CONSTRUCTIVE ANALYSIS OF THE PROTECTION OF LAND RIGHTS OF INDIGENOUS COMMUNITIES IN THE DIMENSION OF SUSTAINABLE CONSTITUTIONALISM

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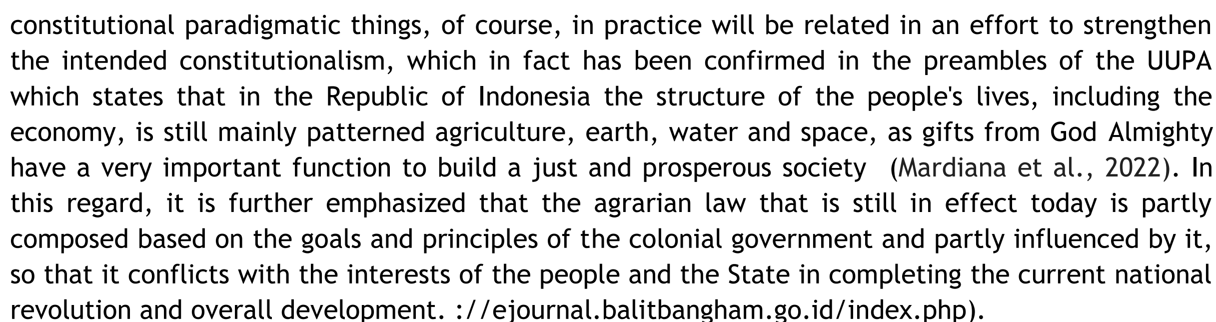
Abstract. *The purpose of this study is to analyze the constructive form of protection of land rights for Indigenous Peoples in the Dimension of Sustainable Constitutionalism, with the formulation of the problem: What are the Legal Arrangements, Implementation, Constraint Factors and Solutions to Protection of Land Rights of Indigenous Peoples in the Dimension of Sustainable Constitutionalism? The type of writing is normative legal, using legal research methodology, supported by secondary data, and using a qualitative approach, and to obtain secondary data, obtained through library research. The grand theory uses the living law theory by Eugen Ehrlich, the middle theory uses the legal theory of structural functionalism by Talcott Parsons and the applied theory uses the theory of the law of happiness (utilitarianism) by Jeremy Bentham. The results of the analysis conclude that if the State/Government implements it in a focused, serious and sustainable manner to provide protection based on constitutionalism for Indigenous Peoples' Land Rights, then the results will strengthen the protection of Human Rights (HAM) and can improve the welfare of citizens who have rights. On Land of Indigenous Peoples.*
Keywords: *Protection, Indigenous Peoples, Land Rights; Constitutionalism, Sustainable.*

1. INTRODUCTION

Observing and examining the construction of Constructive Analysis on the Protection of Indigenous Peoples' Land Rights in the Dimension of Sustainable Constitutionalism, there are several things that are fundamental and strategic in nature. The fundamental and strategic indicators referred to are those relating to the protection of Indigenous Peoples' Land Rights, and the next variable is those related to sustainable constitutionalism (Asshiddiqie, 2010). In relation to the existence and/or existence of customary law community land rights, in fact (Idham, 2010) constitutional paradigm is one of the pillars of the foundation in the context of formulating and at the same time (Idham, 2005) forming laws and regulations in the field of agrarian/land affairs in Indonesia as contained in Law Number 5 of 1960, concerning Basic Agrarian Regulations, which is commonly abbreviated and referred to as UUPA, is recorded in the State Gazette of the Republic of Indonesia of 1960 Number 104, Supplement to the State Gazette of the Republic of Indonesia Number 2043.

In this regard, especially in the construction of legal norms, regarding the existence and existence of customary law community land rights, legally formally it has been regulated and stipulated in Article 3 of the BAL, which states that "taking into account the provisions in Article 1 and 2, Implementation of customary rights and similar rights of customary law communities, as long as in reality they still exist, must be in such a way as to comply with national and state interests, which are based on national unity and may not conflict with laws and regulations. - other higher regulations. In the meantime, further in Article 5 of the BAL, it is expressly stated that "agrarian law that applies to earth, water and space is customary law, as long as it does not conflict with national and state interests, which are based on national unity, with Indonesian socialism." as well as with the regulations contained in this law and with other laws and regulations, everything with due regard to elements that rely on religious law (Boedi Harsono, 1999, Idham et al., 2018).

In relation to this explanation, a brief and concise description of the existence of constitutionalism will be presented, of course this will be integrated (Maria S.W.Sumardjono, 2009) with efforts to protect the Land Rights of Indigenous Peoples, which will be analyzed in this journal. Some of these



