

**STRENGTHENING THE POSITION OF INDIGENOUS PEOPLE IN THE  
MANAGEMENT OF THE FOREST BY SUBSEQUENT DECISION OF THE  
VERDICT OF THE CONSTITUTIONAL COURT OF REPUBLIC OF INDONESIA  
NUMBER 35/PUU X/2012  
TO SUPPORT OF REDD+ INDONESIA**

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**ABSTRACT**

The problems of disputes over land ownership of forest between the government (in this case is the state) and the community, has been occurred tens of years ago, but the increase was higher along with just an era of reform. A possession of forest resources has been dominated by large employers with the strength of their capital, while the local community (in this case of indigenous people) who rely on forest resources for generations before this country stood, their fate was even more marginalized. In fact, the existence of indigenous people with local wisdom value, plays an important role in forest management, as recognized in Law Number 41 of 1999 On The Forestry. Inequality of distribution of forest resources this mastery was seen as a base for real social conflict happens in the life of the community law. Furthermore it was published constitutional court's decision number 35/PUU-X/2012 to provide access to justice for indigenous people over the mastery of the forest. This recognition is strengthened by the existence of a REDD + Program aims to reduce emissions from deforestation and forest degradation that requires the existence of a customary law society active participation through the empowerment of local wisdom values.

**Keyword: indigenous people, management of forests, constitutional court verdict Number35/PUU-X/2012, REDD+Indonesia.**

**A. BACKGROUND**

In this position as one of the determining life support system, the forest has provided great benefits to mankind, therefore it must be preserved. Forest also has a role as harmonizer, offsetting the global environment, so that the dependencies with the international world is very important, with still give priority to national interests (Bambang Eko Supriyadi, 2013 : 1). The forest also provides great benefits for the life of the nation of Indonesia, both the benefits of ecological, social, cultural or economic balanced and dynamic. Therefore, forests should be managed, protected and utilized

continuously for the welfare of Indonesia society, both the current generation and the future.

However, the structure is not recognized or the mastery of Indonesia's natural resources including forest resources many large employers are dominated by the power of their capital. They can master the forest area, land or other natural resources, as well as exploiting it to millions of acres of vastness and decades-old time the consequences.. While local people who rely on the land resources of hereditary before this country stand up, his fate is precisely the more miserable. The injustice of the distribution of the mastery of this natural resource is viewed as the basis for real social conflict going on in people's lives.

The existence of indigenous people with all the traditional rights that are owned are in a marginal position. This is evidenced by the large number of violation against the rights of indigenous people in almost all areas of life and deprivation of customary lands and other agrarian resources by the state. Whereas collateral position of indigenous people is very clearly stated in Article 18B subsection (2): *the State recognizes and respects the entities of community law and their traditional rights are all still alive and in accordance with the development of society and the principle of the unitary State of the Republic of Indonesia, which is set in the legislation.*

Forest and indigenous people are one inseparable unity. Indigenous forest being one of important wealth for society customary law to guarantee the well-being of the state when his life, thus denying its existence. The forest became a source of natural wealth and biodiversity of indigenous legal community they care and keep since ancient times through local wisdom values that we need not doubt because it has been tested and proven since many years even before NKRI stands. However that happened during the time that the general customary law often scapegoats in case of damage to forests and the environment, forest fires or pillaging the forests. Even though the fires and looting the forests that occur with various actors, often also involves the company's large capitalization.

REDD+ (Reducing Emissions from Deforestation and Degradation in developing countries) is a continuation of the previous scheme which is a forest management efforts

in the framework of prevention and or reduction of forest cover and loss of quality stock of carbon which is done through a variety of activities to support national sustainable development (article 4 of the regulation of the Minister of Forestry of the Republic of Indonesia Number: P.30/Menhut-II/2009 on the procedures for reducing emissions from deforestation and forest degradation (REDD).

To maximize the potential of community law through the empowerment of local wisdom values can minimize the rate of deforestation and forest degradation in Indonesia. The role of the community in preserving the forest area is very useful to suppress the greenhouse emissions, because the community to cultivate the forest in wisely way, as the purpose of the scheme REDD +.

## **B. PROBLEM STATEMENTS**

1. How does the juridical implications and implementation Constitutional Court of the Republic of Indonesia Number 35/PUU-X/2012 against the strengthening of the position of community law?
2. How does indigenous people involvement in reducing emissions from deforestation and forest degradation (REDD +) of Indonesia?

