

## ARRANGEMENT OF *MUKIM* BOUNDARIES IN ACEH INDONESIA

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### ABSTRACT

*Legal Recognition for indigenous people in Indonesia has been through a rocky and long journey. In the national context, the existence itself has been recognized by the core principles of the state and the 1945's Constitution. As decentralization came up in late 1990s, the provincial government has been giving recognition for drafting their own law and regulations. In the local context of Aceh, there are local laws (Qanun) and regulations which committed and recognized the existences of indigenous people or also be called as customary law community or mukim. One of derivation of this recognition includes the arrangement of territorial boundaries among the customary law communities (mukim's) lives in. Within this context, the arrangement of mukim boundaries has got more opportunities since the amendment of the 1945's Constitution which recognizes the existence of indigenous people. Furthermore, the enactment of Law 11/2006 reaffirmed the recognition of the mukim in Aceh Province. One of the districts that passed the Qanun of mukim is District of West Aceh, which promulgated in Qanun of West Aceh District no. 3/2010 concerning the Government of Mukim. The important thing that has affirmed in this qanun is regarding the boundaries of mukim. This regulation also associated with the other things, including the management of natural resources within the boundary of mukim. To accommodate this problem, it takes model and regulation to arrange the boundaries of mukim. Therefore, the Qanun of mukim, to be expected, becomes operationalize and implementable in the field.*

Keywords: arrangement of boundaries, indigenous people (customary law community), *mukim*

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### Introduction

The existence of indigenous people or customary law community in Indonesia is still being debatable, whether as a concept in general or a concept based on law. Based on legal term, the confirmation and requirements as indigenous people or customary law community is still being in questions. However, according to the 1945's constitution, the existence of indigenous people in Indonesia cannot be separated from two (2) things: Firstly, the existence of indigenous people being recognized, as long as it still alive and in accordance of development of society; secondly, based on the State principles of Unitary Republic of Indonesia.

The very concept itself had been drafted in the Law no. 5/1960 on Agrarian (land ownership) Principles, which confirmed that the rights of indigenous people were recognized and respected, if it was not in contrary to the national interest and the higher regulations. Thus, it might lead to the indecision in practice.<sup>1</sup>

Fauzi (2003) described thus condition as a form of suspicion.<sup>2</sup> Perhaps, it is related to the national development goals, which essentially put the indigenous people as an integral part in it. The national development goals, intrinsically, to fully realize all of Indonesian and its society to achieve condition of fairness and prosperous society, whether materially and spiritually, in accordance of Pancasila and 1945's Constitution.

After the amendment 1945's constitution in the early Reformation period, there are major changes in legal, political and governmental system in Indonesia. The introduction of decentralization since the amendment of 1945's constitution has been shifted the patterns of relationship between the central and regional provinces. It was a dramatic change, since centralized patterns of legal, political, and governance was held in three decades during Soeharto presidency.

Through the amendments, the recognition of indigenous people is expressly stated in Article 18 B (2) of the 1945's Constitution, namely: *"The State recognizes and respects the units of indigenous people with their traditional rights as long as it still alive, and in accordance to the development of society and the State principles of Unitary Republic of Indonesia, which is regulated by the law."*

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<sup>1</sup> Rikardo Simarmata, *Pengakuan Hukum terhadap Masyarakat Adat di Indonesia*, UNDP Regional Centre, Bangkok, 2006, hlm. 4-8.

<sup>2</sup> Noer Fauzi, *Bersaksi untuk Pembaharuan Agraria, dari Tuntutan Lokal hingga Kecenderungan Global*, Penerbit Insist Press, Yogyakarta, 2003, hlm. 86-87.

The recognition of indigenous people in the constitution, as being argued by Sweet (2009), is a circumstance in legal pluralism which not contradicted with the constitutionalism.<sup>3</sup> Despite, the law of the State still dominates in the form of modern law.<sup>4</sup> Regarding the above provisions, the rules must be derived within the legislation and regulations. Therefore, the constitution could be implemented as expected.<sup>5</sup>

The results show several legislations have been issued in relations with the above provision, among others: the Law no. 39/1999 on Human Rights; the Law no. 41/1999 on Forestry; the Law no. 44/1999 on the Special Status of Aceh; the Law no. 21/2001 on Special Autonomy; the Law no. 7/2004 on Water Resources; the Law no. 32/2004 on Regional Government; the Law no. 11/2006 on the Governing of Aceh; the Law no. 32/2009 on the Protection and Environmental Management; etc.<sup>6</sup>

In the context of Aceh, the birth of the Law on Governing Aceh (Law no. 11/2006) further strengthened the position of indigenous people. One of manifestation regarding indigenous people in Aceh is the existence of *mukim*.

