership occurs through the practice of falsifying land certificates as proof of ownership of land rights. This action not only harms the community as victims or related parties, but also harms the state. This crime still often occurs in Indonesia, so the community is expected to be careful in channeling trust regarding their land certificates to other parties to prevent the possibility of unwanted things happening.¹

Reported by ANTARA Media on Sunday, January 21, 2024, Mahfud Md highlighted customary land cases in Indonesia, he revealed that in 2024 based on the recapitulation made by the Coordinating Ministry for Political, Legal and Security Affairs, out of 10,000 complaints, 2,587 were customary land cases, so this is indeed a big problem in this country. Although customary land already has regulations, the resolution is not as easy as imagined, according to him this is because the apparatus does not want to implement the rules. For this reason, serious attention is needed regarding this land dispute problem.²

Customary land disputes are a complex issue and often cause prolonged conflict in Indonesia. As an agricultural country, land plays a crucial role in the lives of Indonesian people, indigenous people tend not to take care of certificates, because they believe that the land is their ancestral heritage. Meanwhile, the state requires certificates, because of that people sometimes lose customary land that has not been certified. This is the work of certain groups, both from the indigenous people themselves or other groups with a release letter even though it is not their customary land area.³

Fraudulent patterns in release without customary deliberation involve all communities, pressure and manipulation or collusion with certain individuals in issuing land certificates without the knowledge of the people above and or the land objects being certified and also their customary areas. This is sometimes

¹Lailatussyukriah, 2015, "Indonesia and the Conception of an Agrarian State", *Seuneubok Lada Journal*, Vol. 2, No. 1, p. 2. <https://www.ejurnalunsam.id/index.php/jisnbl/article/download/553/407> on May 7, 2024 at 09.00 WIB.

²Benardy Ferdiansyah, "Mahfud highlights 2,587 land cases" ANTARA <https://www.antaraneews.com/berita/3926124/mahfud-soroti-2587-case-tanah-adat> accessed June 18, 2023 at 11.00 WIB.

³Husen Altig, "Land Control of Customary Law Communities (A Study of the Ternate Customary Law Community)", *Journal of Legal Dynamics*, Vol. 11 No. 1 January 2011 <https://dynamica.hukum.fh.unsoed.ac.id/index.php/JDH/article/view/75> accessed on May 14 at 12.30 WIB.

marked by administrative defects. The formation of land regulations departs from the hope of being able to provide legal protection for its owners and efforts to minimize the chances of crime and land rights conflicts in Indonesia, but the reality that occurs is far from the ideals of the concept that was initiated.⁴

The rise incidents related to illegal takeover of customary land rights, in Indonesian customary land dispute resolution can be carried out through both litigation and non-litigation channels, and one of the cases that emerged in the community attracted the attention of the author, namely the case experienced by Ronny Pasahary in the Supreme Court Decision Number 2087 K / Pdt / 2012, who filed a lawsuit against Yagubi Toshia as the Head of PT Nippon Suissan Indonesia, related to a dispute over customary land rights in Sawai Village, Central Maluku Regency. that the defendant took sirtu without permission. Even though he had tried to hold a meeting and had a Statement from the Sawai District Government supporting his claim, Defendant I continued the operation to take sirtu on the Plaintiff's land. The Masohi District Court rejected the Plaintiff's lawsuit and one of the verdicts stated that he ordered the Plaintiff to pay the costs of this case in the amount of Rp. 14,291,000, - (fourteen million two hundred and ninety-one thousand rupiah).

Although the Plaintiff filed an appeal to the Supreme Court, the application was rejected. According to the Supreme Court's decision, the location where the Defendant took the sirtu was within the object of the release of rights between Defendant II and the Sawai Village/State Government. Therefore, the Plaintiff should have sued the Sawai Village/State Government. In this context, the land dispute resolution process is carried out through litigation in the judicial institution. However, the final decision of the Supreme Court did not support the Plaintiff, so the Plaintiff failed to obtain the legal certainty and compensation expected.