## **C. RESEARCH METHODS**

This research uses the legal paradigm of constructivism (Soetandyo Wignjosoebroto, 2002: 103). are seeing the reality of it is there in the form of an assortment of mental construction, based on the experience of social, local and specific in nature and depends on the person doing it. Epistemological relationship between observer and object are one of subjective unity, and is the result of interaction between the two. Therefore the main method is used the hermeneutic and dialectics (Soetandyo Wignjosoebroto, 2002: 103).

In line with the paradigms of research used are legal constructivism then research methods used are legal research socio be field research with data gatherers in the form of istrument study of the literature and in-depth interviews with the selected resource.

## **D. RESULT AND DISCUSSION**

## **1. Verdict Urgency of Constitutional Court of the Republic of Indonesia Number 35/PUU-X/2012**

Urgency of Constitutional Court of the Republic of Indonesia Number 35/PUU-X/2012 are, First, the Forestry Act which incorporate indigenous forest as part of the state forest is a form of neglect against the rights of indigenous people and is a violation of the constitution. Second, the indigenous forest issued its position from the previous forms part of the state forest then included as part of the category of forest rights. Indigenous forests are part of customary land society customary law (Yance Arizona, 2014: 140). Indigenous forest (also called the forest, the forest of pertuanan, or other term) are in the scope of customary rights because being in a whole region (the region Monad) indigenous people .

Third, the holders of land rights is the holder of the rights over the forests. In an award the Constitutional Court says that there are three legal subject which is regulated in the act, namely the Forestry country, indigenous people , and the holder of the rights to the land upon which there is a forest. This principle reaffirms the status of forest which consists of state forest, a forest of indigenous people and forest rights an individual/legal entity. This principle is principle of vertical mastery that is the party that ruled the land then he also ruled the rights existing on the ground.

Fourth, the State authorities against state forest and indigenous forests. The Constitutional Court says that against a state forest, the state has full authority to set up the inventory and decide, husbandry, utilization of designation, as well as the legal relations that occurred in the territory of state forest. The management authority of the state in the field of forestry should be given to the ministry that their field encompasses forestry affairs. Fifth, indigenous people constitute the disabled rights. Indigenous people constitute the subject of law who has rights and obligations (Yance Arizona, 2014 : 140-141). Sixth, the indigenous law is a village or called by another name. Verdict of the Constitutional Court 35 indirectly decided that social unit of society (law) a valid custom is “the village” or referred to by other names. Seventh, that indigenous people are dynamic and not static. Eighth, the existence of

indigenous people simply evidenced by legislation district level (R. Yando Zakaria, 2014 :105).

## 2. Strengthening The Position Of Indigenous People after Constitutional Court Verdict Number 35/PUU-X/2012

Terms and parameters unity of Indigenous People with the criteria in determining a community of indigenous law as a legal subject based on verdict Number 010/PUU-I/2003 about Amendments Law Number 53 of 1999 On The Establishment Pelalawan, Rokan Hulu, Rokan Hilir, Siak, Karimun, Natuna Regency, Regency Kuantan Singingi and Batam, Indonesia. Constitutional Court Verdict Number 31/PUU-V/2007 on Judicial Act 31 of 2007 about the Establishment of Tual City in Maluku Province. Decision Number 6/PUU-VI/2008 about judicial review of Act Number 51 of 1999 On The Establishment of Buol, Morowali and Banggai Islands are as follows:

Terms	Parameters
1. Extant	<ul style="list-style-type: none"> <li>a. The existence of a society that has its citizens feelings group</li> <li>b. Indigenous governance institution</li> <li>c. Treasures, custom objects</li> <li>d. Customary law norms device</li> <li>e. Specific area</li> </ul>
2. According society development	<ul style="list-style-type: none"> <li>a. Its existence is recognised based on the applicable of act as a reflection on the development of values that are considered ideal in society (whether general act or sectoral act, perda)</li> <li>b. The traditional rights of the substance is recognized and respected by the citizens of the Union of the communities concerned as well as the wider community, not in conflict with human rights</li> </ul>
3. According NKRI Principles	<p>If the unity of indigenous people does not interfere with the existence of the Republic of Indonesia as a unitary political and legal unity</p> <ul style="list-style-type: none"> <li>a. Not threaten the sovereignty and integrity of NKRI</li> <li>b. the substance of customary norms</li> </ul>

<b>4. Based Regulation</b>	are appropriate and do not conflict with the laws and regulations
	Based regulation from general act, sectoral act, and Perda.