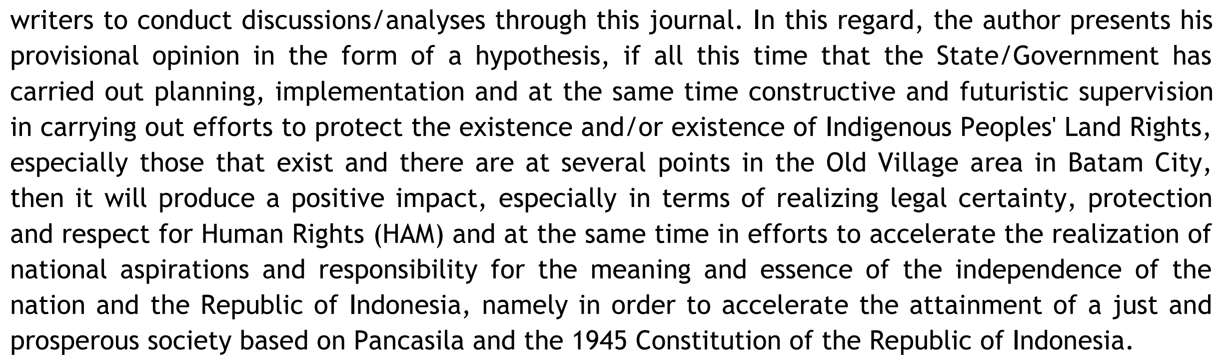
constitutional paradigmatic things, of course, in practice will be related in an effort to strengthen the intended constitutionalism, which in fact has been confirmed in the preambles of the UUPA which states that in the Republic of Indonesia the structure of the people's lives, including the economy, is still mainly patterned agriculture, earth, water and space, as gifts from God Almighty have a very important function to build a just and prosperous society (Mardiana et al., 2022). In this regard, it is further emphasized that the agrarian law that is still in effect today is partly composed based on the goals and principles of the colonial government and partly influenced by it, so that it conflicts with the interests of the people and the State in completing the current national revolution and overall development. ://ejournal.balitbangham.go.id/index.php).

In line with what has been mentioned in the section above, especially with the commitment of the State/Government in the context (Asshiddiqie and Safa'at, 2006) to realize the notion of constitutionalism, namely in an effort to provide protection for the existence of the Land Rights of the Indigenous Peoples' Land, then according to In the writer's opinion, this is the obligation of the State/Government to immediately carry out the mandate and orders of the Constitution of the Republic of Indonesia, namely based on the 1945 Constitution of the Republic of Indonesia. Meant (Tarmizi et al., 2017). The true meaning and nature of constitutionalism is an understanding that in an independent country, especially in the context of implementing all public policies and government administration, all of them must refer to and be based on the mandate and orders as stipulated in the constitution of the country concerned, in things to (Idham, 2012) accelerate the realization of national ideals and goals as stipulated in the constitution.

Related to the above, that the existence and/or existence of the constitution referred to as its position and position is very fundamental and strategic, that is, it applies as the highest law, because (Idham, 2011) philosophically paradigmatic is a form of the highest social agreement of all sovereign people in a country. Therefore, in the constitution, there is actually a "legal document", which is at the same time an eco-construction of the legal political paradigm. One of the functions of the legal political paradigm ecosystem is as a postulate, anchor and direction in all systems and areas of national life of a nation and state which includes the fields of Ideology, Politics, Economy, Social Culture, and National Security Defense (Ipoleksosbudhankamnas), namely in managing himself/the country concerned, whose ultimate goal is to accelerate the realization of the mandate of the national ideals and goals, and at the same time to be accountable for the meaning and essence of independence that has been achieved by that country. In this case, the application of the constitution and constitutionalism (Idham, 2021) for the nation and the State of Indonesia, is actually for and to account for the mandate that has been ordered as set forth in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, namely in the framework of realizing a just and prosperous society (welfare state).

Looking back at the construction of the journal title above, of course in this case it is questionable, in fact what has been implemented by the State/Government, in the context of implementing protection for the existence/existence of the Customary Law Community Land Rights? To answer this very fundamental question, the author will present empirical conditions in the field regarding (Idham, 2013) the existence of Indigenous Peoples' Land Rights in Batam City. In this regard, and linked to the results of research studies in the field, that the State/Government has not implemented it concretely, is responsible for providing protection for the existence of Indigenous Peoples' Land Rights in Batam City, especially over Indigenous Peoples' Land Rights at several points and/or or location in the Old Village area of Batam City. In other words, that the State/Government has not protected the existence of the Land of the Customary Law Community, especially those in several points in the Old Village area of Batam City, of course in the dimension of constitutionalism in a sustainable manner (sustainability). This means that in the field there has been an imbalance (gap phenomenon) between das sollen (what should be according to laws and regulations) which is usually referred to as das sein, namely the reality does not match what is and exists in the field based on the mandate of laws and regulations.

Based on the things mentioned in the section above, it is with situations and conditions like that (Noeng Muhadjir, 2002) that encourages, and provides a burst of enthusiasm and motivation for



writers to conduct discussions/analyses through this journal. In this regard, the author presents his provisional opinion in the form of a hypothesis, if all this time that the State/Government has carried out planning, implementation and at the same time constructive and futuristic supervision in carrying out efforts to protect the existence and/or existence of Indigenous Peoples' Land Rights, especially those that exist and there are at several points in the Old Village area in Batam City, then it will produce a positive impact, especially in terms of realizing legal certainty, protection and respect for Human Rights (HAM) and at the same time in efforts to accelerate the realization of national aspirations and responsibility for the meaning and essence of the independence of the nation and the Republic of Indonesia, namely in order to accelerate the attainment of a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

2. METHODS

In line with the construction of the title, and the variables and things that have been explained in the background section as mentioned in the section above, then (Soejono, Abdurrahman, 2003) the construction of the problem formulation that will be presented in this journal is: Legal Regulations, Implementation, Constraints/Constraints and Solutions in terms of Protection of Indigenous Peoples' Land Rights in the Dimension of Sustainable Constitutionalism?.

