

The Existence of Indigenous Institutions at the Implementation of Regional Autonomy in Murung Raya District

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ABSTRACT: Khalid Ilmi, D2B114024, 2017. The Existence of Indigenous Institutions at the Implementation of Regional Autonomy in Murung District Murung Raya District. Thesis, Master of Public Administration of Lambung Mangkurat University. Under the guidance of Setia Budhi and Gazali Rahman. The issuance of the Regional Autonomy Act No. 23 of 2014 on Regional Government brought fresh air and opened opportunities for indigenous peoples to appear in government and politics after a long wait for the presence of the son of the region as governor of Central Kalimantan. But why the development and empowerment of Dayak Indigenous Peoples was still poorly considered. Why the development of regional autonomy became a challenge to the existence of indigenous people of Central Kalimantan. The sustainability of indigenous peoples through Kadamangan groups was eroded by the interests of individuals and certain groups. This descriptive research aimed to know and to understand the existence of Kadamangan indigenous administration in the implementation of regional autonomy in Murung subdistrict, Murung Raya district, Central Kalimantan and to know and to understand the influencing factors of the existence of Kadamangan indigenous administration in the implementation of regional autonomy in Murung subdistrict, Murung Raya district, Central Kalimantan. The study was a qualitative descriptive one. It aimed to describe the complex reality that was underway in qualitative study. Field study showed and it could be argued that the existence of Kadamangan indigenous administration at the implementation of regional autonomy in Murung su-district, Murung Raya district, Central Kalimantan province, had the opportunity to be an important institution in the implementation of dispute resolution and community empowerment function. The factors affecting the existence of customary Kadamangan among them were the lack of socialization, institutional finance and human resource development.

Keywords: the existence of indigenous customary institution of Kadamangan local autonomy

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I. BACKGROUND

Various ways was used in addressing the indigenous people of Kalimantan as indicated by the results of Borneo studies by scientists. Widjono (1998) suggested that there were at least four names: Daya, Dyak, Daya and Dayak. Meanwhile, they recognized themselves as Benuaq, Kenyah, Punan, Bahau and so on the basis of their domicile. According to Zulkarnaen (2000) at the beginning they did not identify themselves with Dayak. Dayak was a label given by other group. They identified themselves generally as ethnic name referring to the name of the river where they lived. Tambun Anyang (1996) called Dayak "Taman" referring to the whole society of the ethnics living in certain area. Meanwhile, according to Mjoerberg (in Coomans, 1987) the name Dayak was for all of the population in inland areas whose religion was not Islam.

Coomans (1987) referred Dayak to those living in upper course of a river. According to him in some local languages (Benua, Tunjung, and Kutai) "Dayak" meant upper course of a river such as Mahakam Dayak that meant the upper course of Mahakam River. The same meaning was also found in some local languages in Central Kalimantan. However, there were those who gave the word "Dayak" other meaning such as Tjilik Riwut, prior Governor of Central Kalimantan suggesting that the word "Dayak" meant beautiful, handsome and tough (Idram, 1989).

Dayak people was defined as a group of people living in certain geographical area for generations, having characteristic value, social and cultural systems, sovereign on the land and controlling natural riches, having their own authority to regulate and manage the sustainability of their life using customary law and institutions. The definition was based on the decision of the leaders of the community of customary peoples of the archipelago in a congress of customary peoples of the archipelago (Kongres Masyarakat Adat Nusantara or KMAN) that was firstly held in March 1999. There were also those who defined customary people as an

autonomous social unit capable of regulating its own living system (law, politics, economics, etc.). It emerged from, developed along with, and maintained by itself.

Customary institutions in Central Kalimantan were regulated in Local Regulation Number 16 of 2008 on the Customary Institutions of Dayak in Central Kalimantan and the Regulation of the Governor of Central Kalimantan Number 13 of 2009 on Customary Land and Customary Rights over the Land resulting from National Congress II of Dayak Customary Board across Kalimantan dated September 2nd-5th, 2006 in Pontianak. Articles of association and bylaws were established, which regulated the hierarchy and the coordination system of the organization of Dayak customary people for synergy from National Dayak Customary Council (Majelis Adat Dayak Nasional), Provincial Dayak Customary Board (Dewan Adat Dayak Propinsi), District/City Dayak Customary Board (Dewan Adat Dayak Kabupaten/Kota), Customary Law Holding Institution (Lembaga Pemangku Hukum Adat) or Kadamangan.