Table1. Terms and Parameters Unity of Indigenous People as law subject in Article 18 B UUD 1945 after verdict Constitutional Court

Citing opinion from Mahfud MD, the recognition of indigenous people have consequences (Mohammad Jamin. 2014 : 72) :

- a. A whole society is recognized as a the unity of indigenous people, so that it can act as a subject of law with different individuals members. This status puts the unity of indigenous people as a subject of law which accords with the law, whether the person or legal entity.
- b. The unity of the indigenous people can be attached rights and obligations, as well as be able to carry out legal actions as a unity
- c. At the time, there is recognition of the unity of Community law, then the State itself recognizes the system of law that make up the unity of Community law as the unity of indigenous people. This means covering the recognition of countries against the existence of customary law which is formed, developed and applied in the community. Consequently customary law was placed as part of the national legal system of parts that must be nurtured and upheld
- d. Recognition of the unity of indigenous people also by itself means recognition of the governance structure and formed based on legal norms State administration local customs.

Constitutional Court Decision of the Republic of Indonesia on case Number 35/PUU-X/2012 (herein after referred to the ruling of the Constitutional Court Verdict 35) that determined that the indigenous forest was no longer State-owned by the Ministry of forestry, but rather is part of the indigenous people territory, courtesy of indigenous people. This verdict is very strategic for the examined because it brings the impact and juridical implications against the position of indigenous people in the mastery and management of forest area. In Law Number 41 of 1999 on Forestry originally

indigenous include to a forest country, based on verdict of constitutional court verdict 35 experienced changes namely indigenous forest was categorization in the forest rights.

Changing Act Number 41 of 1999 On The Forestry as a Verdict of the Constitutional Court of the Republic of Indonesia on Case Number 35 / PUU-X / 2012 (herein after referred to Constitutional court verdict 35) :

Section that change	early sentence	Corrections from Constitutional Court
Section 1 paragraph 6	Indigenous forest is a state forest located in the area of customary law society	The forest is a forest located in the area of customary law society
Section 4 paragraph (3)	Governance of the forest by the State still pays attention to the rights of customary law community, all reality is still there and acknowledged its existence, as well as not contrary to the national interest.	Governance of the forest by the State still pays attention to the rights of customary law community, all still alive and in accordance with the development of society and the principle of the unitary State of the Republic of Indonesia, which is set in the legislation.
Section 5 paragraph (1)	The forests based on its status consists of: a. State forest, and b. rights of forest	State forests as referred to in paragraph (1) letter a, do not include indigenous forests.
Section 5 paragraph (3)	The Government set the status of the forests as referred to in paragraph (1) and paragraph (2), and the indigenous forests are set along according to the reality of indigenous people in question is still there and acknowledged its existence.	The Government set the status of the forests as referred to in paragraph (1), and the indigenous forests are set along according to the reality of Community law in question is still there and acknowledged its existence.

**Table 2 : Amandement in Act No 41 of 1999 about Forest as Effect from Constitutional Court Vederiet 35**

Besides some changes in the table above, constitutional court also removes description article 5 paragraph (1) which reads “State forest can be either indigenous forests, woodlands country that handed over its management to the general indigenous people (*rechtsgemeenschap*). The indigenous forests, previously called the indigenous

forest, forest of pertuanan or other designations.” Indigenous people in the sense of state forest as a consequence of the existence of the right controlled by state power as an organization and all the people at the highest levels and the principle of NKRI. With the inclusion of indigenous forest in state forest, it does not negate the rights of indigenous law along the fact still exists and its existence is recognized, to conduct forest management activities. The state forest is managed by the village and utilized for the welfare of the village called village forests. The main utilization of state forest are aimed at empowering communities called jungle treks. Right’s of forest on the ground that burdened the property commonly known as the forest folk.

The Constitutional Court Decision is a form of removal “state forest” which may be regarded as a source of denial existence of indigenous people and their rights as well as the form of criminal acts against the people .This is a form of recognition and tribute to the indigenous law which is placed as people with rights , law and the subject areas customary owner (Noer Fauzi Rahman, Mia Siscawati, 2014 : 3). Previous categorisation that forest customary entrance in the woods of countries which has been employed in so long by institutional practices the government has brought marginalisasi as the impact of and discrimination against community customary law.

### **3. Implementation and Implications of Constitutional Court Decision Number 35 / PUU-X / 2012 on Indigenous Peoples**

#### **a. The Government's Response as The Implementation of The Constitutional Court Ruling Number 35 / PUU-X / 2012**

As we know that the Constitutional Court ruling Number 35 of 2012 on Traditional Forest becomes important decision to change the country's policies on indigenous peoples and their rights to indigenous regions of Indonesia. The 35 Constitutional Court's decision regarding changes to the status of indigenous forest that will not happen automatically as soon as the decision was issued, but remains hampered by the provisions of Article 67 paragraph (2) of Law Number 41 of 1999 about Forestry which requires the fulfillment of several conditions before it can be recognized as an indigenous forests. That is inauguration of existence and abolishment of customary law communities as referred to in paragraph (1) shall be determined by the regional



regulation. (3) Further provisions referred to in paragraph (1) and (2) regulated by Government's Regulation. Until now it seems not yet issued implementation regulations that are intended (Maria Rita Roewiastoeti. 2014 : 54)