With regard to the above, in the context of carrying out the analysis and/or discussion, then the construction of the problem formulation referred to, for the next (I Made Pasek Diantha, 2017) analysis will be carried out, which in essence will be divided into two groups, namely for the first group will be discussions related to the construction of legal arrangements will be carried out, and then in the second group will be analyzed content related to implementation, constraints and solutions related to efforts to protect customary law community land rights in the dimension of sustainable constitutionalism (https://www.komnasham. go.id/index.php/news/2020/6/25/1455).

In this section, we will explain the guidelines as a source of literature. Related to this, and adjusted for the variables as set out in the central theme in this journal, in essence the literature source that will be used as one of the (Peter Mahmud Marzuki, 2006) materials to analyze the construction of the problem formulation referred to, is to rely on literary sources that are derived from secondary data.

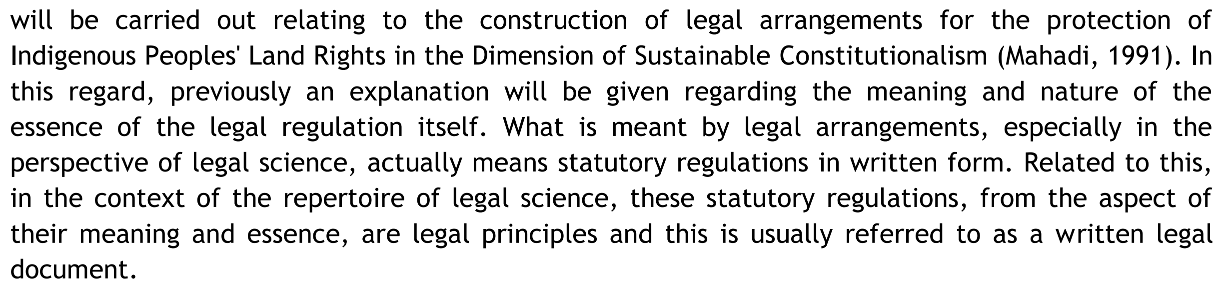
Related to what has been mentioned in the section above, that the use of literature sources from secondary data, in its manifestation is based on several types of secondary data literature, which in essence secondary data consists of primary legal materials, secondary legal materials and legal materials. tertiary law, all of which were obtained through library research. Specifically regarding the type of writing, methodology and theoretical basis, in principle it will be adjusted to the construction, variables as set out in this journal, and in line with the intended matter also adjusted to several key matters as described in the background section as mentioned above. Therefore, for this type (Burhan Bungin, 2017) the writing of this journal is normative in nature. Related to the matter in the section above, matters relating to the methodology are carried out legally research, and by using a qualitative approach. For (Rasyid Rizani, 2020) the theoretical basis is to use living law theory by Eugen Ehrlich as grand theory. The middle theory uses the legal theory of structural functionalism by Talcott Parsons, while the applied theory uses the theory of the law of happiness (utilitarianism) by Jeremy Bentham.

3. RESULT AND DISCUSSION

Henceforth in this section an analysis/discussion will be carried out on the construction of the problem formulation as described in the section above. In the context of carrying out the analysis, it will be carried out in two stages and/or divided into two groups, the analysis/discussion of which is as presented in the section below.

1. Construction of Legal Arrangements for the Protection of Land Rights of Indigenous Peoples in the Dimension of Sustainable Constitutionalism

Now, the time has come to carry out an analysis/discussion of the construction of the problem formulation presented in this journal. For this reason, in this first part, content analysis/discussion



will be carried out relating to the construction of legal arrangements for the protection of Indigenous Peoples' Land Rights in the Dimension of Sustainable Constitutionalism (Mahadi, 1991). In this regard, previously an explanation will be given regarding the meaning and nature of the essence of the legal regulation itself. What is meant by legal arrangements, especially in the perspective of legal science, actually means statutory regulations in written form. Related to this, in the context of the repertoire of legal science, these statutory regulations, from the aspect of their meaning and essence, are legal principles and this is usually referred to as a written legal document.

In line with what has been mentioned in the section above, and in relation to the content that will be analyzed in this section, it will be interpreted in advance regarding the meaning and significance (Husen Alting, 2011) of the Land Rights of the Indigenous Peoples. To give a definition, actually in a normative juridical constellation, when it comes to interpreting the meaning of customary law community land rights, it is substantially very closely related to the existence and/or existence of customary land rights. Meanwhile, it can be explained that Ulayat Land is a parcel of land on which there are customary rights from a certain customary law community. Meanwhile, what is meant by customary law community is a group of people who are bound by their customary law order as joint citizens of a legal alliance because of the similarity of residence or on the basis of descent (http://ejournal.uki.ac.id/index.php/tora/article).

With regard to the matters referred to in the section above, then (Iman Soetiknyo, 1994) the construction and meaning of customary law community land rights are customary rights and the like of customary law communities (hereinafter referred to as customary rights), is an authority according to customary law is owned by certain customary law communities over certain areas which are the environment of their citizens to benefit from natural resources, including land, in that area, for their survival and life, arising from an outward and inward relationship that is hereditary and uninterrupted between the customary law community and the area concerned. In this regard, specifically in terms of the meaning of ulayat rights and land rights of customary law communities, it has been explained in such a way as set forth in the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency of the Republic of Indonesia Number 5 of 1999, concerning Guidelines for Settlement of Legal Community Ulayat Rights Issues Adat, which regulations were signed and enacted on 24 June 1999.