District and Village Dayak Customary Board (Dewan Adat Dayak Kecamatan dan Adat Dayak Desa/Kelurahan) was assigned on the basis of the Local Regulation of the Province of Central Kalimantan Number 14 of 1998 on Kadamangan in Central Kalimantan province. However, the regulation was considered as out of date and it was necessary to amend it with the Local Regulation of Central Kalimantan Number 16 of 2008 on Dayak Customary Institutions in Central Kalimantan.

Local Regulation Number 16 of 2008 on Dayak Customary Institution in Central Kalimantan contained ambiguity related to the authority and the function of Damang as customary head of customary community and the government. It could cause authority overlapping in the community. Additionally, there was not any regulation on the improvement of the capacity of the Damang and the customary institutions that they were able to manage the customary institution to face various external interventions.

The Regulation of Governor Number 13 of 2009 was inseparable of the Articles 36 and 44 of the Local Regulation of Central Kalimantan province Number 16 of 2008 on Dayak Custom in Central Kalimantan that served as the basis of the issuance of the Regulation of the Governor of Central Kalimantan province on Customary Land and the Right over the Land in Central Kalimantan province.

The main objective of the issuance of the Governor Regulation was to make an inventory of the customary land owned by the customary people in Central Kalimantan province. However, the Governor Regulation Number 13 of 2009 on Customary Land and the Right over the Land in Central Kalimantan province did not automatically warrant collective right of the customary people of the space and the territory because it was only based on individual right of the land.

Customary people was considered as the smallest social unit capable of managing its own affairs, which "did not conquer and was not conquered" just as the case of the formation process of a kingdom or a state and usually had following characteristics (though it was not absolute): It was stated in ILO convention and in the declaration that self-identification of a society was the key in putting a social entity in the position of customary people. The concept of customary land law represented the crystallization of the noble values of Indonesian that put the emphasis on the balance between "social life" and "individual life". The control and the use of a land should consider harmony.

The Local Regulation Number 16 of 2008 and the Regulation of the Governor of Central Kalimantan Number 13 of 2009 stated that customary land was the land and any thing contained in the land in Kadamangan's territory and/or in village territory that was controlled on customary law, representing forest and non-forest with clear boundaries, both owned collectively and individually and whose existence was recognized by the customary head Damang.

The right of the land might be seen in legal form of the control of the land by the customary people and it was referred to as the right of the customary land. It was a formal term though there were various terms used differently. The issuance of the Act on Local Autonomy gave customary people the chance to find governmental and political positions after a long wait for the presence of the son of the region as governor of Central Kalimantan. However, the infrastructure and agricultural development as main foundation of the empowerment of Dayak customary people still deserved serious attention. Additionally, there was still illegal logging, illegal gold mining and forest fire since 2006. They posed challenge for the existence of the customary people in Central Kalimantan. Deforestation continued and agricultural land seriously damaged and natural resources depleted.

The implementation of local autonomy was based on the Act Number 5 of 2002. It resulted in the establishment of new districts from 5 districts into 13 districts and a city. It was expected that the 8 new districts would give more opportunity to local people to find more positions in the public sector of the local government and would increase the prosperity of the local customary people.

The intervention of the governmental apparatus in the assignment of the customary chief of Damang gave the assignment political content. A customary chief Damang did not come from his customary people, but assigned by the government. Therefore, the the customary institution of the customary chief was not justified by the customary people, but by the government. In other words, the government used the customary chief as

instrument and it was clearly observed in the local regulation on Dayak customary institution that regulated: 1. the inventory making of the customary institutions and the rearrangement of the position, the role and the function of the customary institution, 2. stipulating the names and the organizational arrangement of the customary institutions (MADN, DAD, Kadamangan, and BPMAD), 3. regulating the inventorymaking of the financial sources and the property of customary institutions, 4. regulating the mechanism of the building and the development of customary institutions, and 5. establishing the role and the function of customary institutions to achieve governmental objectives and the goals.

