

Intisari

Disertasi ini bermaksud untuk meneliti dan menemukan proses pembuatan norma hukum adat tentang larangan menambang marmer dan ada tidaknya ketentuan dalam hukum adat tentang pengambilan akar angin oleh MHA Mollo. Dari pra-penelitian, diketahui MHA Mollo mengeluarkan larangan penambangan marmer pada tahun 2000, sedangkan pembatasan pengambilan akar angin dibuat tahun 2019. Rumusan masalah penelitian ini adalah (1) bagaimana respons MHA Mollo terhadap implementasi peraturan perundang-undangan tentang penetapan kawasan Hutan Gunung Mutis sebagai Hutan Lindung, Cagar Alam, penambangan Gunung Batu (*Fatukanaf*) Anjaf dan Naususu, dan pemungutan Hasil Hutan Bukan Kayu (HHBK)? (2) siapa saja pihak yang terlibat, apa peran masing-masing pihak, dan bagaimana interaksi antarpihak dalam proses pembuatan norma hukum adat larangan menambang marmer dan pembatasan pengambilan akar angin? dan (3) bagaimana proses pembuatan norma hukum adat oleh MHA Mollo terkait larangan menambang marmer dan pembatasan pengambilan akar angin?

Penelitian ini menggunakan pendekatan sosio-legal untuk mengumpulkan data sekunder dan data primer dari studi kepustakaan dan penelitian lapangan. Pengumpulan data primer melalui wawancara dan observasi berlangsung selama empat bulan (1 Juni – 21 September 2021) di Kabupaten TTS dan Kota Kupang, Provinsi NTT. Ada seorang tokoh kunci dan 97 responden dalam penelitian ini yang terdiri dari unsur fungsionaris adat dan anggota MHA Mollo, aktivis Lembaga Swadaya Masyarakat (LSM), pendeta, dan Aparatur Sipil Negara (ASN).

Respons MHA Mollo menyikapi berbagai peraturan perundang-undangan yang berlaku di wilayahnya beragam dan dipengaruhi oleh penalaran mereka tentang keberlangsungan hidup. Diantara para otoritas adat terjadi dinamika dan tarik-menarik kewenangan berdasarkan garis kekerabatan mereka. Para *Usif* menghadapi serangan pelabelan dan stigma dengan melibatkan pihak otoritas Gereja maupun Lembaga Non-Pemerintah yang berkiprah di bidang HAM, sampai ke tingkat nasional. Usaha penalaran demikian, berhasil menekan Pemerintah Daerah untuk mencabut keputusannya. *Usif* dan *Amaf* MHA Mollo memanfaatkan peraturan Pemerintah Lokal tentang aktivitas produktif yang boleh dilakukan di Kawasan Hutan Lindung maupun Cagar Alam. Dengan demikian, ketentuan hukum adat untuk pembatasan pengambilan akar angin bersesuaian dengan hukum negara. Bahkan warga MHA Mollo mendapatkan kemudahan hingga proses distribusi dan penjualan akar angin. Fungsionaris adat membaca pembaharuan hukum adat berdasarkan kebutuhan kesejahteraan MHA Mollo terkait pemanfaatan alam kehidupannya. Proses pembuatan hukum adat tetap berlandaskan musyawarah secara kolektif. Penalaran para fungsionaris adat juga terbukti mengikuti perkembangan serta perubahan konteks ekonomi dan sosial politik pada umumnya. Disertasi ini menunjukkan bahwa hukum adat tidak selalu berbeda, tetapi bisa berkesesuaian dengan otoritas hukum lain. Dalam konteks MHA Mollo, ancaman penghancuran lingkungan alam akan membuahkan ketentuan pelarangan dan/atau penghentian, sedangkan terhadap situasi yang membawa keuntungan, hukum adat cukup berfungsi membatasi. Hal tersebut menunjukkan bahwa hukum adat dibuat secara terbuka dan tidak terisolir.

Kata Kunci: hukum adat, penalaran hukum, pluralisme hukum, sosiolegal

Abstracts

The aim of this dissertation was to research and find *adat* law-making on marble mining prohibition and whether there was any ruling on Beard Lichens collection by the Mollo *Adat* Law Community (ALC). From pre-research, it was known that Mollo ALC issued a mining marble prohibition in 2000, while beard lichen collection restriction in 2019. There were three research questions: (1) how did the responses of Mollo ALC towards the implementation of law and regulation on stipulation of Mutis Mountain Forest as Protection Forest, Conservation Forest, Anjaf and Naususu Rock Mountain Mining, and non-timber forest product collection? (2) who were the parties involved, what are their role, and how does the interaction between the parties in the process of *adat* legal norm making on mining prohibition and limitation to collect Beard Lichens? and (3) how did *adat* legal norm-making process on marble mining prohibition and Beard Lichens collection restriction in Mollo ALC's territory?

This research used a socio-legal approach to collect secondary and primary data from the library and empirical study. Primary data were collected through interviews and observation for four months (June 1st—September 21st, 2021) in TTS Regency and Kupang Municipality, NTT Province. There was a key informant and 97 respondents in this research, consisting of Mollo ALC's *adat* functionaries and members, Non-Governmental Organization (NGO) activists, priests, and Civil Servants.

Mollo ALC's attitudes towards law and regulation implementation in their territory were varied and influenced by their reasoning for survival. Between the *adat* functionaries, there was dynamic and tension about authority based on their bloodline. The *Usif* responded on label and stigma by involving Church's authority and Human Rights NGO, up to the national level. Such reasoning successfully threatened Local Government to revoke its decision. The *Usif* and *Amaf* of Mollo ALC used Local Government regulations on permitted production activities in the Protection Forest and Conservation Forest. Therefore, *adat* legal norm to restrict beard lichen collection was in accordance with the state law. Moreover, Mollo ALC's inhabitants were facilitated to distribute and to trade beard lichen. The *adat* functionaries foresaw *adat* law reform based on Mollo ALC's welfare needs relating to their livelihood's utilization. *Adat* law-making was consistently based on collective deliberation. The *adat* functionaries' reasoning was proven following the development and change of the common economic and social-political context. This dissertation found that *adat* law was not always contrary but also could be compatible with other legal authorities. In the Mollo ALC experience, the threat of livelihood destruction resulted in a prohibition and/or termination ruling, while in a situation that brought benefit, the *adat* law only restricted. It showed that *adat* law is making an open and not-isolated process.

Key words: *adat* law, reasoning, legal pluralism, sociolegal