

Legal Approach to the Preservation of Adat Village (Kampung Adat) in Koto Gasib Sub-district, Siak Regency, Riau Province

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Abstract. Article 18 of the 1945 Constitution states that “The division of the territory of Indonesia into large and small regions shall be prescribed by law in consideration of and with due regard to the principles of deliberation in the government system and the hereditary rights of special territories”. Koto Gasib is one of the districts in Siak Regency with a Malay background from the Gasib kingdom. The customs in the Kampung community in Koto Gasib are still alive and have the potential to be designated as a Customary Village. Currently, of the 11 (eleven) villages in Koto Gasib sub-district, only one has been designated as a traditional village. The purpose of this article is to conduct an inventory so that villages that have the potential to be designated as indigenous villages can become indigenous villages. This article uses a juridical sociological approach by examining how the implementation of legal rules related to the establishment of customary villages. the results of the research found are first, the people in the villages of Koto Gasib sub-district still carry out the customs originating from their ancestors. Secondly, there is no conflict between the customs that are carried out today and the development of society. Third, the unity of customary law communities and their traditional rights does not conflict with the principles of the Unitary State of the Republic of Indonesia. Fourth, customary villages that have been established are not running properly due to a legal vacuum to organize customary village governments from 2015 until now. However, the villages in Koto Gasib sub-district have the potential to be designated as customary villages to preserve the customs of Koto Gasib, but the local government must first solve the problem of the current legal vacuum so that there is no stagnation in the governance of customary villages.

Keywords: adat village, inventory, Koto Gasib sub-district, preservation, Siak Regency

1. INTRODUCTION

Riau Province is rich in Malay history. The Malay people have lived for generations in the mainland and coastal areas of Riau. Various kingdoms have taken turns from time to time. The territory of the kingdom varies, ranging from kingdoms that have small areas to large areas.¹

Koto Gasib sub-district is part of Siak Regency with a Malay background from the Gasib kingdom. In ancient times, the river was the way of traffic for many people, and the Gasib kingdom was located at the mouth of the Gasib river on the banks of the Siak river. The Gasib Kingdom is also the forerunner of the establishment of the Siak Sri Indrapura Kingdom.²

In 1945 the proclamation of Indonesian independence echoed, kingdoms from various regions including Sumatra welcomed it. The Kingdom of Siak chose to join the Unitary State of the Republic of Indonesia.³

Indonesia, through its constitution, still respects the customs that live in the community. Although currently there are no more kingdoms that stand independently within the Indonesian state, if the customs are still alive and in accordance with the development of Indonesia, they are still recognized and respected. The 1945 Constitution of the Republic of Indonesia (UUD 1945) Article 18B paragraph (2) states, "The State recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law". Article 18B of the 1945 Constitution, as Indonesia's highest constitution, continues to provide a place for the preservation of customs that still apply.⁴

Emphasis related to the recognition, respect and protection of customs is also contained in other articles in the 1945 Constitution, especially related to human rights and culture. Article 28C paragraph (1) of the 1945 Constitution states, "Every person has the right to develop themselves through the fulfillment of their basic needs, the right to education and to benefit from science and technology, art and culture, in order to improve the quality of their lives and for the welfare of mankind". Article 28C states that education and benefiting from culture are human rights. Article 28I Paragraph (3) "cultural identity and rights of traditional communities are respected in harmony with

the development of the times and civilization". Article 28I again emphasizes that culture and traditional rights are part of human rights. Article 32 paragraph (1) "The State promotes Indonesian National Culture in the midst of world civilization by guaranteeing the freedom of the community to maintain and develop cultural values". Paragraph 2 "The State respects and maintains regional languages as national cultural treasures". In Article 32, the state reemphasizes that preserving culture is the responsibility of the state.⁵

Through Law of the Republic of Indonesia Number 6 of 2014 on Villages (Village Law), the state reaffirms the importance of preserving the customs that live in the community. Article 1 point (1) of the Village Law states, "Village is a village and customary village or what is called by another name, hereinafter referred to as the Village, is a legal community unit that has territorial boundaries that is authorized to regulate and manage government affairs, the interests of the local community based on community initiatives, origin rights, and/or traditional rights that are recognized and respected in the system of government of the Unitary State of the Republic of Indonesia". Therefore, the Government of Siak District in 2015 changed the name "village" to "kampong" based on Siak District Regional Regulation Number 1 of 2015 concerning Changing the Name of Village to Kampung (Regional Regulation (Perda) Changing the Name of Village to Kampung).⁶

