

Dimensi maritim dalam model pengakuan konstiusional masyarakat adat di indonesia pasca reformasi (dekonstruksi konsep masyarakat adat dan prinsip NKRI dalam Pasal 18B Ayat (2) UUD NRI 1945) =
Maritime dimension in the constitutional recognition model of the indigenous peoples in post-reformation Indonesia (deconstruction of the indigenous peoples concept and the NKRI principles in article 18B (2) of the 1945 Constitution of the Republic of Indonesia) / Arasy Pradana A Azis

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Abstrak

Pasal 18B ayat (2) UUD NRI 1945 memuat setidaknya empat elemen pengakuan masyarakat adat, di mana dua diantaranya berkaitan dengan masyarakat adat itu sendiri dan prinsip NKRI sebagai prasyarat pengakuan. Keduanya sejatinya mengandung bias paradigmatik kepada kebudayaan agraris. Konsep masyarakat adat sejak semula diidentikkan dengan hak ulayat atas tanah. Sementara prinsip NKRI mengalami proses ideologisasi oleh Angkatan Darat dan berkontribusi pada penyeragaman masyarakat adat. Oleh karenanya, orientasi maritim ditawarkan untuk mendekonstruksi bias-bias terrestrial tersebut. Penelitian ini kemudian disusun sebagai penelitian normatif, dengan pendekatan sosio-legal, perundang-undangan, konseptual, sejarah, dan perbandingan. Dekonstruksi diajukan sebagai metode interpretasi utama, selain historis, sosiologis, dan sistematis. Diperoleh simpulan bahwa: 1) terdapat tiga model umum dalam pengakuan konstiusional masyarakat adat di Indonesia: implisit-terbatas (UUD 1945), pengakuan melalui pranata-pranata adat (Konstitusi RIS dan UUD 1950), dan eksplisit-terbatas (UUD NRI 1945); 2) bias terrestrial dalam konsep masyarakat adat berakar dari kelahiran konsep masyarakat adat itu sendiri, dan dipertahankan dalam proses pembentukan UUD NRI 1945. Perlu diingat bahwa terdapat masyarakat adat yang juga hidup di laut. Selain itu, terdapat pula masyarakat adat yang tidak mengenal konsep hak ulayat dan perlu dilindungi hak-hak lainnya; 3) untuk memecah ideologisasi NKRI, negara perlu (1) mengakui kemajemukan sebagai dasar pembentukan bangsa Indonesia, (2) mengakui subyektivitas konstiusional masyarakat adat secara gamblang, (3) mengafirmasi kecakapan masyarakat adat untuk bertindak selayaknya sebuah subyek hukum, dan (4) menjabarkan kategori-kategori hak yang disandang masyarakat adat di Indonesia, termasuk skema perlindungan atas keberlanjutannya.

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Article 18B paragraph (2) of the 1945 Constitution of Indonesia contains at least four elements of recognition of indigenous peoples, while two of it (indigenous people concept and NKRI principle) contain paradigmatic bias towards agrarian culture. The concept of indigenous peoples was originally identified with customary rights to land (hak ulayat). While the principles of the NKRI experienced an ideologization process by the Army and contributed to the uniformity of indigenous peoples. Therefore, a maritime orientation is offered to deconstruct those terrestrial biases. This research was then compiled as a normative study, with a socio-legal, legislative, conceptual, historical, and comparative approach. Deconstruction is proposed as the main method of interpretation, besides historical, sociological, and systematic interpretations. The conclusion is that: 1) there are three general models in the

constitutional recognition of indigenous peoples in Indonesia: implicit-limited (UUD 1945), recognition through customary institutions (RIS Constitution and 1950 Constitution), and explicit-limited (1945 Constitution NRI); 2) terrestrial bias in the concept of indigenous peoples is rooted in the birth of the concept of indigenous peoples themselves, and is maintained in the process of establishing the 1945 Constitution of the Indonesia. It is important to remember that there are indigenous people who also live within the sea. In addition, there are also indigenous people who do not recognize the concept of customary rights and need to be protected by their other categories of rights; 3) to break down the ideology of the NKRI, the state needs to (1) acknowledge pluralism as the basis for the formation of the Indonesian nation, (2) recognize the constitutional subjectivity of indigenous peoples explicitly, (3) affirm the skills of indigenous peoples to act accordingly, the categories of rights held by indigenous peoples in Indonesia, including protection schemes for their sustainability.