Regulations in Indonesia already cover customary land regulations as stipulated in Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) and Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 14 of 2024 concerning the Implementation of Land Administration and Registration of Customary Land Rights of Customary Law Communities. However, in practice, there are still many problems encountered related to customary land dispute conflicts.

2. Research Methods

This study uses a normative legal research type with a statute approach, in this study it is used to understand and interpret various applicable legal provisions and their application in the context being studied. The type of data used is secondary data obtained through literature studies. The data analysis method is carried out qualitatively. Secondary data taken from library sources include legal

⁴Ibid

literature, official documents, and laws and regulations related to the research topic. It is expected that this research will provide a comprehensive understanding of the law.

3. Results and Discussion

3.1. Legal Protection for Communities with Rights to Customary Land according to UUPA

The 1945 Constitution (UUD), as the highest legal product in the hierarchy of legislation in Indonesia, contains various articles that have direct relevance to indigenous legal communities. These articles reflect the recognition and protection of the existence and rights of indigenous legal communities in the national legal system.⁵

In the context of regulations in agrarian matters, Indonesia achieved an important historical milestone in Agrarian Law on "Saturday, September 24, 1960,"⁶ when Law Number 5 of 1960 concerning Basic Agrarian Regulations was enacted. This law is known as the Basic Agrarian Law or abbreviated as UUPA. According to Muchsin and Imam Koeswahyono, the implementation of UUPA has a very important ideological meaning because this law is a direct implementation of Article 33 paragraph (3) of the 1945 Constitution.⁷

Customary land law has been regulated in the Basic Agrarian Law (UUPA). In the preparation of this law, customary law is the main source used to formulate the UUPA because it provides the materials needed to build national land law. The legal position of customary land in the UUPA is based on the principles of customary law on land, which are stated in the considerations of the UUPA. The regulation of customary law in the UUPA includes several things, namely:

a. Article 2 paragraph (4)

This article explains that the State's right to control land, water, and other natural resources can be delegated to autonomous regions (Swatantra) and customary law communities. This delegation is carried out as far as it is necessary and does not conflict with national interests. This means that the state can give authority to regional governments and customary communities to manage certain natural resources in their areas, but must still comply with the provisions stipulated in Government Regulations.

Thus, although authority is delegated, the management must remain within the framework of broader national interests and must not ignore the basic principles

⁵Dyah Ayu Wisowati, 2014, Recognition and Protection of Land Rights of Customary Law Communities in Forest Areas, Center for Research and Community Service, National Land College, Yogyakarta, p.30.

⁶Abdul Hamid Usman, 2011, Basics of Agrarian Law, Tunas Gemilang, Palembang., p.52.

⁷Muchsin and Imam Koeswahyono, 2008, Legal Policy Aspects of Land Use and Spatial Planning, Sinar Grafika, Jakarta, p.11.

set by the state. This article emphasizes that the state holds full control, but can allocate some of this power to maintain a balance between local and national interests.

b. Article 3

Customary land, in the context of agrarian law, is land that is controlled and owned hereditarily by customary law communities, based on customary law in force in the area. The rights to this land are known as customary rights, which reflect the collective relationship of indigenous communities with the land that is part of their cultural and spiritual identity. This is in accordance with Article 3 of Law Number 5 of 1960 concerning Basic Agrarian Principles

Considering the provisions in articles 1 and 2, the implementation of customary rights and similar rights of customary law communities, as long as they actually still exist, must be such that they are in accordance with national and state interests, which are based on national unity and must not conflict with laws and other higher regulations.

The Basic Agrarian Law (UUPA) recognizes the existence of customary land and provides legal protection for the rights held by indigenous peoples. UUPA also establishes principles that regulate how customary land can be used and controlled, in order to align with national interests and support the welfare of society in general.