The spirit of preserving the customs that live during society in Siak Regency does not stop at changing the name of the village. Through the Regional Regulation of Siak Regency Number 2 of 2015 concerning the Determination of Customary Villages in Siak Regency (Regional Regulation (Perda) Determination of Customary Villages), the Siak Government again determined some villages to become customary villages. One of the villages designated as a customary village in Koto Gasib District is Kuala Gasib Village, which became Kuala Gasib Customary Village.⁷

The villages and government status in Koto Gasib Sub-district are currently⁸, as follows:

No.	Village	Government Status
1	Kuala Gasib	Traditional Village
2	Buatan I	Definitive Village
3	Buatan II	Definitive Village
4	Teluk Rimba	Definitive Village
5	Pangkalan Pisang	Definitive Village
6	Sengkemang	Definitive Village

¹ Haryono Haryono, 'JASA ORANG LAUT DAN ORANG-ORANG ASLI DALAM KEMUNCULAN DAN PERKEMBANGAN PERADABAN KERAJAAN MELAYU RIAU' (2018) 13 *Pelita Bangsa Pelestari Pancasila* 1.

² Kecamatan Koto Gasib, 'Profil Kecamatan Koto Gasib Tahun 2022' (2023).

³ Murni Wahyuni, Budi Agustono and Warjio, 'Siak Masa Revolusi Tahun (1945-1949)' (2020) 4 *Yupa: Historical Studies Journal* 40.

⁴ Pemerintah Indonesia, 'Undang-Undang Dasar Negara Republik Indonesia Tahun 1945'.

⁵ *ibid.*

⁶ Pemerintah Siak, 'Peraturan Daerah Kabupaten Siak Nomor 1 Tahun 2015 Tentang Perubahan Nama Desa Menjadi Kampung'.

⁷ Pemerintah Siak, 'Peraturan Daerah Kabupaten Siak Nomor 2 Tahun 2015 Tentang Penetapan Kampung Adat Di Kabupaten Siak'.

⁸ Koto Gasib (n 2).

The eleven villages in Koto Gasib sub-district from 2015 to 2023 still have the same government status. If you look at the history of the Gasib and Siak kingdoms, which are former Malay kingdoms and whose people have been hereditary, they should have the potential to be designated as traditional villages.

Indigenous peoples are part of Indonesian society, which is the origin of the formation of the Unitary State of the Republic of Indonesia. Based on the above problems, it can be formulated whether 10 (ten) villages with village government status have the potential to become indigenous villages. The purpose of this article is to conduct an inventory of villages that have the potential to be designated as indigenous villages.

2. METHODS

This article uses qualitative research. Research that uses analysis on deductive and inductive inference processes. Analysis is also carried out on the dynamics of the relationship between observed phenomena, and literature studies using logical reasoning.⁹ This article uses a juridical sociological approach, which looks at the laws that live in the interaction of society and the government's ability to apply the law.¹⁰ The data used are primary and secondary data. Primary data is obtained from the process of observing the community and interviewing the government and traditional leaders in the community. Secondary data is obtained through a literature study process related to materials related to this article, such as laws and regulations, journals and books that have relevance.

3. RESULTS AND DISCUSSION

An organized unit, the members of the community have ties, settle in a certain area has a ruler and wealth both tangible and intangible is referred to as a customary law community.¹¹ Indigenous peoples or customary law communities have in common that they are communities that already have a territory, law, government and people. Before the existence of a modern state, indigenous peoples were an independent and sovereign state. Indigenous peoples are communities that existed before the Indonesian state was formed. Based on the theory of state formation, the element of a state is the people. Therefore, indigenous

peoples are an element of the people in the formation of the Indonesian state.¹²

Indonesia does not eliminate the existence of indigenous peoples. The state accommodates Indonesia's indigenous communities. The unity of indigenous peoples did not only exist during the royal period before Indonesian independence, in fact they had existed long before that. Historical evidence that can be a reference can be seen in the Muara Takus Temple heritage, where the local customary government system still exists, known as the Kedautuan System. Santo Saba Piliang said, "The earliest Kedautuan was detected to have existed in 4,058 BC..."¹³

The Indonesian state recognizes and respects indigenous peoples as stated in the 1945 Constitution. Article 18B paragraph (2) provides several criteria for recognizing and respecting the unity of indigenous peoples and their traditional rights, first, the unity of indigenous peoples is still alive. Second, the traditional rights of indigenous peoples are still alive. Third, the unity and traditional rights are in accordance with the development of society. Fourth, the unity and traditional rights are in accordance with the principles of the unitary state of the Republic of Indonesia. Fifth, it is regulated in the law (UU).¹⁴