There are numbers of articles regarding the *mukim* in the Law no. 11/2006, namely article 98, article 99, and article 114 (1) and (2). One of important clause is *Qanun* no. 4/2003 on the Government of *Mukim* as derivative from Law no. 18/2001 would no longer valid, if there are Districts/Municipalities which enacted their own law (*Qanun*) regarding *mukim* within their territory. In contrary, if a District/Municipal has not have a *Qanun* regarding the *mukim*, then the *Qanun* no. 4/2003 would be in use.

One of the districts that enacted the *Qanun* regarding the government of *mukim* is the District of West Aceh. It is promulgated in the *Qanun* of West Aceh no. 3/2010 regarding the government of *mukim*. This *Qanun* was enacted in June 7, 2010.

The important thing that has affirmed in this *qanun* is regarding the arrangement of *mukim* boundaries. This setting and regulation associated with variety of other things, aside for the government implementation mechanisms, also it includes the natural resources management in *mukim* territory.

## Research Methods

This study focusses on the document study. The main data used are the primary legal material that are legislations related to the Aceh authority. Moreover, some related research results are also used to help explaining problems encountered. This study applies quantitative analysis by descriptive explanation.

## Result and Discussion

### 1. Towards Legal Pluralism

Generally, the purpose of the establishment of the state is to create happiness for its citizens.<sup>7</sup> As stated in the preamble of 1945's Constitution, the goals of the state are to protecting Indonesia as a whole, promoting the general welfare, advancing the intellectual life of the nation, and participating in the establishment of world order.

According to Article 1 the 1945's Constitution, Indonesia is a Unitary State. Mahfud MD (2010) argued that, the concept of unitary state is a constitutional concept which regulated the relationship between central and regional power.<sup>8</sup> According to Article 18B the 1945's Constitution: (1) The State recognizes and respects the local government units which are special and regulated by law; (2) The State recognizes the units of traditional community with all the traditional rights as long as it still alive, and in accordance with the development of society, along with the State principles of Republic of Indonesia which are regulated by the law.

Thus, Indonesia as a State set the law that requires the legal recognition for indigenous people, which in fact is still exist and thriving within society.<sup>9</sup>

In the national context, the terms of "indigenous people as customary law community," at first – formally – appears in article 1 (3) of Supreme Court Regulation no. 5/1999. It is defined as "a group of people who bound by the order of customary law as citizens within a community of law, due to the similarity of dwelling or descents."

<sup>3</sup> Alec Stone Sweet, *Constitutionalism, Legal Pluralism, and International Regimes*, Indiana Journal of Global Legal Studies Vol. 16, 2, 2009 (pp. 621-645).

<sup>4</sup> FX. Adji Samekto, Slamet Haryadi, Oki Hajiansyah Wahab, *Revealing The Myth Of Rule Of Law*, Journal of Law, Policy and Globalization, Vol.21, 2014, (pp. 1-7).

<sup>5</sup> Taqwaddin, "Revitalisasi Pemerintahan *Mukim* di Aceh", *Proceeding Aceh Development International Conference*, International Islamic University, Kuala Lumpur 26 – 28 Maret 2012.

<sup>6</sup> Taqwaddin, *Aspek Hukum Kehutanan dan Masyarakat Hukum Adat di Indonesia*, Intan Cendekia, Yogyakarta, 2011, hlm. 69 – 113.

<sup>7</sup> Miriam Budiardjo, *Dasar-dasar Ilmu Politik Hukum*, Gramedia, Jakarta, 2004, hlm. 45.

<sup>8</sup> See Moh. Mahfud MD, *Konstitusi dan Hukum dalam Kontroversi Isu*, Rajawali Press, Jakarta, 2010, hlm. 212.

