

# Customary forest updates

20 May 2019

## National policies to recognize IP rights

- The government (MoEF) revised regulation regarding customary forest from Ministerial Regulation No. 32/2015 to **Ministerial Regulation No. 21/2019** to accelerate customary forest recognition (document not yet available).<sup>1</sup>
- The Minister also made official **Customary Forest Indicative Map** (Peta Indikatif Hutan Adat) with the size of 451,045 hectares, which is hoped to provide temporary security for customary forests against issuance of large-scale licenses while waiting for official recognition (document not yet available).<sup>2</sup>
- Customary forest recognition is very slow, only 1% from the total social forestry rights recognized until today.
- IP Rights Bill in the critical period– the last parliamentary session of 2019 is from **May 8 to July 26 2019**.<sup>3</sup> If the Bill is not signed into law in these three months, it has to be proposed again from the start in the next parliament period (2019-2024).

## Regional policies to recognize IP rights

- **Papua.** Draft Special Regional Regulation (Ranperdasus) of Indigenous People in Papua Province is in the process of discussion in Papua People Assembly (MRP). In general, the draft is quite progressive in substance.<sup>4</sup>
  - **Scope.** Its scope is among others definition of IP in Papua, procedure of inventory, verification, and recognition of IP in Papua, the rights of IP, IP territories, and IP trial system. It is an “umbrella legislation,” that does not specifically recognize particular IP group(s).
  - **FPIC.** The draft contains an FPIC clause for IP in Papua to vote against development plan from the government. But it also enables cooperation between IP and third party including to lease or use their land of natural resources contained in the land based on consensus of the community (could be good or bad depending on the terms of cooperation and whether it’s genuine or only comes from the elite).
  - **IP Affairs Agency.** It mentions a special agency called Agency for Indigenous People Affairs (*Badan Urusan Masyarakat Adat*), which will be established by Decision of Papua Governor. It is tasked to verify of results of IP identification, reporting to Governor or Head of District. Governor and Head of District are authorities that will

<sup>1</sup> Prof. Hariadi Kartodihardjo, “Mengukuhkan Hutan Adat dalam Kerahasiaan Informasi Izin,” 17 May 2019 and informal discussion.

<sup>2</sup> Ibid.

<sup>3</sup> Sekretariat Jenderal dan Badan Keahlian DPR RI April 2019, Masa Persidangan V Tahun Sidang 2018-2019, dpr.go.id

<sup>4</sup> Draft Rancangan Peraturan Daerah Khusus Papua Nomor....Tahun....Tentang Masyarakat Adat di Provinsi Papua.

- recognize particular IP groups in their respective jurisdiction through Governor or Head of District Decision Letter (SK Gubernur/SK Bupati).
- **Restitution mechanism.** The draft also has a retroactive restitution and mechanism clause for IP territories and rights that have been taken over for military purposes, palm oil plantations, and transmigration that occurred before, which becomes the obligation of regional government, which is very progressive if ever approved.
- **Social forestry and customary forests.** In the draft, there is a clause regarding recognition of social forestry and customary forest, which will be regulated further by Governor Regulation (Pergub).
- The term used is Masyarakat Adat and Kesatuan Masyarakat Adat while in the West Papua regulation (below), the term used is Masyarakat Hukum Adat.
- **West Papua, District of Teluk Bintuni (district level).** The Head of Teluk Bintuni District issued in 25 February 2019 a District Regional Regulation (Perda Kabupaten) on the Recognition and Protection of Customary Law Communities in Teluk Bintuni District. However, it has not been put in the official legal journal (no date yet).<sup>5</sup>
  - **Scope.** Among others: Criteria of existence of IP communities (Masyarakat Hukum Adat), IP territories, IP institution, IP law, IP committee, dispute resolution, natural resources management.
  - This regulation is an umbrella regulation for recognition that specifically recognizes seven tribes: Suku Kuri, Wamesa, Irorutu, Sebyar, Simuri, Sougb, and Moskona.
  - IP territories will be recognized by Head of District Decision and will be integrated into district spatial planning.
  - **IP Committee.** Maximum 6 months after the regulation is put in the official legal journal, the Head of District will establish IP Committee that will conduct verification of validation of IP groups' existence, take inventory and verify results of territory mapping, facilitate IP territory mapping by related agencies, facilitate conflict resolution, and recommend determination of IP territories to Head of District. The task is much similar to IP Affairs Agency in the draft regulation in Papua.
  - **FPIC.** The regulation also has an FPIC clause.
  - **Licenses.** All natural resources exploitation licenses and land use rights that have been given in Teluk Bintuni shall still be operational until their expiration date. BUT there is a clause that such licenses can be reviewed if there is an urgent demand from IP in the case of violation of the rights of IP and the regional government must assist community in such endeavor. In Teluk Bintuni, there are a lot of intact forests inside palm oil concessions that are not yet operational with the size of 110,960.61 hectares (GP dataset, 2017).

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<sup>5</sup> Peraturan Daerah Kabupaten Teluk Bintuni No. 1 Tahun 2019 tentang Pengakuan dan Perlindungan Masyarakat Hukum Adat di Kabupaten Teluk Bintuni, issued 25 February 2019, not date for putting in official journal yet.