The 1945 Constitution calls for the recognition and respect of customary law communities through law. The political law of the Village Law intends to accommodate the interests of customary law communities as well as being a tool to achieve the ideals of independence. The Village Law is also the government's answer to keep up with developments in society. It is hoped that villages can become strong, advanced, independent and democratic, thus creating a strong foundation in carrying out governance and development towards a just, prosperous and prosperous society.¹⁵

Villages where community units still exist and have traditional rights are directed to become Indigenous Villages. The requirements for an Indigenous Village are regulated in the Village Law, Article 97 paragraph (1) states, "The establishment of an Indigenous Village as referred to in Article 96 shall fulfill the following conditions:

- a. The unity of customary law communities along with their traditional rights is still alive, both territorially, genealogically, and functionally;
- b. the unity of customary law communities and their traditional rights are considered in accordance with the development of society; and

⁹ Zuchri Abdussamad, *Metode Penelitian Kualitatif* (Syakir Media Press 2021).

¹⁰ E Deliana, MA Rauf and Z Akmal, 'How Indigenous Peoples Resolve Ulayat Land Disputes (Study in Koto Gasib, Siak Regency)' (2023) 1181 IOP Conference Series: Earth and Environmental Science.

¹¹ Elmayanti Dan and Ferawati, 'View of Nilai-Nilai Budaya Melayu Dalam Sistem Pemerintahan Kepenghuluan Pada Masyarakat Adat Kampung Kuala Gasib Di Kecamatan Koto Gasib Kabupaten Siak' (2021) 1 Journal of Education and Culture 18.

¹² Zainul Akmal and Rika Lestari, 'Indigenous Community Existence In Indonesia's Constitution' (2022) 6 Melayunesia Law 19.

¹³ Santo Saba Piliang, *Sangharama Para Arya Mahavihariya Therra Dharma Phala* (Self Publishing 2020).

¹⁴ Akmal and Lestari (n 12).

¹⁵ Pemerintah Indonesia, 'Undang Undang Republik Indonesia Nomor 6 Tahun 2014 Tentang Desa'.

- c. the unity of customary law communities and their traditional rights in accordance with the principles of the Unitary State of the Republic of Indonesia."¹⁶

The local government of Siak district welcomed the Village Law. Approximately one year after the Village Law was passed, the Siak government stipulated, first, the change of the name "village" to "kampung" using the legal instrument of the Regional Regulation on the Change of Village Name to Kampung. Secondly, some "villages" became "customary villages" using the legal instrument of the Regional Regulation on the Determination of Customary Villages. Although not all villages that used to have indigenous community units were legalized as Indigenous Villages, the early stages of local government policies have shown good support for central government policies.

Policies are guidelines for action. Policies can be simple or complex, general or specific. Fredrick explains policy, as "a series of actions proposed by a person, group or government in a certain environment by showing obstacles and opportunities for implementing the policy proposal in order to achieve certain goals".¹⁷

The Siak Government establishes regional development policies by prioritizing trustworthy, prosperous and sustainable human resources in a community environment and Malay culture. The policy is contained in the form of Siak District Regional Regulation Number 5 of 2021 concerning the Regional Medium-Term Development Plan of Siak District for 2021-2026. The policy is also contained in the Koto Gasib District Strategic Plan for 2021-2026.¹⁸

Islamy adds the following important elements of a state policy:

1. In the first stage, state policy takes the form of determining government actions;
2. State policy must reach the stage of concrete action;
3. State policy whether in the form of silence or action must be based on goals and objectives.
4. The intent and purpose of government action must be for the benefit of society.¹⁹

Regarding state policies for customary law communities, the main stage has been accommodated through establishing the Village Law and specifically in Siak District, some villages have been designated as Customary Villages. In Koto Gasib Subdistrict, Kuala Gasib Village is designated as a Customary Village.

The third and fourth elements have been fulfilled. It is expected that the establishment of a village as a customary village is intended and aimed at the prosperity and welfare

of the people. The establishment of a customary village is also expected to preserve Malay customs and culture. The local government's policy by changing the status of the kampung becomes a tool towards a better indigenous community.

Problems related to Kampung Adat, when viewed from Ismay's opinion related to the important elements of state policy on "real action". The government cannot act without any governing rules. The government must comply with the principles of the rule of law and the principle of legality. Legal products cannot be created instantly. Legal products have their own arrangements, namely based on Law Number 12 of 2011 concerning the Formation of Legislation.

Indigenous villages, which are part of the government, do not yet have adequate legal instruments. Running the government in Kampung Adat is constrained by juridical instruments. There is no Regional Regulation related to the administration of Kampung Adat that is sufficient to run the government as it should be a source of problems.