Some important questions of the study were formulated as follows: What was the opportunity for customary institution in the local autonomy era and the new establishment of new districts in Central Kalimantan? What was the positive impact on customary people? Have the marginalized customary people not been the beneficiaries of the development programs? Based on the description of the background of the study above and the questions of the study have been formulated, the researcher focused on the study of the existence of indigenous institutions at the implementation of regional autonomy in Murung Raya district of Central Kalimantan province.

II. STUDY METHOD AND OBJECTIVES

Based on the aforementioned background, the questions of the study were formulated as follows: 1. How was the existence of the customary institution Kadamangan in the implementation of local autonomy in Murung subdistrict of Murung Raya district of Central Kalimantan province? and 2. What were the influencing factors of the existence of the customary institution Kadamangan in the implementation of the local autonomy in Murung subdistrict of Murung Raya district of Central Kalimantan province? Based on the problems of the study above the objectives of the study were: 1. To find out and to understand the existence of the customary institution Kadamangan in the implementation of local autonomy in Murung subdistrict of Murung Raya district of Central Kalimantan province and 2. to find out and to understand the influencing factors of the existence of the customary institution Kadamangan in the implementation of the local autonomy in Murung subdistrict of Murung Raya district of Central Kalimantan province.

III. BASIC THEORIES

The people's Consultative Assembly of the Republic of Indonesia issued the decree IX on Agrarian Reform and Natural Resources Management. Although the overall emphasis of the decree was on the rationale of the natural resources management, including the legal and regulatory aspect, the decree also signaled an important milestone in a decades-long struggle to resolve tenurial issues over the resources. A struggle took place when the basic Agrarian Law of 1960 and the basic Forestry Law of 1967 Indonesia declared all land natural resources under state control.

Customary people, especially those living in areas rich of resources have been among the most disadvantaged groups concerning the recognition of the right and even their existence that has in some cases been denied. Though the law recognized tenurial rights, it considered the rights in a narrow sense as communal rights to use the resources. It was expected that the national law and practices would over time marginalize local customary communities by considering them as politically, economically and socially integrated to the nation-state of the unitary state of the Republic of Indonesia. However, it persisted and indeed has proven to be more resilient than ever (International Journal, Custom and Globalization: Living Side by Side, Moira M. M. Moeliono, 2001).

The obligations of customary people Dayak was classified into two: social and moral obligations. There were several important things in accomplishing the obligations of the customary people under customary law. Concerning the social obligation, Teras Narang (2006) in his speech in MADN meeting suggested that customary law societies should be able to maintain social order in their respective communities. However, the social obligation should also be accomplished by considering the moral obligation of upholding the philosophy of *Belum Bahadat Huma Betang* that became the real foundation of the customary people as manifested in the catchword of *Masyarakat Adat Dayak Nasional Adil Katalino Bacuramin Kasaruga, Basengat Kajubata*.

IV. STUDY LOCATION

The study was conducted in Murung Raya district or well-known as Barito Hulu representing the widest district in Central Kalimantan. The district was part of the watershed area of Barito River that had its estuary in South Kalimantan and the upper course was situated on the border area of West Kalimantan. It was wellknown as Muller Schawanner Mountain area.

The government of Murung Raya district depended on its human resources. The number of the civil servants in the government of Murung subdistrict in 2015 was 52 individuals, consisting of 33 males and 19 females. The number of the civil servants in the subdistrict office and villages in the subdistricts with education level and sex in Murung subdistrict in 2015.

The main source of the demographic data was population census that was organized once in ten years. There have been 6 censuses since the independence of the Republic of Indonesia, which were conducted in 1961, 1971, 1980, 1990, 2000 and 2010. In the general description of the study, the data resulting from the population census in 2010 were presented as constant numbers of the processed results.

The population of Murung subdistrict based on the projection of the population in 2015 was 36,293 individuals, consisting of 18,846 males and 17,447 females. Therefore, the sex ratio of the male-female population was 108. Compared to the projected population in 2015, the population of Murung subdistrict grew 3.60%. The number of the households in Murung subdistrict in 2015 was 8,691 with the number of the population per household of 4 individuals. The population density of Murung subdistrict was 50 individuals/km².