<sup>9</sup> For a new state, it is common such conflict exists between local and state norms. See Laura Grenfell, *Legal Pluralism and the Rule of Law in Timor Leste*, Leiden Journal of International Law, 19 (2006), (pp. 305–337).

However, in the global context, the term of indigenous people has been introduced in the Convention of International Labor Organization (ILO) no. 169/1989 concerning the indigenous and tribal peoples, which defined as “tribes who resided in independent countries whom socially, culturally, economically is different from other groups.”

According to Kingsbury (1995), there are four characteristics of the indigenous people, namely: (1) identified themselves as a distinct group; (2) has historical experience in relation to their vulnerability to disruption, dislocation, and exploitation; (3) has a long relationship with the area they live in; (4) willing to maintain a different ideology.<sup>10</sup>

While the forms of indigenous peoples, including: (1) The legal community based on genealogy [patrilineal, matrilineal, parental]; (2) The legal community based on territorial [village communion, fellowship area, village associations]; (3) The legal community based on genealogy and territorial [assimilation, migration/ transmigration].<sup>11</sup>

By relying on those concepts, the recognition of indigenous people cannot be separated from the essence of national development. In the explanation of the Law no. 17/2007 regarding the National Long-term Development Plan for 2005-2025, it is states: “National development is a series of sustainable developments which covering all aspects of society, nation and state, to carry out the task of realizing the national goals as being defined in the preamble of 1945’s Constitution.”

One of manifestation of national goals is the development of law. It was one of the Indonesia’s legal political directions proclaimed after the change of constitutional agenda, which includes: (1) political and legal; (2) economic and business; (3) social welfare and culture; (4) mapping system and apparatus.<sup>12</sup>

The term of law development itself has various definitions, namely: ‘law reform,’ ‘changes in law,’ ‘legal guidance,’ and ‘modernization of law.’ Raharjo (2009) using the term of ‘legal reform.’<sup>13</sup> Wignjosobroto (2007) distinguish the concept of legal reform in the sense of law reform (law as subsystem and serves as a tool of social engineering alone) with legal reform (the law is not only the concern of law enforcement, but also public affairs).<sup>14</sup>

Simply put, the development of the law is part of series of national development, which the goal is referring to the national goals, as defined in the preamble of 1945’s Constitution.

In fact, the development itself is likely controlled by other interests, such as the interest that does not pay attention to the sustainable development.<sup>15</sup> However, with the support of green Constitution, the goals of sustainability would be easier to achieve.<sup>16</sup>

## 2. Mukim: History and Management

The government of *mukim* is very crucial feature in the history of Aceh, which it cannot be separated from the atmosphere of religious life. Particularly, Shafi’i school has been dominant in Aceh. The school requires at least 40 grown up men at noon Friday prayer.<sup>17</sup> Therefore, a mosque has to be established at least in one *mukim*. *Mukim* is a combination of the villages and it is formed of religious character in customary law community. *Mukim* leader is called as *imeum mukim*.<sup>18</sup>

Historically, the development of *mukim* could be divided into seven phases:<sup>19</sup> (1) the government of *Mukim* in 13 Century, was promulgated in *Qanun Syara’* of Sultanate of Aceh, and in 17 Century in the era of Iskandar Muda, it was stated in *Qanun Al*

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<sup>10</sup> B. Kingsbury, “Indigenous People as an International Legal Concept”, in RH. Barnes et al (eds.), *Indigenous Peoples of Asia*, Michigan University Press, 1995, p. 33.

<sup>11</sup> I. Gede AB. Wiranata, *Hukum Adat Indonesia, Perkembangan dari Masa ke Masa*, Penerbit PT. Citra Aditya Bakti, Bandung, 2005, hlm. 112-115.

<sup>12</sup> Imam Syaukani, “Karakteristik Politik Hukum Nasional”, *Jurnal Harmoni*, Vol. 7 No. 8 Tahun 2008, hlm. 57.

<sup>13</sup> Satjipto Rahardjo, *Membangun dan Merombak Hukum Indonesia*, Genta Publishing, Yogyakarta, 2009c, hlm. 15.

<sup>14</sup> Soetandyo Wignjosobroto, “Pembaruan Hukum Masyarakat Indonesia Baru”, dalam Donny Donardono dkk, *Wacana Pembaharuan Hukum di Indonesia*, HuMa, Jakarta, 2007, hlm. 94.