Returning to the content that will be analyzed in this section, of course, for the next discussion/analysis will be presented, namely what the State/Government should actually do in an effort to provide protection for the existence/existence of customary law community land rights in the constitutionalism dimension on an ongoing basis. . Related to this, and by referring to and based on the fact that the State of Indonesia is actually based on the mandate and orders of the constitution is a country that is obliged to uphold the notion of people's sovereignty and at the same time is obliged to confirm the understanding that Indonesia is a state of law, then in the context of protecting the existence of land rights Indigenous Peoples, of course in the dimension of sustainable constitutionalism, for this reason the State/Government in its efforts to carry out the process of forming legal arrangements and/or legal norms, especially in carrying out the process of forming laws and regulations (law making processes), must rely on design and construction (Edy Ruchiyat, 1994) ecosystem of sustainable constitutionalism, which is based on the anchor or foundation of the legal political paradigm as will be explained in the section below.

a. Affirming the Mandate of People's Suffering and the Ideals of Independence

The content that will be analyzed in this section is actually substantially related to things that are very (Idham, 2014) philosophical paradigmatic (philosophy of paradigm). That is, when the State/Government carries out all the series and processes in the context of forming statutory regulations, which are related to efforts to protect the existence/existence of the Customary Law Community's Land Rights, it must be sharp and sharp whose sole purpose is for the sake of and for to be responsible for the mandate of the people's suffering and at the same time to be accountable for the mandate for the ideals of independence for the nation and the Republic of Indonesia on August 17, 1945, which in fact this matter in a constitutional paradigm approach (constitutional

paradigm) has been explicitly mandated in the four deepest points of thought as set forth in the Preamble to the 1945 Constitution of the Republic of Indonesia.

In line with what has been mentioned in the section above, in fact regarding the construction and substance for (Urip Santoso, 2015) taking responsibility for the message of people's suffering and the ideals of the independence of the nation and the Republic of Indonesia, has been stabilized in such a way in the considerations of "Offended", as stated in Law Number 5 of 1960 concerning Basic Agrarian Regulations, which are commonly referred to and abbreviated as UUPA, State Gazette of the Republic of Indonesia of 1960 Number 104, Supplement to the State Gazette of the Republic of Indonesia Number 2043, states expressly that "that In connection with what is stated in the considerations above, it is necessary to have a national agrarian law based on customary law on land, which is simple and guarantees legal certainty for all Indonesian people, without neglecting elements that rely on religious law. It was further emphasized that national agrarian law must provide the possibility of achieving the functions of earth, water and space, as referred to above and must be in accordance with the interests of the Indonesian people and also meet their needs according to the demands of the times in all agrarian matters (https:// core.ac.uk).

b. Strengthening the concept of people's sovereignty and Indonesia as a rule of law

For the following section, that the State/Government, especially in the context of carrying out the process of forming arrangements or construction of legal norms in an effort to form all kinds of laws and regulations that intersect with efforts to protect the existence and/or existence of the customary law community's land rights, must prioritize to efforts to strengthen the understanding of people's sovereignty and at the same time affirm that the State of Indonesia is a state of law. Related to this, in a constitutional paradigmatic perspective it has been mandated, regulated and ordered, namely based on the provisions of Article 1 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which affirmatively, emphatically and explicitly states that "sovereignty is in the hands of the people and carried out according to the Constitution. That is, once again in designing arrangements and/or legal norms regarding efforts to protect the existence of customary law community land rights, priority must be given to the realization of the affirmation of principles and/or understanding of people's sovereignty (Idham, 2018).

Relevant to the matters that have been presented in the section above, henceforth aimed at institutions with the authority to form statutory regulations that have to do with efforts to protect the existence of Indigenous Peoples' Land Rights, especially in designing the construction of arrangements or legal norms must be prioritizing the affirmation that the State of Indonesia is a state of law. Specifically regarding this matter, it has actually been explicitly stipulated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which explicitly states that the State of Indonesia is a country based on law. This means that in the context of carrying out efforts to protect customary law community land rights, the state/government is obliged to ensure that Indonesia is a country that understands the rule of law. Related to this, the legal arrangements must be strictly regulated for the realization of the principles and characteristics of a rule of law state. Related to this, one of the very fundamental substances in terms of confirming that Indonesia is a rule of law, is that there should never be a violation of the dimension of Human Rights (HAM) in the perspective of protecting the Land Rights of the Indigenous Peoples' Land. . It is one of the pillars in strengthening Indonesia as a rule of law country, that is, it must uphold and defend the implementation of human rights (HAM), and this is actually one of the "important and fundamental characteristics of the constitutional state itself".

c. Strengthening the Understanding of the National Economy and Social Welfare

Another important, fundamental and strategic part that must be carried out by institutions that have constitutional authority in the context of designing and formulating legal arrangements or in the context of establishing legal norms in terms of carrying out efforts to protect the existence of customary law community land rights, is obliged to uphold realization of the understanding of the National Economy and Social Welfare. Regarding this matter, especially in a constitutional paradigmatic perspective, it has been regulated and stipulated in Article 33 of the 1945

