

REKONSTRUKSI POLITIK HUKUM PENGAKUAN MASYARAKAT ADAT DI INDONESIA

Oleh:

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INTISARI

Jauh sebelum terbentuk NKRI, terdapat Masyarakat Adat yang memiliki sistem sendiri. Berdasar cita hukum yang tercermin pada spirit proklamasi, Pancasila dan Pembukaan UUD 1945, Masyarakat Adat diakui secara deklaratif. Cita hukum tidak dipahami utuh dalam norma konstitusi, kemudian diatur secara rumpang dalam peraturan perundang-undangan dan tidak berkeadilan pada implementasinya. Terdapat kesenjangan cita hukum dengan norma konstitusi, peraturan perundang-undangan dan implementasi pengakuan Masyarakat Adat, yang mengakibatkan pengakuan bersifat konstitutif, parsial, ego sektoral dan tidak sistemik. Penelitian akan menganalisis faktor kesenjangan dan menemukan metode untuk mengurai dan memutus kesenjangan, melalui rekonstruksi politik hukum pengakuan Masyarakat Adat yang berkeadilan. Guna memahami secara holistik politik hukum pengakuan Masyarakat Adat di Indonesia, penelitian normatif-empiris ini menggunakan pendekatan sosio-legal. Melalui analisis teks, konteks dan kontekstual data primer dan sekunder, ditemukan bahwa kesenjangan disebabkan oleh faktor hukum, politik, ekonomi dan sosial budaya. Sebagai upaya mengurai dan memutus kesenjangan, dibutuhkan rekonstruksi politik hukum pengakuan Masyarakat Adat yang berkeadilan. Melalui studi perbandingan pengakuan Masyarakat Adat pada Norwegia, Selandia Baru dan Filipina, didapatkan pembelajaran untuk mengurai kesenjangan dan formulasi konsep ideal sebagai metode mencapai cita hukum melalui pengadministrasian pengakuan Masyarakat Adat. Pengadministrasian sebagai bentuk upaya penegakan hak-hak Masyarakat Adat memerlukan adanya harmonisasi peraturan perundang-undangan, pendekatan yang memerhatikan kamajemukan, terobosan hukum, dan tekanan politik melalui gerakan sosial dalam agenda reforma agraria.

Kata Kunci: *Masyarakat Adat, Politik hukum, Pengakuan, Pengadministrasian*

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THE RECONSTRUCTION OF POLITICS OF LAW ABOUT INDIGENOUS PEOPLES RECOGNITION IN INDONESIA

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ABSTRACT

Long before Indonesia was formed, there were Indigenous Peoples who had their own system. Based on the legal ideals reflected in the spirit of the Proclamation, Pancasila and the Preamble of the 1945 Constitution, Indigenous Peoples are recognized declaratively. Legal ideals are not fully understood in constitutional norms, are regulated in incomplete manner in laws and regulations, and also are unjust in implementation. So there is a gap between legal ideals and constitutional norms, laws and regulations and the implementation of Indigenous Peoples recognition, which results in recognition being constitutive, partial, ego-sectoral and not systemic. The research aims to analyze the gap factors, and find the methods to unravel and break the gap through the reconstruction of politics of law of Indigenous Peoples recognition in a just manner. To understand holistically the politics of law of Indigenous Peoples recognition in Indonesia, this normative-empirical research uses a socio-legal approach. Through analysis of the text, context and contextual based on primary and secondary data, it was found that the gap was caused by legal, political, economic and socio-cultural factors. As an effort to unravel and break the gap, reconstruction of politics of law of Indigenous Peoples recognition in a just manner is needed. Through a comparative study of Indigenous Peoples recognition in Norway, New Zealand and the Philippines, the lesson learned that obtained is the way to parse and break the gaps, and formulation of the ideal concepts as a method of achieving legal ideals through administering the Indigenous Peoples recognition. Administering as a form of effort to uphold the rights of Indigenous Peoples requires harmonization of laws and regulations, approaches that pay attention to pluralism, legal breakthroughs, and political pressure through social movements in the agrarian reform agenda.

Keywords: Indigenous People, Politics of Law, Recognition, Administering.

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