Article 3 regulates customary rights of customary law community units. This regulation aims to place customary rights in the right position in the context of a modern state, so that these rights continue to be respected and protected in the current legal system. UUPA seeks to maintain a balance between the recognition of traditional rights and the needs of national development.

c. Article 5

After the enactment of the UUPA, customary land law underwent significant changes as explained in the UUPA concept. Land, together with earth, water, and space, as well as the natural resources contained therein in the territory of the Republic of Indonesia, are seen as gifts from God Almighty to the Indonesian Nation and are considered national wealth. Article 5 of the UUPA states that the agrarian law applicable to earth, water, and space is customary law, as long as it does not conflict with national and state interests based on national unity, Indonesian socialism, and the regulations contained in this law and other laws and regulations, while still respecting elements that are based on religious law.

This provision has two implications for customary law on land in force in Indonesia. On the one hand, this provision expands the application of customary law, not only limited to European and Eastern Foreign groups, but also applies to lands that were previously included in the category of Western lands. Customary law is not only applied to Indonesian lands, but also to lands that were previously regulated by Western law.

d. Explanation of Article 11

The enactment of UUPA, the era of dualism and pluralism of agrarian law in Indonesia ended, marking the unification of agrarian law throughout the country.

Since then, there has been no longer a separation between customary agrarian law and western civil agrarian law. What applies is only agrarian law based on UUPA and its implementing regulations. Likewise with land rights, where land rights according to customary law or western civil law are no longer recognized. There are only land rights as regulated by UUPA, especially in Article 16 of UUPA. This raises questions about the status of land rights that were previously born based on customary law and western civil law after UUPA was enacted.

e. Explanation of Article 16

This article is an implementation of the provisions in Article 4. In accordance with the principles set out in Article 5, that national land law is based on customary law, the determination of land and water rights in this article also follows the systematics of customary law. In this case, the right to cultivate and the right to build are held to meet the needs of today's modern society. It should be emphasized that the right to cultivate is not an erfpacht right as regulated in the Civil Code, and the right to build is not an opstal right. The institutions of erfpacht and opstal have been abolished by revoking the provisions in Book II of the Civil Code.

Legal protection for indigenous peoples over customary land rights is further strengthened by the Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 14 of 2024 concerning the Implementation of Land Administration and Registration of Customary Land Rights of Customary Law Communities. This regulation was drafted to reaffirm the principles contained in the Basic Agrarian Law (UUPA) by providing more detailed guidance on the implementation of land administration and registration of customary land of customary law communities.

This Ministerial Regulation also shows concrete steps in strengthening the recognition and legal protection of customary land, in line with the objectives of the UUPA to create justice and legal certainty in the control and use of land in Indonesia. Here are several articles related to legal protection in the Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 14 of 2024 concerning the Implementation of Land Administration and Registration of Customary Land Rights of Customary Law Communities in the articles:

a. Article 1 paragraph 1

“Customary Rights or similar rights of Customary Law Communities, hereinafter referred to as Customary Rights, are the authority which according to customary law is held by certain customary law communities over certain areas which are the environment of their citizens to take advantage of natural resources, including land, in said area, for the continuity of their lives and livelihoods, which arise from the physical and spiritual relationship passed down from generation to generation and unbroken between the customary law community and the area concerned.”

b. Article 2

(1) Customary rights are exercised as long as they actually still exist according to the customary law provisions applicable to the customary law community.

(2) Ulayat rights as intended in paragraph (1) are declared to still exist if: a. there is a group of people who still feel bound by their customary legal order which recognizes and applies the provisions of the association in their daily lives; b. there are certain Ulayat Lands which are the living environment for its residents and a place to get their daily necessities; dan/ or c. There is a customary legal order regarding the management, control and use of Ulayat Land which applies and is adhered to by its citizens

c. Article 4

(1) Administration of customary land rights is carried out as long as they still exist as intended in Article 2 paragraph (1).

