



## THE ROLE OF CUSTOMARY LAW IN SUSTAINABLE INFRASTRUCTURE DEVELOPMENT IN SOUTH SULAWESI

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### **Keyword:**

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**Abstract:** *Infrastructure development is not an easy thing to implement. Because of the diversity of cultures and geographical conditions, so that in its implementation must be in accordance with the values of indigenous peoples. This study aims to analyze the provisions in the utilization of indigenous peoples' natural resources and analyze the implementation of customary law in sustainable infrastructure development. This research uses a normative juridical approach method through primary and secondary legal study materials to find answers to the research. The results showed that infrastructure development that falls into the customary rights of indigenous peoples for public interest can be carried out by handing over land by the government with indigenous peoples based on agreements between indigenous peoples and applicable regulations. In infrastructure development, an area requires natural resources in the form of both land and forests, of course, in the implementation of infrastructure development, it sometimes enters customary forest areas and customary lands, causing sharpening conflicts, especially since indigenous peoples have received state or local government recognition as outlined in Regional Regulations.*

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### I. Introduction

Forests are a gift from God Almighty that provides many benefits for human life in the world (Rachmadi 2019). On the contrary, humans should protect and use forests wisely and wisely by not destroying them (Soni 2021). Forest utilization aims to obtain optimal benefits for the welfare of all communities in a sustainable manner while maintaining forest sustainability (Patunru and Haryoko, 2015). Limited access to land for communities around forests is undeniably one of the causes of deforestation. This problem has led to the emergence of the concept of social forestry even though in some regions it has not achieved the goal of sustainable social forestry (Nugraha et al. 2022).

Forests as one of the determinants of the life support system and source of prosperity of the people, tend to decline in condition, as well as what happens in South Sulawesi Province, the existence of forests is very worrying along with the progress of development (Muluk and Nugroho 2019). Starting from deforestation, forestry conflicts, management conflicts to recognition of indigenous peoples.

Sustainable development contains the concept of the goals of *the Sustainable Development Goals* (SDGs), which is to harmonize between three main elements which include economic growth, social inclusion and protection of the environment (Hidayat and Sidik 2019). Sustainable development prioritizes infrastructure that is useful to support the growth of the economic sector as well as increase people's access to basic services and increase productivity (UNOPS 2019). Sustainable infrastructure development also has an impact on improving water, food and energy security (Nugroho et al. 2022). In addition, it can also open new and quality jobs which result in a decrease in poverty rates and an increase in per capita income. According to the World Bank, Indonesia is categorized into upper-middle-income countries, which currently continue to implement sustainable development that is closely related to infrastructure development and includes economic growth. Infrastructure development in Indonesia is not an easy thing in its implementation, because it is influenced by geographical conditions or cultural customs in Indonesia which are very heterogeneous (Wardhana 2016). The diversity of cultures, cultures and geographical conditions is what makes Indonesia have to strive for infrastructure development in accordance with the conditions and situations of indigenous peoples (Wicaksana and Rachman 2018). This action is part of the state's efforts to ensure respect for indigenous peoples in the context of implementing infrastructure development, as mandated in the 1945 NRI Constitution.

The construction of respect for the existence of indigenous peoples can be in the form of customary rights owned by indigenous peoples contained or regulated in Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest (Jusdin 2019). In the provision, it is stated that "Land Acquisition for public interest is carried out through planning involving all stakeholders and stakeholders". Sustainable infrastructure development that is being promoted by the government sometimes in its implementation still does not pay attention to the importance or existence of regulations from the lives of indigenous peoples (Errico 2017). In this section, the development carried out has different views between the

government and indigenous peoples. In fact, often the government prioritizes personal interests to seize customary land owned by indigenous peoples in the name of infrastructure development (Maskawati, Hamid, and Habiba 2018). With these different perspectives, it can create gaps in the original concept of sustainable infrastructure development. Infrastructure development that should consider more on the benefits or potential of land, natural resources, and territories owned by indigenous peoples and already part of the rights owned by indigenous peoples, is actually taken over by the state for national development and conservation without the consent of indigenous peoples (J  r  mie 2017). That is what causes the concept of development between the state and indigenous peoples to gradually deteriorate. Supposedly, the paradigm of infrastructure development is not always related to physical infrastructure such as the provision of transportation, irrigation, drainage, building buildings and other public facilities, but also soft infrastructure (Haryati 2019).