Constitution of the Republic of Indonesia. The said customary law must prioritize strengthening the understanding of the National Economy and Social Welfare (Achmad Sodiki, 2013).
Relevant to the explanation above, that in a constitutional paradigm, this has been strictly regulated in Article 33 of the 1945 Constitution of the Republic of Indonesia, which states explicitly that the economy is structured as a joint venture based on kinship. At the same time it was also emphasized that the branches of production which are important for the State and affect the livelihood of the people at large are controlled by the State. Henceforth, especially in Paragraph (3), it is emphasized that the land and water, and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people. Then in Paragraph (4), it is emphasized that the national economy is organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental awareness, independence, and by maintaining a balance of progress and national economic unity. In the construction of Article 33 of the 1945 Constitution of the Republic of Indonesia, it is closed in Paragraph (5) that further provisions regarding the implementation of this article are regulated in the law. Related to this, that the design of the construction of Article 33 of the 1945 Constitution of the Republic of Indonesia is intended, actually in the approach and dimensions of constitutionalism the understanding or principle that will be affirmed is in the context of realizing the notion of the National Economy and Social Welfare (https://journal. unismuh. ac).

d. Strengthening National Identity and Mutual Cooperation Born and Inner Grounded

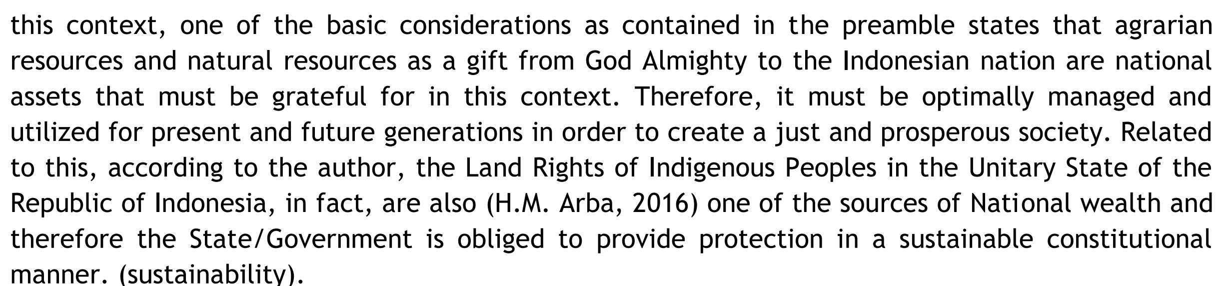
Henceforth in this section it will be explained related to the legal political paradigm ecosystem that must be implemented by the State/Government, especially in the context of designing the construction of legal arrangements or legal norms in an effort to make statutory regulations to protect Indigenous Peoples' Land Rights, namely must prioritize to strengthen national identity and the principle of mutual cooperation, both physically and mentally down to earth. This is meant, that the State/Government in fact, especially in terms of a philosophical paradigmatic dimension, are the values of Pancasila 1 June 1945 which are the basis of the State, view of life, and the soul of the personality of the nation and State of Indonesia (Dyah Ayu, et al. , 2014).
In other words, through this down-to-earth national identity and inner and outer mutual cooperation, the nation and state of Indonesia exist and continue to exist today, which is able to unite all existing differences, namely by being embraced by a strong and permanent paradigm of Bhinneka. Tunggal Ika, which can tightly bind the nation and state of Indonesia from Sabang to Merauke and from Miangas to Rote Island. This means that national identity, which in essence is the grounded inner and outer mutual cooperation, is in fact the single root of the cultural values that are owned by the nation and state of Indonesia, that is through a strong and sturdy knot, upon adherence to these values. customary law values that live in society, which is none other than customary law itself. Therefore the existence of Indigenous Peoples' Land Rights must be protected by the State/Government through sustainable constitutionalism (sustainability). In this regard, so that in carrying out the process of forming the said legal arrangements, the State/Government must give priority to strengthening and implementing it seriously, namely the theory of living law by Eugen Ehrlich.

2. Implementation, Obstacles and Solutions to Protection of Indigenous Peoples' Land Rights

Paying attention to the content that will be analyzed in this section, substantially there are three contents that must be analyzed, namely regarding Implementation, then the constraints and solutions related to efforts to protect Indigenous Peoples' Land Rights, of course in the dimension of sustainable constitutionalism, as further The analysis is presented in the section below.

a. Implementation

Related to the implementation in terms of protecting the existence of Land Rights of Indigenous Peoples, especially in (Darwin Ginting, 2012) the ecosystem perspective of the legal political paradigm in terms of implementing agrarian / land policies, namely in the operational paradigm approach (operational paradigm), that in fact it has been regulated and stipulated in a political decision as set forth in the Decree of the People's Consultative Assembly of the Republic of Indonesia Number IX/MPR/2001, concerning Agrarian Reform and Natural Resource Management. In