<sup>15</sup> Heriamariaty, *Legal Politics of Mineral and Coal Mining Permission Regulation in Protection Forest Area that Lies on the Conservation and Sustainable Principles in Indonesia*, Academic Research International, Vol. 5 (2), 2-14 (pp. 429-436).

<sup>16</sup> Muhammad Akib & Fathoni, *Learning Environmental Rights, Finding Green Future: The Road To Ecojustice*, *Journal of Law, Policy and Globalization*, Vol.21, 2014 (pp. 28).

<sup>17</sup> Taqwaddin, *Eksistensi Masyarakat Hukum Adat terhadap Penguasaan dan Pengelolaan Hutan Adat dikaitkan dengan Penyelenggaraan Otonomi Khusus di Aceh*, Disertasi, USU, Medan.

<sup>18</sup> Mahdi Syahbandir, *Sejarah Mukim di Aceh*, *Jurnal Kanun* No. 64 Tahun XIV April 2014, hlm. 2.

<sup>19</sup> Taqwaddin, *Kapita Selekta Hukum Adat Aceh*, LKHA, Banda Aceh, 2013, hlm. 18.

Asyi or *Adat Meukuta Alam*;<sup>20</sup> (2) in the Dutch and Japan colonization periods. The position of *mukim* slightly changed, in accordance with the interests of those countries. For such could be seen in 1935, the Dutch colonial power issued the 1935's Ordinance – No. 102 (Article 3 (a) RO), which for the first time acknowledged the existence of customary court;<sup>21</sup> (3) The early independence of Indonesia in 1945. The existence of *mukim* has been recognized and enforced under the provisions of article 11 of the Transitional Provisions of 1945's Constitution. In addition, to maintain the position of *mukim* above the structures of village governments, the Residence of Aceh issued the Residency Regulation no. 2 and no. 5/1946,<sup>22</sup> which according to these regulations, the government of *mukim* was implemented for the entire of Aceh;<sup>23</sup> (4) The New Order (1966-1998). The existence of *mukim* was removed by the Law no. 5/1974 on the principles of provincial administration, and the Law no. 5/1979 on the government of village; (5) In the reformation period (1998-2012). The removal of the Law no. 5/1974 and the Law no. 5/1979. The birth of Law no. 44/1999 on the Special Status of Aceh, which asserted the status of Aceh as special autonomous region by Law no. 18/2001 on Special Autonomy for Special Province of Aceh as Nanggroe Aceh Darussalam. The implementation of the Law contributed to the enactment of *Qanun Aceh* no. 4/2003 on Government of *Mukim*, which recognizes *mukim* as government, administrators and customary law community; (6) in the post-reformation period. There were four times amendment of 1945's Constitution started from 1998 to 2001; (7) Post-Tsunami and after the signed of MoU Helsinki in 2005 gave birth to the Law no. 11/2006 on Governing Aceh, which accommodated the birth of *Qanun Aceh* no. 9/2008, *Qanun Aceh* no. 10/2008 on customary institution, and *Qanun Aceh* no. 3/2009 on Election Procedures of *Imeum Mukim*.

From above explanation, as *de jure*, the position and status of *mukim* and *imeum mukim* was recognized by the law. It can be seen in the position of *mukim* as government institution as stipulated in article 112 (3)(b) of the Law no. 11/2006 concerning the governing of Aceh. It is also affirmed in the article 3 on the *Qanun* no. 3/2009, which has stated, "*Mukim has the task to organize the administration, implementation of development, social development and improvement of the implementation of Shari'a.*"

In addition, there is an explanation which a *mukim* as a unit of legal community, has its own territory, as defined in article 1 (19) of the Law no. 11/2006. However, this regulation seems not confirmedly express in the contents.