In four (4) years after the 35 Constitutional Court Decision, the government on implementing their decision, still half-hearted, although the government has issued various policies and provisions of legislation. The response of the government on implementing the Constitutional Court 35 they publish:

- 1) Law Number 6 of 2014 about Village
- 2) Law Number 18 Year 2013 on the Prevention and Eradication of forest destruction was not targeted to corporations but to the small community. Law-P3H issued not long after the 35 constitutional court decision. Since the Law P3H, none of the corporations that snared, but rather the people around the forest estate. 53 people brought to justice, with the 43 people found guilty with imprisonment, and 43% of them are farmers. (Yance Arizona, June 18, 2015, <http://brwa.or.id/articles/read/214/> day Wednesday, August 3, 2016 at 12.00 pm)
- 3) Regulation 52 of 2014 On The Guidelines for the Recognition and Protection of Indigenous People,
- 4) Joint Regulation (Perber) of the Minister of Home Affairs, Minister of Forestry, Minister of Public Works, and the National Land Agency Number 79/2014, Number PB.3 / Menhut-II / 2014; Number 17 / PRT / M / 2014; and No 8 / SKB / X / 2014 dated October 17, 2014 about The Procedures for the Settlement of Land Tenure in the Forest Region.
- 5) SE Home Minister No: 552/8900/SJ (December 30, 2013) on social mapping of indigenous peoples, Conceptually, this circular mistaken in defining indigenous peoples, because the circulars are mentioned incoming indigenous peoples were the tribe, group clan, palace, kingdom to the empire. Though the royal palace and the empire not an indigenous people.
- 6) Regulation of Minister of Forestry Number P / 62/2013 on the strengthening of forest area. In this Permenhut, indigenous forests out of the forest area. MoF throwing responsibilities to local governments to make the recognition of indigenous people

and forests through regulation. Whereas the responsibility of the ministry ensure indigenous forests. In fact, in the Forestry Law has described their mandate to legislate on indigenous peoples. Nevertheless, the PP of Traditional Forest never published.

**b. Response of Indigenous People Post Constitutional Court Number 35 / PUU-X / 2012**

Secretary General of AMAN, Abdon Nababan said that during the two (2) years of the birth of the MK 35, AMAN along with indigenous people are doing some things, such as indigenous peoples and its founders made and launched a signature field that identifies the existence of indigenous forests, but until now the government in this case represented by the Ministry of Agricultural and Spatial/BPN was never present to signify the indigenous forest. In addition, indigenous peoples during the two (2) years have been doing rehabilitation by planting 35 million trees in the indigenous forest land that was damaged in a variety of indigenous territories. Ministry of Agricultural and Spatial/BPN acknowledged that his ministry has not carried out the registration of customary land in forest areas. Currently the Ministry of Agricultural and Spatial/BPN will make the socialization and in the future will set up a special team that will plunge into various areas to take measurements to mapping a registration of customary land (Titi Pangestu, <http://www.aman.or.id/2015/04/24/pemerintah-setengah-hati-implementasikan-putusan-mk-no-35puu-x2012/> accessed on 01 August 2016).

**c. The Policy about Indigenous Peoples in East Kalimantan**

By Subsequent Number 35, there are plenty of local regulations created to make a recognition of indigenous peoples and regions. This is important because in the 35 Constitutional Court Decision, the recognition of the existence of Indigenous People can be established with government regulations and local regulations. Forms of local regulations include Recognition Regulation, Perda Determination, Regulation of the Governor/Regent and Regent SK. Until now, there are 108 local regulations that recognize the existence of indigenous peoples and territories, including forests. The legal product consists of 19 provinces regulations, 45 local district law, 6 Governor regulations and 38 Regent's Decisions.

Implementation of Decision Number 35 in the context of legal recognition of indigenous peoples in the region must be adapted to the context of policies and regulations regarding indigenous peoples that exist in that area. So far, the legal recognition of the existence and rights of indigenous peoples can be distinguished from the legal form and type of substance that regulates. In terms of legal form, legal recognition of the existence and rights of indigenous peoples at the local level is done in the form of (Yance Arizona, 2010) :

- 1) Regional regulations / governor regulations
- 2) Head of the local area's Decree
- 3) Court decision
- 4) Agreements between indigenous peoples and government agencies to recognize the existence and rights of indigenous peoples to land and forests.