(2) Administration of customary land rights as referred to in paragraph (1) is carried out to record customary land in the customary land register.

d. Article 8

(1) To ensure that customary land is not in a state of dispute, conflict and/or case as referred to in Article 7 paragraph (4) letter b, physical and legal data searches are carried out.

(2) Physical data tracing as referred to in paragraph (1) is carried out using the overlay method.

(3) Legal data searches as referred to in paragraph (1) are carried out by taking into account data and or information obtained from identification activities as referred to in Article 7 in the field and/or at the Land Office.

e. Article 12

(1) Based on the results of the spatial review as referred to in Article 11 paragraph (5), the director general in charge of surveys and mapping orders the head of the Regional Office or the head of the Land Office according to the location of the Customary Land to carry out measurements and mapping of the Customary Land area in accordance with the area of measurement authority in order to obtain physical data on the Customary Land. (2) The measurement and mapping activities of the Customary Land area as referred to in paragraph (1) are carried out in accordance with the provisions of statutory regulations.

f. Article 13

(1) Customary land areas that have been measured and mapped as referred to in Article 12 paragraph (1) and have had a land area identification number affixed to the registration map, are recorded in the Customary Land Register at the Land Office according to the location of the land.

(2) The Land Office issues a copy of the Customary Land Register after the Customary Land is recorded in the Customary Land Register as referred to in paragraph (1).

(3) The form, ISI, method of filling in, storing and maintaining the Customary Land Register shall be carried out in accordance with the provisions of statutory regulations.

g. Article 14

(1) A copy of the Register of Customary Lands as referred to in Article 13 paragraph (2) is submitted by the Head of the Land Office to the customary law community and the regional government where the Customary Land is located.

(2) Submission of a copy of the Customary Land Register as referred to in paragraph (1) shall be carried out by letter no later than 14 (fourteen) working days from the date of issuance of the copy of the Customary Land Register.

(3) In the event that the customary law community has not received a determination from the regional government regarding the location of the customary land, a copy of the customary land register as referred to in paragraph (1) may be used as a consideration in the context of determining the customary law community.

(4) The determination of customary law communities as referred to in paragraph (2) is in the form of regional regulations or governor's decrees, regent's decrees/mayor's decrees which determine the existence of customary law communities in accordance with the provisions of statutory regulations.

(5) A copy of the Register of Customary Land as referred to in paragraph (1) and the determination of the customary law community as referred to in paragraph (4) shall be the basis for registering Customary Land.

h. Article 16

(1) Areas of customary land for which no confirmation of management rights has been submitted by the customary law community unit shall retain the status of customary land.

(2) With regard to customary land as referred to in paragraph (1), the customary law community unit may cooperate with third parties based on an agreement in accordance with the provisions of statutory regulations.

i. Article 28

Maintenance of customary land data is carried out in accordance with the provisions of laws and regulations while still respecting applicable customary laws.

j. Article 30

Registration of Customary Land does not reduce the validity of customary law regarding Customary Land.

k. Article 32

When this Ministerial Regulation comes into force:

a. Customary land that has been determined by the Ministry in the form of a decision or determination of rights as joint ownership is processed in accordance with the provisions in this Ministerial Regulation;

b. land area that has:

1. determined by the ministry that carries out government affairs in the forestry sector as a customary forest located outside the forest area; and/or

2. determined by the regional government through regional legal products, processed in accordance with the provisions in this Ministerial Regulation;

Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 14 of 2024 reaffirms the government's commitment to protecting customary land rights recognized by the Basic Agrarian Law as the basis for customary land rights by providing a clear legal framework and more transparent procedures for the recognition and registration of customary land. This regulation protects the ancestral heritage embedded in every inch of customary land. And the government seeks to strengthen the rights of customary law communities to customary land that has been passed down from generation to generation and is legally recognized in the national legal system, as well as preventing conflicts that are detrimental to customary communities by embracing customary values and providing new hope for the protection of customary land.