If we go back to the concept of indigenous people, the explanation is still vague and could be interpreted in wide range. According to Dahlan & Bathlimus (April 2001), the term of "law community unit" is a definition that has juridical-technical in nature, it is refer to a group of people who live in a residence area (*ulayat/communal*) and in certain circumstances, has a resources and leader in charge of maintaining the interest of group (internally and externally), and has regulations (system) of law and governance.<sup>24</sup>

Based on the concept brought by Van Vollenhaven, T. Djuned (2001) was mentioned that, each customary law communities have the authority of *origins right*, in the form of authority and rights: (1) run the system of self-government; (2) control and maintain the natural resources within its territory, especially for the benefit of its citizens; (3) acting to the inside, to regulate and manage the society and the environment, while to the outside, acting on behalf of customary law community as legal entity; (4) has the right to participate in any transaction related to the environment; (5) has the right to establish the customary rights; and (6) has the right to organize a kind of legal court.<sup>25</sup>

Thus concept has similarities with the explanation of article 67 of the Law no. 41/1999 on Forestry, which confirms that indigenous people or customary law community would be recognized, if, in fact consists the elements of: (1) the society of indigenous people still in the form of community (*rechtsgemeenschap*); (2) there is a institution in the form of customary authorities; (3) there is a clear area/territory of customary law; (4) the existences of legal institutions and legal instruments, particularly related to the customary court, which still be adhered; and (5) Still apply the harvesting activities in the surrounding woods areas to meet the needs of everyday life.

<sup>20</sup> In this function, as if as a mirror, custom and customary law could not be separated from the purpose of regulating life. Faridah Jalil, *Peranan 'Hukum' dalam Menjaga 'Hukum Ada' untuk Kesatuan Masyarakat*, Jurnal Kanun, No. 61 Tahun XIV Desember 2013, hlm. 406.

<sup>21</sup> Sanusi M. Syarif, *Gampong dan Mukim di Aceh, Menuju Rekonstruksi Pasca Tsunami*, Pustaka Latin, Bogor, 2005, hlm. 67.

<sup>22</sup> In this time, Aceh was a residency in Sumatra under the governor of Mr. Teuku Muhammad Hasan based in Medan. In the early independence of the Republic of Indonesia, the territories were divided into eight (8) provinces: West Java, Central Java, East Java, Sumatra, Borneo, Celebes, Moluccas, and Lesser Sunda). S.M. Amin, *Kenang-Kenangan dari Masa Lampau*, Pradya Paramita, Jakarta, 1978, hlm. 40.

<sup>23</sup> Mahdi Syahbandir, *Op. Cit.*

<sup>24</sup> Dahlan dan Bathlimus, "*Hak Masyarakat Hukum Adat Atas Tanah di Propinsi Daerah Istimewa Aceh* ", Jurnal Kanun, No. 28 Tahun X April 2001. In certain fields, the history of custom is different depends on its development process. Emily Kadens, *The Myth of the Customary Law Merchant*, Texas Law Review, 90, 5, 2012 (pp. 1153-1206). Even in certain areas, custom and sharia cannot be separated. Jan Michiel Otto, *Rule of Law, Adat Law and Sharia: 1901, 2001, and Monitoring the Next Phase*, Hague Journal on the Rule of Law, 1: 15–20, 2009.

<sup>25</sup> T. Mohd Djuned, *Kesiapan Sumberdaya Mukim dalam Mengemban Amanat UU No. 18 Tahun 2001, Makalah Diskusi Lembaga Mukim Dulu, Sekarang, dan Masa Akan Datang*, LSM PUGAR, Banda Aceh, 3 Mei 2003.

Therefore, referring to the authority of *origins right* as argued by T. Djuned (2001), as well as the explanation of article 67 on the Law no. 41/1999 above, it can be understood that the *mukim* of Aceh is a form of customary law community, because the six requirements above can be found within the *mukim* institution in Aceh.

As the implications of this position, the number of natural resources lies within the *mukim* territory automatically considered as the wealth of *mukim*, as well as the resources that further be controlled and ruled by the *mukim* in the future, such as forests, soil, water rod, estuary, lake, sea, mountains, marshes, swamps, and others which also be called as *ulayat mukim*.

However in fact, in the other areas, the collaboration between government and indigenous people is difficult to be formed in managing such wealth and property.<sup>26</sup>

### 3. The Arrangement of *Mukim* Boundaries

The Article 2 of the Law no. 11/2006 on Governing of Aceh, has affirmed the *mukim* – juridically – as one level of institution in the Government of Aceh. In juridical concept, *mukim* is a unit of customary law community under sub-district (*Kecamatan*) that consists of several *gampong* (village) which have certain boundaries led by *imeum mukim* or the other name, and legally put under the sub-district administration (in the article 1 (19) of Law no. 11/2006).