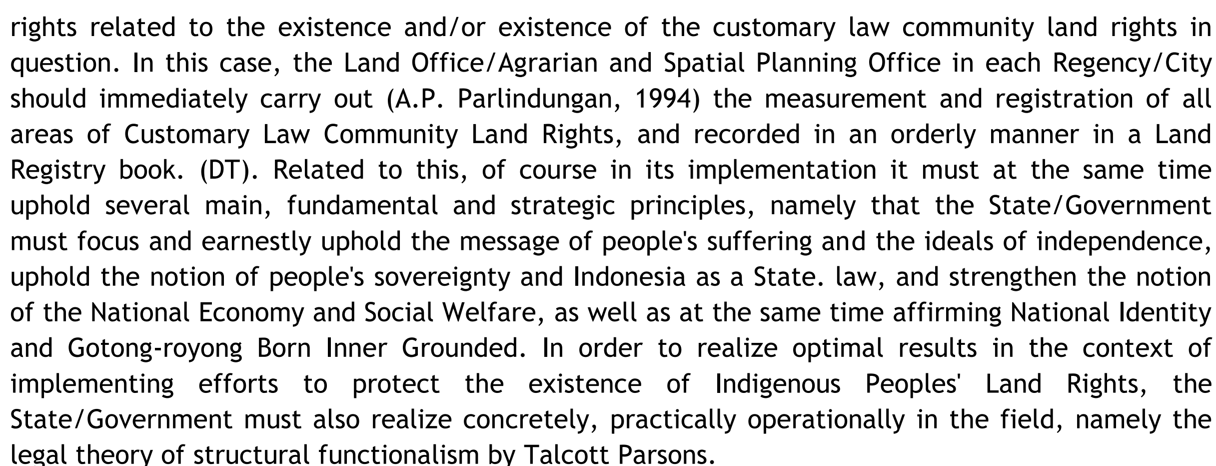


this context, one of the basic considerations as contained in the preamble states that agrarian resources and natural resources as a gift from God Almighty to the Indonesian nation are national assets that must be grateful for in this context. Therefore, it must be optimally managed and utilized for present and future generations in order to create a just and prosperous society. Related to this, according to the author, the Land Rights of Indigenous Peoples in the Unitary State of the Republic of Indonesia, in fact, are also (H.M. Arba, 2016) one of the sources of National wealth and therefore the State/Government is obliged to provide protection in a sustainable constitutional manner. (sustainability).

In connection with the matters mentioned above, in the following section several principles will be released in such a way as to carry out agrarian reform, and according to the author, these principles are also closely related to implementation in order to protect the existence of Indigenous Peoples' Land Rights. The design (Diyan Isnaeni and H.Suratman, 2018) of the construction of the intended principles has actually been regulated and stipulated in Article 5 of the Decree of the People's Consultative Assembly of the Republic of Indonesia Number IX/MPR/2001, concerning Agrarian Reform and Management of Natural Resources , which stated that “agrarian reform and management of natural resources must be carried out in accordance with the principles of: (1) maintaining and maintaining the integrity of the Unitary State of the Republic of Indonesia; (2) respect and uphold human rights; (3) respecting the rule of law by accommodating diversity in legal unification; (4) bringing prosperity to the people, especially through improving the quality of Indonesia's human resources; (5) developing democracy, legal compliance, transparency and optimizing people's participation; (6) realizing justice including gender equality in control, ownership, use, utilization and maintenance of agrarian resources and natural resources; (7) maintaining sustainability that can provide optimal benefits, both for present and future generations, while taking into account the carrying capacity and carrying capacity of the environment.

In the meantime, it is still there to explain about a number of principles for carrying out agrarian reform and of course this is closely related to efforts to protect the existence of customary law community land rights, further in section Article 5 of the Decree of the People's Consultative Assembly of the Republic of Indonesia Number IX/ MPR/2001, concerning Agrarian Reform and Management of Natural Resources, stated explicitly that it must "carry out social, sustainability and ecological functions in accordance with local socio-cultural conditions. Furthermore, the next principle stated that there should be increased integration and coordination between development sectors in the implementation of agrarian reform and management of natural resources. In this regard, the next principle is stated, which must recognize and respect the rights of "customary law communities" and the nation's cultural diversity over agrarian resources and natural resources. In the next section it is stated that there must be a balance between the rights and obligations of the State, Government (Central, Provincial Region, District/City and Village or equivalent), communities and individuals. In the final part, in terms of strengthening the implementation of the principles in the context of agrarian reform, it is explicitly stated that it must carry out decentralization in the form of division of authority at the National, Provincial, Regency/City and Village levels or at the same level, related to the allocation and management of agrarian resources and natural resources. the. In this regard, its implementation has actually been regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 9 of 2015 concerning Procedures for Determining Communal Rights to Land of Indigenous Peoples and Communities Residing in Certain Areas. The next regulation is as stipulated in Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration, State Gazette of 2021 Number 28, Supplement to State Gazette Number 6630 (https://e-jurnal .regulation.go.id/index.php/jli/).

In line with the explanation above, especially integrated with the implementation of efforts to protect the Land Rights of the Indigenous Peoples, again if we pay close attention to the construction of some of these principles, it is clear that the State/Government must “recognize and at the same time respect customary law community rights”, especially those relating to material



rights related to the existence and/or existence of the customary law community land rights in question. In this case, the Land Office/Agrarian and Spatial Planning Office in each Regency/City should immediately carry out (A.P. Parlindungan, 1994) the measurement and registration of all areas of Customary Law Community Land Rights, and recorded in an orderly manner in a Land Registry book. (DT). Related to this, of course in its implementation it must at the same time uphold several main, fundamental and strategic principles, namely that the State/Government must focus and earnestly uphold the message of people's suffering and the ideals of independence, uphold the notion of people's sovereignty and Indonesia as a State. law, and strengthen the notion of the National Economy and Social Welfare, as well as at the same time affirming National Identity and Gotong-royong Born Inner Grounded. In order to realize optimal results in the context of implementing efforts to protect the existence of Indigenous Peoples' Land Rights, the State/Government must also realize concretely, practically operationally in the field, namely the legal theory of structural functionalism by Talcott Parsons.