V. STUDY RESULTS

The customary chief Damang as the customary leader of Dayak people played an important role in regulating customary people to maintain their awareness of Dayak identity in a globalization era and to organize the people as partner of local government. Therefore, it was necessary to improve the role of the customary people to support the implementation of the public administration for better life.

The local regulation of the provincial government Number 16 of 2008 on Dayak customary institution in Central Kalimantan province regulated the position, the obligation and the function of the customary chief of Dayak people, especially Article 7 of the regulation of the local government of Central Kalimantan province Number 16 of 2008 stating that:

(1) The customary chief Damang had the domicile in subdistrict capital city as partner of subdistrict government head Camat and subdistrict Dayak Council, and had the obligation to preserve, to develop, and to empower the custom and the tradition and served as the customary law enforcer in the territory of Kadamangan. Concerning the function of the Damang Article 9 stipulated that the function of the Damang was to manage, to preserve, to empower and to develop the custom, the tradition, and the customary law of Dayak in the territory of the Kadamangan.

(2) The existence of the customary chief as the customary law enforcer was evidenced in the case of customary dispute and in the settlement of the dispute in a final customary law judicial process and as mediator and peace keeper in the case of customary dispute among the customary people under customary law.

(3) In addition to the function as stipulated in verse (1), the customary chief also served the function as initiator of the final settlement of the dispute among Damangs related to the function and the obligation in District/City Dayak Customary Committee. In a globalization era, the development of knowledge, technology and information went rapidly and it resulted in transparent world and caused rapid change in all aspects of human life.

Such rapid and complex change in human life caused more fierce competition in political, economic, social and cultural areas. It was also the case of Kadamangan who was directly elected. The selection of the candidates of Damang for the direct election went through stages. The election board opened the registration of the candidates of the customary chief Damang. The election board prepared the forms and the requirements for the candidates of the customary chief Damang. It was consistent with the statement of Mantir Adat of Beriwit village that served simultaneously as the deputy of the election board.

The registration of the candidates of the customary chief Damang set the requirements of the candidates of the Damang as follows: all of the village heads, the chairman of village consultative body (Badan Permusyawaratan Desa), the chairman of village social institutions, and all of the members of district customary peace Mantir meeting in the territory of Kadamangan. Meanwhile, the administrative requirement of the candidate of the Damang included: 1. The candidates of the customary chief Damang came from Dayak ethnics who have fulfilled the existing requirements, and 2. The candidate of the customary chief Damang submitted written proposal to the election board along with the requirements as stipulated in the verse (1) in four copies sealed IDR 6,000. The establishment of customary chief Damang was conducted by the election board from 3 candidates of the Damang who have won the competition in the direct election and on the basis of the decree issued by subdistrict head Camat. The election of the customary chief Damang was based on articles 22, 23, and 24 of the Local Regulation Number 16 of 2008.

The organization of the election of the customary chief Damang was like general election, followed the mechanism of general election and used vote boxes. The customary chief Damang was assigned on the basis of the verse (1) of Article 25 in 15 days since the acceptance of the official report of the results of the election of the customary chief Damang, regent/mayor immediately prepared the assignment. Once the regent of Murung Raya district has accepted and carefully studied the official report of the election result and found nothing breaking the existing rules, the regent issued the Decree on the Assignment of the Customary Chief Damang. The inauguration of the customary chief Damang was organized by the election board through the local budget (APBD) of Murung Raya district. Certain amount of fund was then incurred for the operational cost of the

secretariate, the organization of the election and the honorarium of the election board. Thus, it was expected that there would not be any funding obstacles.