As explained before, *Mukim* has been put in two forms: *First*, in the article 98 (3)(b) on the Law no. 11/2006, mentions that *imeum mukim* as one of the traditional institution (the institution, functioning and acting as media of public participation in governing Aceh along with district/municipal in the areas of security, peace, harmony, and public order (article 98 (1)), as well as the settlement of social issues through customary/traditional institutions (article 98 (2)). The executorial *Qanun* as derivation from this Law in accordance with the article 98 (4) was enacted in the form of *Qanun* Aceh no. 10/2008.

*Second*, the regulation in the article 114 (1) and (2) on the Law no. 11/2006, which has stated the rules concerning the formation of *mukim* consisting of several villages which led by *imeum mukim* as organizer and being helped by *tuha peut mukim* or by the other names. These provisions gave birth to two mandates to formed *Qanun* of district/municipal on institution, duties, functions, and apparatus of *mukim* (article 114 (4)), and *Qanun* regarding the election procedures for *imeum mukim* (article 114 (5)).

As the implications of these provisions, one of the district in Aceh namely West Aceh (Kabupaten Aceh Barat), had enacted the *Qanun* of District regarding the Government of *Mukim*. This *qanun* was promulgated on June 7, 2010.

Related to this study, there are two important features that necessary to be explained, which are: the issues of wealth of *mukim* (*ulayat mukim*) and the boundaries. Article 1 (8) on the *Qanun* of West Aceh no. 3/2010 mentioned that “*the wealth of mukim is the wealth controlled by Mukim or by other names, and have not be submitted to gampong (village), as well as other legal sources of income.*” Whereas, article 1 (10) states that, “*tanah ulayat (communal land) is the land within the territory of mukim and regulated by customary law.*”

Moreover, in the article 7 (1)(j) describes one of the duties and obligations of *Imuem mukim* is to foster and promote the economy and welfare of the community, also maintain and preserve the ecological functions of environment and natural resources.

The mechanisms to achieved this success being asserted in article 21 (1) which has stated, wherein the *mukim* wealth (*ulayat mukim*), or which then ruled by *mukim*, such as forests, soil, water rod, estuary, lake, sea, mountains, marshes, swamps, and others would become the *ulayat mukim*, as long as have not contradicted with other higher law and regulations.

Article 21 (2) has stated that, the types of *mukim's wealth* have to be inventoried and registered, and the utilization have to be governed by *Bupati* (Regent) based on consensus or agreement in the *Mukim's* council. The wealth itself would be one of revenue for *mukim* (article 22 (1)).

This *Qanun* also confirmed the *mukim's* sources of incomes, either taxes or retribution that had been collected by the District government, and there should not be additional charges from the *mukim*. The District government can distribute the part of income proportionally, decent and fair, which later on regulated by Regent Decree (*Peraturan Bupati*) (article 25).

The *mukim* wealth (*ulayat mukim*) itself associated with the boundary of the *mukim*. Article 18 defined: “*the alteration of mukim's boundaries can be arranges through the agreement of mukim council and the other mukims which in directly adjacent.*” And this alteration of *mukim* boundaries regulated by separated *Qanun* District. Therefore, this *Qanun* has not provided the regulations regarding the arrangement of *mukim* boundary.

Indeed, *Qanun* on *Mukim* (*Qanun* No. 4/2003), *Qanun* on District/Municipalities (*Qanun* no. 2/2003), and the *Qanun* on *Gampong* (village) (*Qanun* no. 5/2003), have mentioned that the coverage of *mukim* is the combination of several *gampongs*. In the explanation of *Qanun* on *mukim*, every *mukim* respectively has own borders, which is marked by natural boundaries (*krueng* (river), *alue* (water rod), *teureubeng* (cliff), *glee* (mountain), etc. These borders should be certificated (must be formulated in writing), so the boundaries of *mukim* would be obvious in fact and legally, and can be used as a guide for the future generations.

<sup>26</sup> Ahmad Maryudi & Max Krott, Local Struggle for Accessing State Forest Property in a Montane Forest Village in Java, Indonesia, Journal of Sustainable Development; Vol. 5, No. 7; 2012 (62-68).