Based on the contents, policies and regulations regarding the recognition of the existence and rights of indigenous peoples in East Kalimantan include:

- 1) The existence of indigenous peoples. This type is as East Kalimantan Provincial Regulation Number 1 of 2015 about the Guidelines for the Recognition and Protection of Indigenous People in East Kalimantan.
- 2) Customary institutions. This type of regulation such as local regulations of Kutai Barat Number 24 of 2001 on Empowerment, Conservation, Protection and Development of Customs and Territory Indigenous Institute in West Kutai and Paser District Regulation Number 3 of 2000 on Empowerment, Conservation, Protection and Development of Customs and Custom Agency.
- 3) Perda Number 12 of 2006 on Strengthening and Development of Indigenous People in West Kutai region.

### **3. Involvement of Indigenous Peoples in the REDD + Program (Reducing Emissions from Deforestation and Forest Degradation Plus)**

About Ad Hoc Working Group on Long Term Cooperative Action (the Ad Hoc Working Group on Long-term Cooperative Action/AWGLCA) in Copenhagen expressed its readiness to support REDD + to create a framework on the rights of indigenous peoples. Recognition of rights for indigenous peoples should be able to show

three (3) operational principles of REDD +, namely: participation in decision making, equity and benefits (Thomas Sikor, 2010 : 1).

Recognition of indigenous peoples in recent years experienced an increase in both domestic law and international treaties. Identification of community recognition of customary forest done by 3 (three) approaches, namely: i) The first approach focuses on the transfer of ownership rights of forest peoples indigenous, it's based on the premise that the redistribution of forest tenure is a need to improve the history of deprivation of rights of forest peoples indigenous, ii) approach the second promotes the rights of indigenous forest communities. Organization of Indigenous People and support organizations advocating for restitution penguasaan community forest indigenous forests, iii) a third approach emphasizes human rights to forestry, human rights procedures referring to the participation of a minimum level in political decision-making, for example: the right to information and access to get justice.

The reasons underlying the full and effective participation of indigenous peoples in the agreement REDD + is advocacy and lobbying of indigenous leaders presented at a climate change conference that there are concerns when REDD + will be implemented without the involvement of indigenous peoples (both at the planning and implementation) will affect every decision and natural resources under their control. Mesoamerican report (Christian Erni, 2011 : 27) found that the forests are better protected in indigenous territories and tergenerasi well, even areas where indigenous communities have greater control over forest areas produce large amounts of carbon and generate benefits for life. Research shows that community-based conservation is a very effective means to protect forests, or vice versa without community involvement in forest management will lead to failure in the protection of forests and biodiversity (Christian Erni, 2011 : 27). Indigenous peoples and traditional communities who depend for their livelihood on natural resources face special challenges as a consequence of climate change (Annelie Fincke, 2010 : 5).

High dependence on natural ecosystems, marginal land occupation, and socio-economic situation and the fragile political force the indigenous people are particularly vulnerable to climate change and extreme natural phenomena. Factors that contribute to

the high vulnerability of indigenous peoples, among others: geographic location, dependence on natural resources and a greater reliance on sector climate, marginalization history in decision-making and public policy, the insecurity of rights to land, territories and resources, low economic income, and customary law institutions that are not dohormati by the dominant system of government.

Strategy and planning developed REDD + program is at the national level are made by the central government, however any REDD + projects to be implemented in the field will directly affect and involve communities living in or near forests. Therefore, the government plays a key role for designing a national regulation governing REDD + with the involvement of indigenous people's participation at every level of activity with respect the interests and rights of indigenous peoples.

REDD + has a challenge when community involvement in the scheme of security (safeguards), namely how to develop partnerships that allow REDD + projects implemented but remain under the control of indigenous peoples. A partnership that can be developed is through community-based approaches to REDD + (Community-based REDD+). REDD + initiatives based society should be planned, designed and implemented in such a way that meets the security (safeguards) as defined in the agreement the UNFCCC on REDD, as well as the provisions of the Declaration of the United Nations About the Rights of Indigenous Peoples (United Nations Declaration on the Rights of Indigenous Peoples/UNDRIP ). At the national level, community-based REDD + projects require several requirements, among others (Christian Erni, 2011 : 32):

- a. Is the right to give or withhold consent (free prior and informed consent) of an activity / project REDD + initiatives coming from indigenous people themselves;
- b. The need to secure the rights of indigenous peoples over land and resources required;
- c. Guarantee that indigenous peoples have the right to manage the communal forest, or at least to participate fully and effectively in decision-making regarding the management and conservation of their forests;
- d. Build and strengthen the knowledge and practices of indigenous peoples;

- e. Respect for the rights of indigenous peoples in their traditional livelihoods and natural resource management systems;
- f. The warranty for the conservation of natural forests and biodiversity;
- g. Guarantee equitable sharing of benefits from REDD + to the public;
- h. Guarantee full and active participation of women in each activity group.