Based on an interview with the Head of the Community and Village Empowerment Office (DPMK) Muhammad Arifin²⁰, Member of the Siak District Regional People's Representative Council Sudarman²¹ and Secretary of Koto Gasib Sub-District Muharam²² that the current problem related to Kampung Adat is a legal instrument.

There are several problems that do not have legal instruments, starting from the election of Penghulu Kampung Adat (Village Head), the expansion of Kampung Adat, and the boundaries of Kampung Adat. This results in stagnation related to the administration of the Penghulu election. Since the establishment of the kampung adat until now 2023, the village head has always used the instrument of executing the position. This means that the village head has not been elected from the indigenous community itself. Territorial boundaries are one of the wetlands of disputes. Especially when there is a source of income from the area. Because the village needs a source of village income to be included in the Village Budget. The absence of rules related to clear boundaries between kampongs adds to the problems of customary kampongs.

Village expansion is also a complicated issue to resolve. When a customary village wants expansion, it requires a juridical instrument. The government cannot carry out expansion activities without a juridical instrument. If

¹⁶ *ibid.*

¹⁷ Sholih Muadi, Ismail MH and Ahmad Sofwani, 'Konsep Dan Kajian Teori Perumusan Kebijakan Publik' (2016) 6 JRP (Jurnal Review Politik) 195.

¹⁸ Camat Koto Gasib, 'Rencana Strategis Kecamatan Koto Gasib Tahun 2021-2026' (2021).

¹⁹ Muadi, MH and Sofwani (n 17).

²⁰ 'Wawancara Dengan Muhammad Arifin Kepala Dinas Pemberdayaan Masyarakat Dan Kampung Kabupaten Siak (DPMK Siak), Tanggal 3 Agustus 2023 Di Kantor Dinas Pemberdayaan Masyarakat Dan Kampung Kabupaten Siak'.

²¹ 'Wawancara Dengan Sudarman Anggota Dewan Perwakilan Rakyat Daerah Kabupaten Siak (Anggota DPRD Siak) Tanggal 20 Juli 2023 Dan 14 Agustus 2023 Di Gedung DPRD Siak'.

²² 'Wawancara Dengan Muharam Sekretaris Camat Koto Gasib Tanggal 20 Juli 2023 Di Gedung DPRD Siak'.

forced. It will result in abuse of authority and potentially become a perpetrator of criminal acts of corruption.

The current government is trying to solve the existing problems. This includes forming juridical instruments at the regional level in the form of Regional Regulations. The government has not yet carried out activities on the formation of new Indigenous Villages. Therefore, the government has not yet conducted an inventory of kampongs that have the potential to become Indigenous Villages.

However, the Head of the Planning Division of the Siak District Regional Planning Agency, Riza Gustian, said that the Siak regent had once questioned again regarding the determination of the kampong to become a Customary Village. Regarding planning, it has not yet been carried out, because there are still many problems with indigenous villages at this time.²³

The number of problems of indigenous villages and unresolved from 2015 to 2023 shows the lack of attention of the Siak Regional government to the problems of indigenous villages. As a result, the problems are increasingly protracted and the problems of traditional villages are piling up.

If you look at the stages of public policy according to Thomas R. Dye, it needs to go through the following process:

Identification of policy issues:

1. Agenda setting
2. Policy formulation
3. Policy endorsement
4. Policy implementation
5. Policy evaluation.²⁴

Six stages explained by Thomas, currently the Siak district government has not yet reached the policy ratification stage. Arifin said that DPMK has submitted a draft regulation to address the issue of Kampung Adat but has not yet reached the ratification stage. Arifin also complained that the lack of human resources in DPMK has slowed down government administration in DPMK.²⁵

4. CONCLUSION

So the villages in Koto Gasib District have the potential to be designated as customary villages, as a forum as well as a driving force for the preservation of the cultural customs of the Indigenous Peoples of the Gasib Kingdom. The Regional Government of Siak Regency must first solve the

problem of the current legal vacuum. In order to avoid stagnation in the customary village government and give optimism to the indigenous people of the Gasib kingdom to support programs from the local government in preserving local cultural customs.

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²⁴ Muadi, MH and Sofwani (n 17).

²⁵ 'Wawancara Dengan Muhammad Arifin Kepala Dinas Pemberdayaan Masyarakat Dan Kampung Kabupaten Siak (DPMK Siak), Tanggal 3 Agustus 2023 Di Kantor Dinas Pemberdayaan Masyarakat Dan Kampung Kabupaten Siak' (n 20).

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