Legal protection in customary land disputes, communities can take two paths, namely litigation (through the courts) and non-litigation (outside the courts). Both paths provide a mechanism to resolve disputes fairly and based on applicable law, including customary law and national legislation.

- Litigation Path (Through the Court): This pathway involves resolving customary land disputes through the legal process in the district court. The steps in the litigation pathway include registering a lawsuit, the trial process, providing evidence, and finally a court decision. The plaintiff must file a lawsuit with the competent court, including relevant evidence, such as a customary land certificate or other evidence of customary rights. The court will consider the evidence, hear witnesses, and apply applicable laws, including customary law and national regulations such as the Basic Agrarian Law (UUPA) and Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 14 of 2024 concerning the Implementation of Land Administration and Registration of Customary Land Rights of Customary Law Communities.

- Non-Litigation Path (Outside the Court): Dispute resolution through non-litigation pathways includes mediation, conciliation, and arbitration. This pathway is more peaceful and prioritizes mutual agreement between the disputing parties. Supreme Court Regulation (PERMA) Number 1 of 2016

concerning Mediation Procedures in Court also encourages peaceful dispute resolution through mediation before the case is further examined by the court. This mediation can be carried out with the assistance of a neutral mediator, whose role is to help the parties reach a fair agreement without having to go through a long and expensive court process.

The theory of legal protection is an important concept in the context of agrarian law in Indonesia, in the Basic Agrarian Law (UUPA) and the Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 14 of 2024 concerning the Implementation of Land Administration and Registration of Customary Land Rights of Customary Law Communities. According to Satjipto Raharjo, legal protection means providing protection for Human Rights (HAM) that are harmed by other parties, and this protection is given to the community so that they can enjoy all the rights guaranteed by law. The law should function to provide protection that is not only adaptive and flexible, but also predictive and anticipatory.

Law is needed for those who are weak and not yet strong socially, economically, and politically to obtain social justice. The following is an explanation of the theory of legal protection in the context of legal protection based on the UUPA and the Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 14 of 2024.:

- a. Principle of Justice: The regulation emphasizes the importance of justice in the control, ownership, use, and utilization of land. Legal protection must be provided to all interested parties by considering justice for both individuals and society as a whole.
- b. Recognition of Rights: The regulation provides recognition and protection for various land rights, including ownership rights, business use rights, building use rights, and use rights. The theory of legal protection ensures that every rights holder has legal certainty and protection for their rights.
- c. Legal Certainty: Legal protection in the UUPA and the Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 14 of 2024 aims to provide legal certainty to land owners and users. This is done through land registration, which provides strong legal evidence of ownership and rights to land, thereby reducing land disputes and conflicts.
- d. Social Function of Land: the regulation emphasizes that land has a social function. Therefore, legal protection must ensure that land use provides the greatest possible benefits for the prosperity of the people. Land rights must not be used arbitrarily to the detriment of the public interest.
- e. Role of Government: The government has an important role in ensuring legal protection of land. The government is obliged to regulate and supervise land use to comply with applicable laws and regulations, as well as protect community rights and prevent detrimental practices.

The application of the theory of legal protection, UUPA and Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 14 of 2024 concerning

the Implementation of Land Administration and Registration of Customary Land Rights of Customary Law Communities seeks to create a fair agrarian legal system, provide legal certainty, and protect the rights of all parties related to land in Indonesia. Meanwhile, legal protection for customary land disputes aims to ensure that the rights of indigenous peoples to their land are recognized and respected. These protection measures involve formal recognition of land ownership and management rights by indigenous peoples, in accordance with their customs. In addition, dispute resolution mechanisms, both through formal legal channels such as courts and alternatives such as mediation and arbitration, are designed to handle conflicts fairly.