The framework is free of deforestation (deforestation-free) Indonesian government showed at least two social challenges which require solutions that : how to resolve land rights are unclear and how to overcome the negative effects of deforestation for local communities (Romain Pirard, 2015 : 24).

Ownership of property rights over the land is unclear and conflicts between local residents by companies that operate with a permit issued by the government is a polemic like two sides of a coin in forest governance, it is due to their international commitments must be implemented by the government to reduce deforestation in Indonesia and on the other hand granting the operating license for the company's management in forest areas. Constitutional Court Decision Number 35/PUU-X/2012 marks the first step on UNFCCC agreement about REDD, also provision on United Nations Declaration On The Right Of Indigenous Peoples/UNDRIP at national level, the REDD+ program based society require some rules and regulation such as (Christian Erni, 2011 : 32)

- a. whether the right to give or withhold the consent (*free prior and informed consent*) on an activity or REDD+ project, that initiative must come from indigenous people themselves.
- b. Necessity to securing indigenous peoples right over the land and resources required.
- c. The guarantee that indigenous peoples, have the rights to manage the communal forest or fully participate and effectively in decision-making on management and conservation of their forest.
- d. Build and strengthening knowledge and practice of indigenous peoples.
- e. Respect for the indigenous peoples rights, on their traditional life, and management of their natural resources.
- f. The guarantee for conservation of natural forest and biodiversity.

- g. The guarantee on equitable sharing of benefits from REDD+ Program for the community.
- h. The guarantee fully and active women's grup in each activities.

Deforestation-free framework (*deforestation-free*) Indonesian government show at least, there are two social challenge which require solution, that is: how to resolve the right of the unclear landless, and how to overcome the effects of deforestation for local people (Romain Pirard, 2015). Property ownership of land is not yet clear and the conflict between local people and companies that operate permitted by the government, is a polemic like two-side of a coin, on forest governance. It is because their international commitments which must be implemented by the government, to reduce deforestation in Indonesia, in other side granting operating licenses to the company for forest management. Constitutional court decision number 35/PUU-X/2012 marking the first step clarifying rights over forests and give mandate to nation state to transfer forest land into the control of indigenous peoples. But until the delimitation of the boundaries were set and transfer of rights in the administration, then tenure for indigenous peoples becoming necessity. Therefore it is necessary to engaged a fully and active participation of indigenous people, within the framework policies and strategies on REDD+ program that implemented by Indonesian government.

Involving community and stakeholders mandatory as the inclusive and collaborative principles on REDD+ implementation, (started from the initial stage to implementation on REDD+ program, Indonesian will be develop strategic partnership, to ensure that involving community and stakeholders effective and fair, involving community on REDD+ program performed with following strategic (REDD+ National Strategy, 2012) :

- a. Identification and mapping stakeholders which includes an understanding about the actors and affected party both positive or negative.
- b. Increased understanding, awareness, understanding agreement and supports of the parties on implementation REDD+ Program through the PADIATAPA process by implementing an effective communication strategy and in accordance with local character.

c. Increasing roles of stakeholder on designing and troubleshooting done through the development.

- 1) contributory partnership, cooperation in nature *support sharing* which the contributor agree to the proposal and decided to distributed funds on the program or REDD+ Project.
- 2) operational partnership, cooperation in nature as work sharing.
- 3) Consultative Partnership, cooperation in nature as advisory, which certain parties to provide input policy, strategic, planning, evaluation adjustment for launch implementation of REDD+ Program.
- 4) collaborative partnership, cooperation in decision-making, with authority, with shared risk.

In the future scheme in approach of REDD+ which used to provide recognition of indigeneous people's rights on forest, can be based on three principles, that is (Thomas Sikor, 2010 : 3) :

- a. Involving the participation of indigenous forests community on political decision-making on forests in their territories, involving the participation of indigenous forests community on require procedures in policy making and implementation policies that encourage public participation. Democratic control on forests and implementation local affairs that involved community participation. REDD+ implies the need for representation of indigenous forests community and representative organization participation in decision-making at local, national and international
- b. *Equitable distribution of forest benefits* this principles that unrecongised by AWG-LCA. Equitable distribution benefits, which can be taken from the forests is a form of redistribution forest tenure, this principles, demanding a fair share benefit derived from forest. REDD+implies that the benefit obtained from the forest should be distributed between indigenous forest community and other stakeholders in a fair manner. the mechanism offered include : additional transfer of forest tenure, codification of carbon rights, and, equitable profit-sharing arrangements
- c. Recognition refers to a specific identity of indigenous forest community, social-cultural recognition helping to overcome the stigma attached on indigenous forest



community and prevent the loss of local culture, recognition requires that REDD+ Should give attention to the cultural identity, social and economic of indigenous forest community.