The operational cost of the secretariate incurred for stationeries and the preparation of the forms for the candidate of the customary chief Damang, invitation letters, vote letters, vote boxes, the consumption in the meetings of the election board and the consumption during the implementation of the election, the preparation of the official report of the election result that should be submitted to Murung Raya regent and District Dayak Customary Board and for the honorarium of the election board. The supporting factors of the election of the customary chief Damang:

1. The presence of the local regulation of the provincial government of Central Kalimantan Number 16 of 2008 as main guideline of the implementation of the assignment of the customary chief Damang that regulated the election mechanism, the assignment of election board, the requirements for the candidates of the customary chief Damang in Murung subdistrict.
2. The local regulation Number 16 regulated the partnership between the government of Central Kalimantan province, the government of Murung Raya district, and the government of Murung subdistrict and the Dayak Customary Board of Central Kalimantan Province, Dayak Customary Board of Murung Raya district, and Dayak Customary Board Murung subdistrict, and Kadamangan institution in Murung subdistrict.
3. The allocation of the fund of the local budget (APBD) of Murung Raya district for the organization of the election, including secretariate operational cost, the cost for the organization of the election and the honorarium for the election board.

The study showed the existence of the customary institutions in settling disputes among customary people under the existing customary law. As judiciary system the customary institutions consisted of various elements that were related to each other. The legal system comprised integrated subsystems. It was indicative of how a customary legal system worked along with primary (behavioral norms) and secondary rules that contained main norms and legal culture in the forms of patterned attitude, values, principles, structured ideas followed by each of the individuals and groups of people.

In-field study showed that the existence of the customary institution Damang in Murung subdistrict consistently followed the existing process and system designs. Interview with informants showed that the existence was based on:

Considering the position and the authority of the Damang as customary chief and the implementation of the authority of the Damang, the culture of Dayak people related to the position and the function of the Damang in empowering the Damang. *“The existence of the customary chief of Kadamangan was regulated by Local Regulation that supported the function of the Damang in the implementation of the custom and the tradition among the customary people of Dayak. We expected that the Local Regulation could protect our custom and tradition and became part of our way to solve the problems facing us in our customary social life. The regulation also strengthened our customary law to improve local people resources (interview with the customary chief Damang, Daud, February 2017).*

However, we also expected that local government would socialize the local regulation to the people in general in addition to the customary people of Dayak and also to other ethnics other than Dayak that they could understand it (interview with the customary chief Damang, Daud, February 2017). The existence of the customary chief played an important role in the settlement of disputes that have not been regulated in formal organization and structure and considering the human resources in formal judiciary system. The structure of the customary institution was not independent, but integrated in the customary institutional structure that was in general classified into four institutions: (a) government as the head and the leader of the customary legal society, (b) the customary institution that organized daily public administration, including customary peace/judge, (c) Damang functioned as the customary institution to discuss the problems related to people interests such as village development, the election and the assignment of Mantir following customary procedure, to make policies and to issue customary regulations, consisting of Damang and Mantir, the officers in the organization of ceremonies and those assigned pursuant to the existing customary law as regular representatives, (d) Damang represented the one selected by the Mantirs along with all of the customary people who held annual meeting in customary public hall, usually at the beginning of a year. The government was represented in the meeting by village head and district head to socialize the local regulation on customary institutions.

VI. CLOSING

The existence of the customary institution of Kadamangan in Murung subdistrict was good. The customary institution of the Kadamangan had the function and the objective similar to the ones of the customary institution of Dayak in Central Kalimantan. Therefore, based on the theoretical discussion and considering the correlation of the institution and the results of the study, following conclusions were drawn:

Damang in the customary context and government represented an integrated unit in which the Kadamangan was the lowest governmental institution along with the existing village and district governmental

systems. The Damang in Murung Raya district was also accountable to the government, while serving as customary institution. It was indicated by the presence of the program and the budgeting of the Kadamangan through related institutions.

The existence of the lowest customary institution in the territory of the customary law of Central Kalimantan degraded with the issuance of the Act Number 5 of 1979 on Village Government. The government of autonomous and democratic Nagari has been replaced by centralistic village government.

In-field study showed that the existence of the customary institution of Kadamangan in the implementation of the local autonomy in Murung subdistrict of Murung Raya district of Central Kalimantan province had the opportunity to serve as an important institution in the implementation of the settlement of social disputes and the empowerment of the local customary people. Additionally, the existence of the Kadamangan in the local autonomy played an important role as strengthening agent of inter-religion, ethnics and race unity.

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