3.2. Legal Protection for Communities with Rights to Customary Land in Decision Number 2087 K/Pdt/2012 which is Fair

Indonesia has a diversity of cultures and land ownership in Indonesia, legal protection for communities with customary land rights is an important issue. Customary land is not only an economic asset but also a symbol of customary identity and cultural continuity. However, these rights are often threatened by unfair practices and illegal land management. Therefore, the legal system must provide adequate and fair protection for indigenous communities and ensure that they maintain their rights to the land they have owned for generations.

This case began with Ronny Pasahary owning a piece of customary land in Oping Hamlet, Sawai Village, with a length and width of approximately 1,500 meters each, and clear boundaries. The plaintiff filed a lawsuit with the Mosohi District Court with a number of arguments and evidence. Since January 10, 2007, Defendant I was known to have taken sirtu without permission from the Plaintiff's land using heavy equipment such as excavators and Nissan trucks. On the same day, the Plaintiff visited Defendant I's company in Arara and met with Mr. Sanduan, the company's general or public relations department. On behalf of Defendant I, he explained verbally about the number of cubic meters of sirtu taken and stated that there were field officers who recorded the daily take, while the price per cubic meter would be discussed later. However, until April 2007, Defendant I had not contacted the Plaintiff regarding the discussion regarding compensation for the sirtu taken. Defendant I argued that the Plaintiff should have contacted the Sawai State Government first before they calculated the amount and price of compensation.

The litigation process aims to achieve legal certainty in resolving disputes. Through this path, the aggrieved party can seek a legal and fair resolution based on applicable law. By involving judicial institutions, litigation allows the court to assess and decide disputes based on the evidence and arguments presented. The main goal is to ensure that each party receives appropriate legal protection and that the decisions issued can be used as a reference for formal conflict resolution. This process is expected to provide legal certainty and clarity for all parties involved.

The Masohi District Court issued a verdict on October 7, 2011, rejecting the Plaintiff's lawsuit. The Plaintiff, who had gone through a long legal process in the hope of obtaining justice, was instead faced with the obligation to pay court costs amounting to Rp. 14,291,000. This situation shows the double burden that the Plaintiff had to bear. In addition to not getting the verdict he expected, he also had to bear quite significant costs. The decision to charge the Plaintiff these court costs added to the complexity of the problems he faced.

The Plaintiff then appealed, but the Masohi High Court upheld the decision on January 16, 2012, indicating that the Plaintiff's appeal was also unsuccessful. Not stopping there, the Plaintiff filed an appeal to the Supreme Court in an effort to obtain justice for the case he was facing. Unfortunately, this effort also failed because the cassation application was rejected by the Supreme Court on May 30, 2013. This series of legal processes shows that all efforts made by the Plaintiff through the courts did not produce the expected results. The tiered decisions made from the District Court to the Supreme Court all sided with the Defendant, leaving the Plaintiff without a satisfactory legal solution.

This lengthy process highlights the challenges and complexities of the justice system, and despite several levels of trial, the final outcome has still not been in favor of the plaintiffs. The Supreme Court's final decision closes the path for the plaintiffs to obtain the recognition and legal resolution they desire.

In short, the land dispute resolution process in this case was carried out through litigation in the judicial institution. Although all judicial procedures had been carried out, including appeals and cassation, the final decision of the Supreme Court did not provide a favorable result for the Plaintiff. The Plaintiff failed to obtain legal certainty or the compensation they expected, because the decision rejected their application. This shows that the legal process carried out, although long and tiring, did not produce the desired results and still left the Plaintiff in legal uncertainty regarding the land dispute.

Although the lawsuit was declared wrong because the location of the sand and stone extraction was in an area that was the object of the release of rights between Defendant II and the Sawai Village/State Government, the decision to reject the right to compensation should not have been made automatically. The right to receive compensation must be considered based on the principle of justice.

The plaintiff may suffer significant losses due to the actions of another party. The obligation to provide compensation should not only depend on the success of the lawsuit, but also on the losses suffered by the plaintiff. If the actions taken by the wrongful party result in real losses, then the party who carried out the actions must still be liable to provide compensation.