## **E. CLOSING**

### **a. Conclusion**

1. Constitutional Court Verdict Number 35/PUU-X/2012 on changes in Act Number 41 of 1999 about Forestry which stipulates that indigenous forest was no longer state-owned by the Ministry of Forestry, but rather is part of the territory of indigenous law, belonging to bring euphoria for all the unity of indigenous people in the area of the archipelago since verdict of the constitutional court confirmed the strengthening position of 35 indigenous people in forest management. Prior to Constitutional Court Verdict Number 35/PUU-X/2012, rights and indigenous people of society neglected by the state due to the right country falsely paraphrased into the concept of the country forestry sector, as set forth in Act Number 41 of 1999 about Forestry, but the actual settings in the very legislation contrary to the Article 18 B of Constitution 1945, which states the country acknowledge and respect the entities of indigenous people and their traditional rights are all still alive and in accordance with the development of society and the principle of the unitary of NKRI, which is set in the legislation.
2. Constitutional Court verdict Number 35/PUU-X/2012 appreciated the Government by publishing (a) Act Number 6 of 2014 about Village, (b) Act Number 18 of 2013 about Prevention and Eradication of Destruction of Forests (c) Permendagri 52 of 2014 about Guidelines Recognition and protection of the community's customary law, (d) The Joint Regulation (Perber) the Minister of the Interior, Minister of forestry, Minister of public works, and national land Agency Chief RI Number 79/2014, No PB 3/Menhut-II/2014; Number 17/PRT/M/2014; and Number 8/LCS/X/2014 date October 17, 2014 Completion Procedures about land ownership in the forest area, e SE) Minister of the Interior Number: 552 2013 (30 December 2013) social mapping of indigenous communities, f) Permenhut Number P/62/2013 of the inaugural forest area. At the level of the provincial Government of East Kalimantan in the ruling of the Constitutional Court of Indonesia Number 35/PUU-X/2012 implemented with publication of East

Kalimantan province Perda Number 1 by 2015 about Guidelines Recognition and protection of the community's customary law in East Kalimantan.

3. Indigenous peoples and traditional natural-resource dependent communities face specific challenges as a consequence of climate change impacts. High dependence on natural ecosystems, the occupation of marginal lands, and a fragile socio-economic and political situation make indigenous peoples especially vulnerable to climate change and extreme natural phenomena. REDD+ projects are highly complex and demanding with respect to knowledge, skills and the financial means needed. For indigenous communities, the challenge is to develop methods and forms of partnership which allow the REDD+ project to remain under the control of communities. To emphasise community control and empowerment in REDD+ projects we have chosen to call projects with such an approach “Community-based REDD+”.

#### **b. Suggestions**

1. The Ministry of environment and forestry, along with the house of representatives (DPR) to jointly join the push function rescue forest immediately perform revision of Regulations the Minister of Interior, Minister of forestry, Minister of public works, and national land Agency Chief RI Number 79/2014, No PB 3/Menhut-II/2014; Number17/PRT/M/2014; and Number 8/LCS/X/2014 date October 17, 2014 Completion Procedures about land ownership in the Region, because the The Joint Regulation in the future can become a loophole for encroachment of forests in the future;
2. The indigenous people of law to be able to push the implementation of the change in the level of each area as the Regulatory implementation of the ruling of the Constitutional Court verdict Number 35/PUU-X/2012, in terms of the inaugural indigenous forest by The Ministry of Forestry.

#### **BIBLIOGRAPHY:**

##### **Books and Journals**

Annelie Fincke, 2010, *Indigenous Peoples and Climate Change/REDD, An Overview of Current Discussions and Main Issues*, International Union for Conservation Nature,.