b. Constraint Factor

Related content and constraints/obstacles, in principle, is something that is not good content and it is certain that at the same time (Rosmidah, 2010) is an inhibiting factor, especially in the context of carrying out efforts to protect the existence and/or existence of Land Rights of Indigenous Peoples, spread within the territory of the Unitary State of the Republic of Indonesia (NKRI). Related to this, in general the constraints/barriers come from two corner points, namely political and economic in nature. These two constraints/obstacles, according to research studies in the field, show a dominant and significant contribution to the slowdown in terms of carrying out efforts to protect the existence and/or existence of Customary Law Community Land Rights that exist and exist throughout the territory of the Unitary State of the Republic Indonesia, especially to the Land Rights of Indigenous Peoples that exist and are in the Batam City area, one of which is the existence of Indigenous Peoples Land Rights at several points in Kampung Tua that exist and are in the Batam City area, Riau Archipelago Province.

Relevant to the explanation above, in the following an explanation will be presented, namely regarding the problems with protecting the Rights of Indigenous Peoples. In this regard, it is stated that the use of the terms indigenous peoples and indigenous peoples is still the subject of discussion among environmentalists and human rights activists. The absence of recognition of indigenous peoples has resulted in the confiscation of customary law community land rights. Academically and scientifically, the term indigenous peoples has actually been used for a long time. This means that the term indigenous peoples has actually been recognized in the constitution as stated explicitly and explicitly in Law Number 39 of 1999 concerning Human Rights, State Gazette of the Republic of Indonesia of 1999 Number 165, Supplement to the State Gazette of the Republic of Indonesia Number 3886, which in Article 6 Paragraph (1) and Paragraph (2). Related to this, in fact there are also those who use the term indigenous peoples, namely for example the Alliance of Indigenous Peoples of the Archipelago (AMAN) who argue that not all indigenous peoples have laws, but they have customs that have been carried out for generations so that it is feared if they use the term legal community customary then only indigenous peoples have the law, so they think (https://www.aman.or.id/).

In connection with the matters mentioned in the section above, furthermore in this section it is explained that it is specifically related to the basic rights which are the rights of these customary law communities. In this context, indigenous peoples actually have the same rights as other communities, it's just that indigenous peoples have their own specificities. For example, if a customary law community owns a plot and/or several stretches of land rights, then the customary community also owns it, but in practice the concept is different from the communal rights. Therefore, constitutionally, especially in the eyes of the law, that the State/Government enforces it must be the same. This means that the rights of customary law communities must be recognized, respected and protected by the State/Government, namely in the dimension of constitutionalism on an ongoing basis (sustainability).

It is still related to the obstacle factor as mentioned in the section above, that the majority of indigenous and tribal peoples in Indonesia have not reclaimed their lands. In this case, there are administrative requirements that must be prepared and fulfilled in advance, such as the mandatory Regional Regulation (Perda) and/or other regional legal products, and this will actually become a factor of obstacles/obstacles in terms of returning Law Community Land Rights. the custom. Relevant to this, there are many concrete examples that can be put forward, namely how vast the expanse of Land Rights of Indigenous Peoples is, especially those that exist and are found around certain forest areas. Likewise in the field there are still stacked problems that occur, namely one of which is that there are still many maps of land parcels that overlap between the Land Rights of Indigenous Peoples and land that is directly under supervision/controlled by the State. Currently, on an existing basis, only 30,000 hectares have been returned and recognized as customary community forest. In fact, this is only a very small area of the target of 4,500,000 hectares which must be returned by the State/Government to become forest with customary law community rights (https://www.komnasham.go.id/index).

With regard to the above, how difficult (Komnas HAM National Inquiry Team, 2016) is the difficulty of the processes and procedures that must be followed by indigenous peoples so that their rights can be recognized constitutionally by the State/Government. The dominant causative factor is none other than allegedly caused by the constraints of the political and economic dimensions. In this case, there are not a few customary territories whose designations have changed hands to large private plantation companies. Of course in this case, the State/Government has issued permanent land status, namely by issuing a Certificate of Cultivation Rights (SHGU) to the right holders, and/or has issued Forest Tenure Rights (HPH) to certain parties, either individually or collectively. corporation. The situation on the ground that is happening is increasingly complicated and troublesome for indigenous peoples, namely (Idham, 2015) there are frequent occurrences of transactional politics, where several Regional Heads in certain Regencies/Cities seek personal gain, for the existence of land status Certificates of Cultivation Rights (SHGU), and along with all kinds/types of related licensing matters.

Meanwhile, it was explained that existing in the field, there have actually been thousands of conflict disputes over land/land of customary law communities, and this has occurred due to the absence of recognition of the territory of indigenous peoples from the State/Government. In line with this, there are still administrative processes and implementation that are very difficult, and settlement efforts made by the State/Government to resolve these various conflicts have not been carried out in a focused, serious, thorough, comprehensive manner starting from planning, implementation, supervision , monitoring and evaluation on an ongoing basis. With conditions and situations like this, especially in the dimension of upholding the principle of people's sovereignty, and Indonesia as a rule of law, it is very feared that there will be permanent and sustainable violations of human rights (HAM). In this regard, for an urgent time the State/Government must immediately prepare the availability of comprehensively integrated data on the existence and status of the Land Rights of the Customary Law Community which is connected/integrated in a system with the data center, One Data in the Republic of Indonesia's National Big Data (https://www. Hukumonline.com/stories/article).

