

## Pemulihan hutan adat sebagai hak ulayat pasca putusan mahkamah konstitusi Nomor 35/PUU-X/2012 = recovery of indigenous forest as communal rights a post verdict constitutional court Number 35/PUU-X/2012

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### Abstrak

[<b>ABSTRAK</b><br>

Penulisan tesis ini berangkat dari Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012 terkait uji materi beberapa pasal dalam Undang-Undang Nomor 41 Tahun 1999 tentang Kehutanan karena dianggap bertentangan dengan ketentuan ketetapan yang ada dalam UUD Negara Republik Indonesia Tahun 1945. Salah satu putusan penting Mahkamah Konstitusi adalah mengubah Pasal 1 angka 6 dengan menghapus kata 'negara' sehingga menjadi 'hutan adat adalah hutan yang berada dalam wilayah masyarakat hukum adat'. Dengan putusan Mahkamah Konstitusi tersebut, status hutan adat dipulihkan kembali menjadi salah satu obyek hak ulayat dalam wilayah masyarakat hukum adat. Dengan banyaknya pengakuan atau klaim dari masyarakat hukum adat atas hutan adat, maka diperlukan analisis mengenai pemulihan hutan adat sebagai hak ulayat pasca Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012, khususnya terkait kriteria kepemilikan hutan adat sebagai hak ulayat dalam konsep negara kesatuan, status kepemilikan atas tanah dan izin pada hutan adat serta mekanisme dan peran pemerintah dalam rangka pemulihan hutan adat sebagai hak ulayat. Metodologi yang digunakan yaitu studi normatif dan empiris dengan model deskriptif kualitatif. Hasil penelitian memperlihatkan bahwa untuk membuktikan kepemilikan hutan adat sebagai hak ulayat masyarakat hukum adat diperlukan penelitian terhadap keberlangsungan penguasaan dan penggunaan hutan adat baik sebagai tempat tinggal maupun tempat memenuhi kebutuhan hidup sehari-hari dan tidak hanya sekedar pengakuan atau klaim semata. Hasil penelitian tersebut merupakan salah satu dasar pengakuan masyarakat hukum adat dan hak ulayatnya oleh Pemerintah Daerah melalui Peraturan Daerah, dan selanjutnya menjadi rujukan bagi Pemerintah Pusat untuk menetapkan hutan adat sebagai hak ulayat masyarakat hukum adat. Dengan penetapan hutan adat sebagai hak ulayat tidak ternyata menghapus hak-hak pihak lain atas tanah maupun izin yang diperoleh sebelum penetapan hutan adat. Kesimpulan penting dari hasil analisis yaitu penetapan hutan adat sebagai hak ulayat harus sesuai prinsip-prinsip negara kesatuan dengan batasan-batasan yang telah ditentukan baik dalam UU Kehutanan maupun UU tentang Peraturan Dasar Pokok-pokok Agraria.

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This thesis departs from the decision of the Constitutional Court number

35/PUU-X/2012 related judicial test several articles in Law No. 41 of 1999 on Forestry because it is contrary to the provisions contained in the Constitution of the Republic of Indonesia in 1945. With the decision of the Constitutional Court, the status of indigenous forests restored into one of the objects within the jurisdiction of communal rights of indigenous peoples. With so many confessions or claims of indigenous people on indigenous forests, it would require an analysis of the recovery of the communal rights of indigenous forest after the Constitutional Court decision number 35/PUU-X/2012, particularly related to the ownership criteria as communal rights of indigenous forest in the concept of the unitary state, status of land ownership and permissions on indigenous forests and the mechanisms and the role of government in order to recovery the communal rights of indigenous forest. The methodology used is normative study with qualitative descriptive models. The results of the study showed that to prove ownership of indigenous forests as communal rights of indigenous people needed research on the sustainability of communal tenure and forest use either as a residence or a place to meet the needs of everyday life and not just a mere acknowledgment or claim. The results of these studies is one of the basic recognition of customary laws and communal rights by local governments through local legislation, and subsequently became a reference for the central government to establish communal rights of indigenous forest as indigenous peoples. The determination of customary rights of indigenous forest as it turns out doesn't remove the rights of other to land and permission obtained before the establishment of indigenous forests. Important conclusion from the analysis is the determination of the communal rights of indigenous forest should be according to the principles of the unitary state with the limits specified either in the forestry laws and regulation laws on agrarian basis points.;

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