- Bambang Eko Supriyadi, 2013, *Hukum Agraria Kehutanan : Aspek Hutan Pertanian dalam Pengelolaan Hutan Negara*, Jakarta : Raja Grafindo Persada.
- Gregory Leyh, 2011, *“Pendidikan Hukum dan Kehidupan Publik”*, on Gregory Leyh, ed., *Hermeneutika Hukum : Sejarah, Teori dan Praktek*, terjemahan M. Khozim dari judul asli *Legal Hermeneutics*, Bandung : Nusa Media.
- Deden Djaenudin, *et.al*, 2014, *“Sintesis Penilaian Integratif Ekonomi dan Kebijakan Pengurangan Emisi Dari Deforestasi dan Degradasi”*, Balai Penelitian dan Pengembangan Kehutanan, Pusat Penelitian dan Pengembangan Perubahan Iklim dan Kebijakan, Kementerian Kehutanan Republik Indonesia.
- Fundación PRISMA - Grupo CABAL, 2011, *Understanding Community-Based REDD+, A Manual For Indigenous Community Trainers*, International Work Group for Indigenous Affairs (IWGIA) Asia Indigenous Peoples Pact (AIPP), AIPP Printing Press Co., Ltd: Thailand.
- Husen Alting, 2011, *“Dinamika Hukum dalam Pengakuan dan Perlindungan Hak Masyarakat Hukum Adat atas Tanah”*. Yogyakarta : Laksbang Pressindo.
- Jazim Hamidi, 2011, *Hermeneutika Hukum : Sejarah, Filasafat dan Metode Tafsir*, Malang : UB Press.
- Maria Rita Roewiastoeti. 2014. *“Masyarakat Adat dan Perebutan Penguasaan Hutan”*. Yogyakarta : IsistPress .
- Myrna A. Savitri, Satu Administrasi Pertanahan : Peluang dan Kendala dalam Peraturan Bersama Menteri untuk Penyelesaian Penguasaan Tanah dalam Kawasan Hutan, Policy Brief Epistema Institute, Vol. IV/2014,
- Mohammad Jamin, 2014, *“Peradilan Adat : Pergeseran Politik Hukum, Perspektif Undang-Undang Otonomi Khusus Papua”*, Yogyakarta : Graha Ilmu.
- Noer Fauzi Rahman dan Mia Siscawati, 2014, *“Masyarakat Hukum Adat adalah Penyandang Hak, Subjek Hukum dan Pemilik Wilayah Adatnya”*, InsistPress : Yogyakarta.
- Rebecca Tsosie, 2009, *“Indigenous People and Environmental Justice: The Impact of Climate Change”*, University of Colorado Law Review.

- Romain Pirard, et.al, 2015, “*Working Paper: Deforestation Free Commitments, An Application to Indonesia*”, *Center For International Foresry Research*.
- Thomas Sikor, et.al., “*REDD-plus, forest people’s rights and nested climate governance*”, *Forthcoming in Global Environmental Change*. Vol. 20, Number 3, 2010.
- R. Yando Zakaria, 2014, *Kriteria Masyarakat Hukum Adat dan Potensi Implikasinya terhadap Perebutan Sumber Daya Hutan Pasca Putusan MK Number 35/PUU-X/2012*, *Jurnal Transformasi Sosial Wacana*, Number 33 Tahun XVI, 2014, Insist Press, Yogyakarta.
- Soetandyo Wignjosoebroto, 2002, *Hukum Paradigma, Metode dan Dinamika Masalahnya*, Jakarta : ELSAM dan HUMA.
- Yance Arizona, 2014, *Dibutuhkan Penegakan Hukum Terintegrasi : Kajian Hukum Penerapan Putusan MK Number 35/PUU-X/2012 terhadap Perda Kabupaten Malinau*, *Jurnal Transformasi Sosial Wacana*, Number 33 Tahun XVI, 2014, Insist Press, Yogyakarta.

**Internet:**

- Yance Arizona, 2015, *Refleksi 2 tahun Putusan MK 35: Apakah telah berhasil mengembalikan wilayah adat?* (<http://brwa.or.id/articles/read/214>, acceced on Rabu, 3 August 2016).
- Yance Arizona, 2010, *Peluang Hukum Implementasi Putusan MK 35 dalam Konteks Kebijakan Pengakuan Masyarakat Adat Kalimantan Tengah*, Epistema Institute, President University, Cikarang, 2010.
- DKN, <http://dkn.or.id/2013/11/14/workshop-hasil-kajian-safeguard-redd/>, acceced on 14 Apryl 2014).
- Nurmasripatin. *Submisi Indonesia Tentang Tingkat Emisi Rujukan Deforestasi dan Degradasi Hutan Dalam Kerangka REDD+*. <http://www.reddplus.go.id/tentang-redd/mengenai-bp-redd> acceced on 22 Apryl 2014.
- Titi Pangestu, <http://www.aman.or.id/2015/04/24/pemerintah-setengah-hati-implementasikan-putusan-mk-no-35puu-x2012/> acceced on 01 August 2016.

Transtoto Handhadhari, (<http://sains.kompas.com/read/2015/02/24/21223481/Bom.Waktu.Perusakan.Hutan> acceded on 01 August 2016)

**Regulation:**

Law Number 5 of 1960 On The Judicial Authority