Soft infrastructure can be prioritized so as not to leave the original identity of indigenous peoples and still be guaranteed their existence or existence. If physical infrastructure development continues, the state can involve indigenous peoples directly in their development planning and in the infrastructure development process to create transparency between countries and indigenous peoples (Dom  nguez and Luoma 2020). But the reality of the current situation is that the state provides restrictions that must be obeyed by every citizen, including indigenous peoples. The restriction is that the government can take the land rights of indigenous peoples for granted in realizing their interests and then use them for the benefit of the state aimed at national development (Sulaiman and Darmadi 2023). This is evidenced by data in 2021 which shows that there have been tenure conflicts regarding agrarian and forestry in South Sulawesi which reached 250 cases. In fact, Article 18B paragraph 2 of the 1945 NRI Constitution explains that the state recognizes and respects the unity of indigenous peoples and their traditional rights as long as they are alive and in accordance with the development of society based on the principles of the Indonesian state. With this article, there should be an affirmation from the government so as to minimize the occurrence of conflicts with indigenous peoples so that infrastructure development continues to go hand in hand and is mutually beneficial (Ruits et al. 2004). Based on this, it is interesting to study more deeply about the provisions in the use of indigenous peoples' land for infrastructure development and how the role and application of customary law in sustainable infrastructure development.

## II. Research Methods

Type of Research Normative law research using normative case studies in the form of legal behavior products, for example reviewing laws. The subject of study is law which is conceptualized as norms or rules that apply in society and become a reference in infrastructure development.

## III. Discussion Of Research Results

### 1. The role of customary law in infrastructure development

Infrastructure development is an important and vital aspect to accelerate the national development process (Fahmi, Sahara, and Purnamadewi 2020). National development aims to create sustainable and inclusive economic growth for future regeneration. In addition, infrastructure development is included in one of Indonesia's 2045 state visions, namely equitable development (Conference and Education 2023). Infrastructure development is also a driving factor for economic, industrial and social growth in the community such as the availability of transportation, telecommunications, sanitation and energy infrastructure (Du, Zhang, and Han 2022).

Infrastructure development that has been carried out by the government often fails. This failure can be proven by the existence of infrastructure development that does not involve community participation, which in this study is more specifically aimed at indigenous peoples related to the formulation of goals, planning, implementation and maintenance (OECD 2018). Infrastructure development should consider more on the quality of the physical environment, the existence of indigenous peoples' social behavior, and the infrastructure is appropriate and has urgency in meeting the needs of indigenous peoples (Errico 2017).

In the implementation of infrastructure development, there are often disputes between indigenous peoples and local governments in managing customary rights, which are basically rights owned by indigenous peoples themselves. Customary rights are an inherent part of customary law communities both related to forests and cultivated land. Besides being carried out, customary rights can also be managed or used by all indigenous peoples, which in fact are intended for mutual interests (Perbawati and Evendia, 2021).

Based on Article 3 of the Basic Agrarian Law (UUPA) which states that "Bearing in mind the provisions of Articles 1 and 2 the exercise of customary rights and similar rights of customary law communities, so far as they exist, shall be such that they are in accordance with

national and State interests, which are based on national unity and shall not conflict with other higher laws and regulations.". So it can be concluded that customary rights are recognized in national land law by having to meet two requirements which include: their existence and implementation

Customary rights have three important things which include: indigenous peoples, customary land and the relationship between indigenous peoples and their customary lands (Ivonne Laturette 2017). The indicator is contained in Article 2 paragraph (2) of the Regulation of the Minister of Agrarian State/Head of the National Land Agency No. 5 of 1999 concerning Guidelines for Resolving Customary Rights Problems of Legal Peoples, that the Customary Rights of Customary Law Peoples are considered to still exist if:

- a. there is a group of persons who are still bound by their customary law order as common citizens of a particular legal alliance, who recognize and apply the provisions of the alliance in their daily lives;
- b. there is a certain customary land which is the living environment of the citizens of the legal alliance and where they take their daily necessities; and
- c. There is a customary law order regarding the management, control and use of customary land that applies and is obeyed by the citizens of the legal alliance.