c. Solution/Settlement

In this section an explanation will be presented regarding the form and/or construction of a solution design for efforts that must be carried out by the State/Government to (Soelistyowati, et al, 2022) provide protection for the existence of Indigenous Peoples' Land Rights, in the Dimension of sustainable constitutionalism (sustainability). . Follow-up solutions and/or settlements, indeed in terms of the legal political paradigm ecosystem, in the author's opinion should be emphasized, namely by prioritizing the mandate and orders as stated in the Constitution of the State and nation of Indonesia, which must rely on the provisions that have been regulated and stipulated in in the 1945 Constitution of the Republic of Indonesia. This is a fundamental thing that must be immediately implemented by the State/Government, whose main objective is to reinforce the notion of people's sovereignty, confirm that the State of Indonesia is a constitutional state, and at

the same time to uphold the notion of the economy Nationalism and Social Welfare, and this is the core and/or peak of responsibility for the dimensions of constitutionalism and constitutionalism in a sustainable manner for the nation and state of Indonesia, which we all love very much.

Relevant to the explanation above, as a form of solution and/or resolution that must be immediately implemented by the State/Government, in an effort to protect the existence of customary law community land rights, in essence, it must be focused and serious to implement concretely. on several things that are paradigmatic, namely: -affirming the message of people's suffering and the ideals of independence as already emphasized in the construction of the four main ideas in the Preamble to the 1945 Constitution of the Republic of Indonesia; -Strengthening the notion of people's sovereignty and Indonesia as a rule of law state. This has actually been ordered as meant in Article 1 Paragraph (2) and Paragraph (3) of the 1945 Constitution of the Republic of Indonesia; -Strengthening the understanding of the National Economy and Social Welfare, namely based on the mandate and orders of Article 33 of the 1945 Constitution of the Republic of Indonesia; and - at the same time strengthening national identity and grounded mutual cooperation both physically and mentally.

In connection with the matters referred to in the section above, especially in terms of carrying out the form of solutions and/or settlement of efforts that must be carried out by the relevant State/Government to protect the existence/existence of the Customary Law Community Land Rights, which are integrated in carrying out actions completion in a concrete, practical operational manner in the field, that the State/Government in the shortest possible time immediately prepare valid, accurate and comprehensive data on the existence of Indigenous Peoples' Land Rights spread over thousands of points across Regencies/Cities, Provinces within the territory The Unitary State of the Republic of Indonesia. This comprehensive data (Sentot Bangun Widoyono, 2019), henceforth must be interwoven and/or integrated in a system through sophisticated digital technology infrastructure in Information and Communication Technology (ICT) systems and must also be connected in an integrated manner in an integrated system in One Indonesian data and/or systemically integrated into National Big Data, based on Presidential Regulation Number 39 of 2019 concerning One Indonesian Data, State Gazette of 2019 Number 112. Other important matters, especially in terms of implementing all forms of solution and/or resolution actions meant, that the State/Government must manifest it in a serious and focused manner, namely by permanently and continuously applying the theory of the well-known law of happiness (utilitarianism) from the construction of Jeremy Bentham's thought.

4. CONCLUSSION

In this concluding section, the time has come to present conclusions and suggestions at the same time from all the analytical and/or explanatory constructs as presented by the author in the section above, which conclusions and suggestions are further presented in the following section.

1. Regarding the format and construction of legal arrangements and/or the construction of legal norms that must be carried out by all institutions and/or parties with the authority to carry out the formation of laws and regulations (law making process) in terms of carrying out efforts to protect the existence of Community Land Rights These Customary Laws, especially in the dimension of sustainable constitutionalism, especially for the State/Government must implement a legal political paradigm ecosystem, one of the most important and fundamental of which is: -Strengthening the notion of people's sovereignty and Indonesia as a rule of law. This has actually been ordered as meant in Article 1 Paragraph (2) and Paragraph (3) of the 1945 Constitution of the Republic of Indonesia; -Strengthening the understanding of the National Economy and Social Welfare, namely based on the mandate and orders of Article 33 of the 1945 Constitution of the Republic of Indonesia; and - at the same time strengthening national identity and mutual cooperation that is grounded and inner. In its embodiment, it is suggested that all these parties must apply concretely and factually and earnestly, namely the living law theory by Eugen Ehrlich.

2. Specifically regarding the implementation of the Land Rights of Indigenous Peoples, especially in a constitutional paradigmatic approach, in essence the State/Government must carry it out based on constitutional mandates and orders and constitutionalism based on the 1945 Constitution of the Republic of Indonesia, and operationally paradigmatically it must be based provisions of Law Number 5 of 1960 concerning Basic Agrarian Regulations, State Gazette of 1960 Number 104, Supplement to State Gazette 2043. In line with the matter intended, especially in its implementation/implementation it must be based on the ecosystem of legal political paradigm in a focused and serious manner really, sincerely and spiritually and continuously as mentioned in number 1 above. In this context, especially in terms of facing various obstacles and solutions, the State/Government is advised to immediately prepare data that is accurate, valid and unified and integrated and systemically interwoven through sophisticated technological infrastructure in a digital perspective into One Data Indonesia which is National Big Data regarding the existence of Indigenous Peoples' Land Rights. In terms of its realization, the State/Government must apply the legal theory of structural functionalism by Talcott Parsons and at the same time apply the theory of the law of happiness (utilitarianism) by Jeremy Bentham.

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