The purpose of compensation is to restore the loss suffered by the injured party. Ignoring a claim for compensation can cause further harm to the plaintiff, especially if they have no other means of seeking compensation. Denying compensation can violate the basic principle of law which aims to correct injustice.

To prevent future injustice, courts should consider a more holistic approach to cases where a party is at fault in the lawsuit. Courts should evaluate the harm suffered and award appropriate damages, even if there is an error in determining the party being sued. In addition, courts may direct plaintiffs to sue the correct party while still considering appropriate compensation for the harm that has occurred.

This ruling highlights the weaknesses in the protection of indigenous rights in our legal system. Indigenous peoples often have difficulty when trying to enforce their rights in court. Overall, Decision Number 2087 K/Pdt/2012 shows various weaknesses in the legal protection of indigenous peoples, both in terms of recognizing indigenous rights and implementing the principle of justice. Although this decision may be in accordance with legal procedures, its protection of indigenous rights requires further attention and reform to ensure that indigenous peoples' rights are recognized and protected fairly in our legal system.

Improving legal protection for indigenous peoples requires comprehensive reform of the legal system and legislation, improvement of the judicial system, active involvement of indigenous peoples in policy-making, and better access to justice. This recommendation aims to ensure that indigenous peoples' rights are effectively recognized and protected, and provide a just and inclusive legal basis for all parties.

Linking to John Rawls' theory of legal justice helps to understand how the justice system can fail to meet the ideal standards of justice. According to Rawls, the principles of justice must include equality in access to the legal process and the distribution of outcomes that benefit all parties, especially the disadvantaged.

1. Principle of Justice as Equality: Rawls' theory emphasizes that all individuals should have equal access to the justice system. In this case, even though the Plaintiffs had followed all available legal procedures, from the district court to the Supreme Court, the final outcome was not in their favor. This shows a gap in access and outcome, as the Plaintiffs did not have clarity about who to sue. Rawls' principle would expect the legal system to function to help individuals understand and access the proper legal pathways to obtain justice.

2. Difference Principle: According to Rawls, inequalities should be arranged in such a way as to provide maximum benefit to those who are least advantaged. In this context, the Plaintiffs' failure to obtain legal certainty and redress placed them in a more disadvantaged situation. The decision to dismiss their appeal

without considering the broader economic and social impacts on the Plaintiffs reflects a deficiency in the legal system that is supposed to support individuals who are in a disadvantaged position.

Rawls' perspective, a just legal system should not only focus on fulfilling formal procedures, but also on substantial and fair outcomes for all parties involved. The Supreme Court's decision that did not provide clarity and compensation to the Plaintiff shows that the legal system has not fully implemented Rawls' principles of justice, especially in terms of providing fair and equal support for all individuals, regardless of their economic or social status. The long and fruitless legal process indicates the need for reform to ensure that substantive justice and equal access are truly achieved.

4. Conclusion

Decision Number 2087 K/Pdt/2012 reveals weaknesses in the legal protection of indigenous peoples' rights in Indonesia. Although legal procedures have been followed correctly, this decision shows that excessive focus on technical aspects can ignore the principle of substantive justice. Plaintiffs who suffered real losses did not receive compensation, indicating that the legal system does not fully protect indigenous rights and social justice. This decision also highlights how indigenous peoples are often in a weak position when dealing with parties with greater economic or political power. Therefore, there is an urgent need for reforms in the legal system so that indigenous peoples' rights are more effectively recognized and protected. This includes updating regulations that are more sensitive to indigenous rights, adjusting legal procedures, and increasing indigenous peoples' participation in decision-making processes that affect their lands and resources. These steps are necessary to ensure that justice is understood not only procedurally but also substantively, so that indigenous peoples' rights are fairly and adequately protected.

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