## **2. Sustainable infrastructure development based on indigenous peoples' customary rights**

The diversity of Indonesian society called Tribe, Religion, Race, Intergroup (SARA) has existed since ancient times. Indigenous peoples are a group of people who are organized and behave as a unit, have customary rulers, have customary wealth, and have customary laws that apply and settle in a certain area (Narayana 2023). Indigenous peoples and indigenous peoples are two different legal terms. The term indigenous peoples is widely used by customary law experts for academic theoretical purposes. While indigenous peoples is a term that is widely used by ordinary people sourced from various international agreements. Living norms accompanied by sanctions imposed if needed by the community or the bodies concerned to be obeyed and respected by the community are the definition of customary law according to F.D Holleman and Van Vollenhoven (Biantoro, Suparno, and Budianto 2023). Indigenous peoples and customary law communities have existed and developed since Indonesia's independence. Therefore, Indonesia must recognize indigenous peoples and uphold their rights through normative provisions, namely laws and regulations. The 1945 NRI

Constitution explains the existence of indigenous peoples as a legal subject that is different from other legal subjects regulated in Article 18B paragraph 2, Article 28 paragraph 3 and Article 32 paragraphs 1 and 2.

The form and structure of the legal community, which is a customary law alliance, its members are bound by territorial and genealogical factors (Pontoh, Kalalo, and Wahongan 2021). In addition to the existence of a legal society among the people, Teer Haar suggests the existence of community groups in the circle of kings and nobility and in the circle of merchants. These community groups are influenced by customary law life and residences separate from the general public.

Regulations on indigenous peoples and their traditional rights under the concept of limited recognition are found in Law No. 41 of 1999 on Forestry. Article 4 paragraph 3 of Law No. 41 of 1999 on Forestry explains that forest control by the state still pays attention to the rights of customary law communities, as long as the fact still exists and is recognized for its existence, and does not conflict with national interests. In addition, Article 67 paragraph 1 of Law No. 41 of 1999 concerning Forestry also explains if the existence of indigenous peoples is recognized if there are provisions through Regional Regulations. In addition, it is also seen from Article 2 paragraph 4 of Law No. 5 of 1960 (UUPA) which states that the implementation of the right to control from the state in its implementation can be authorized to autonomous areas and customary law. Therefore, indigenous peoples are given the authority to control land directly controlled by the state with the aim of community prosperity.

Infrastructure development currently carried out by the state is often contrary to the customary rights of indigenous peoples and the principles contained therein which include mutual assistance; social functioning; consent or consensus; and representation.

Some infrastructure developments carried out in South Sulawesi almost 30% enter the customary rights area of indigenous peoples, such as in Selayar Islands Regency with a reclamation development program that occupies the customary rights area of takabonerate, the construction of mining areas in the Seko community area that occupies the customary rights of the Seko indigenous people, North Luwu Regency, the construction of the Jompie botanical garden in Pare-Pare City which partly enters the customary forest area. (Sampean and Sjaf 2021).

The use of customary forests and customary land for investment and infrastructure development continues to this day. Moreover, there is a Job Creation Law which substantially provides many facilities for land-based business licensing.

#### IV. Conclusion

1. The legal basis for the use of customary land of indigenous peoples for infrastructure development must be based on the provisions in the UUPA and government regulations. Referring to the UUPA, the land law adheres to customary law, meaning that land that is not controlled by the state is actually part of the land property of customary law communities.
2. Infrastructure development that is currently being carried out by local governments continues to pay attention to the customary rights of indigenous peoples, so that their use does not cause conflicts of interest.

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