The border of *mukim* is the outer lines of *gampongs* which belong to a *mukim* which directly adjacent with the other *mukims*.<sup>27</sup> This term of border referring to the article 2 on the Law no. 11/2006 on Governing Aceh, which Province of Aceh divided into Districts/ Municipalities, each District/ Municipalities divided into Sub-Districts, Sub-Districts divided into *Mukims*, *Mukim* divided into *gampongs*.

The boundaries of *mukim* set into a map, and promulgated within *Qanun* of District/ Municipality as an integral attachment, along with the formation of *mukims*. The territorial map has to be created by *cartometric* mechanism, using scale and coordinates point, along with consideration towards natural characteristic and local wisdom. It is necessary to avoid the territorial dispute, including the clarity of assets and potencies in the area around the borderline.

In accordance of *Qanun mukim* (*Qanun* no. 4/2003), the alteration of *mukim* boundaries can be made through the consensus of *mukims*, and the changes itself promulgated with *keputusan Bupati/Walikota* (Regent/ Mayor Decree).

From the aspect of demography, in the Law no. 6/2014 regarding the Government of Village, it is requires in minimum 4,000 peoples (800 head of family) for one village in Sumatera. It is fantastic, since previously through Minister of Interior Decree no. 28/2006 was stated that, the village in Sumatera could be candidate for the expansion only if to have a minimum 1,000 people (200 head of family). Thus, if within one *mukim* consists two *gampongs*, so there would be 8,000 peoples in minimum, it is fantastic figure which difficult to achieve in Aceh.

Regarding the *mukim* that have territorial disputes, there are two mechanisms of settlement within the concept of *mukim*: *Firstly*, the concept of settlement by following the regulation from higher hierarchy, as stated by Minister of Interior Decree no. 76/2012 on Confirmation of Territorial Borders. *Secondly*, by settlement from below hierarchy as being defined in Minister of Interior Decree no. 27/2006 regarding the Boundaries of Village. The second option should be easier, if the numbers of village that included in one *mukim* has already confirmed. Therefore, the boundaries of *mukim* have to be determined by village borders within the *mukim* itself.

Meanwhile, related to demarcation of *mukim*, the process is conducted by a team led by *Bupati/Walikota* (Regent/Mayor) or their Vices, Secretary of District (or vice), which consists each members of: (1) Assistant in charge of governmental affairs; (2) The Head of Section in charge of administration; (3) The Head of Legal Department and the Head of Departments in charge with local development planning; (4) The Head of National Land Agency; and (5) Officials that related to the issue (article 19).

The process is carried out through a series of steps, starting from forming the Confirmation of Territorial Borders (CTB) team. And the team leader can assign his vice and/or member of the team or appointed or assigned official to attend the activity to confirm the territorial border. Vice-leader and/or members or appointed or assigned official has authority and responsibility to sign each stages of activities related to the confirmation of territorial borders (article 21).

While in Minister of Interior Decree no. 27/2006, has mentioned that the village is a unit of legal community that has boundaries with the authority to regulate and manage the interests of society, based on the origin and customs that are recognized by the State.

#### 4. Problems of Boundaries Arrangement

In the life of nation, the legal recognition of customary law community could create dilemma for the state. In one hand, customary law community is seen as threatening the unity of the state, because the spirit of pluralism to be put in front to do a legal thing. On the other hand, by the strict requirements of the concept of recognition and have to be consistent with the fact in the field, the existence of customary law community is not contradicted with the national interest, in line with the States principles of Republic of Indonesia, and regulated by the Law.

Thus impression could also be captured in the life of heterogeneous countries. With the most of system of law descended from the former colonial law. Three basic legal concepts have to be considered as part of it, namely, *indigenous law*, *imported law*, and *development law*. The principles have to be based on *community*, *market* and *command*.<sup>28</sup>

By leaning to the living law, the reality of the law itself cannot be ignored. Law which lives within society could be binds the people, because it comes from religious values, traditions, and beliefs.

Therefore, the diversity of values and customs should reinforce the spirit to strengthen the legal concept of nation in accordance with Indonesia legal paradigm.<sup>29</sup> This paradigm describes and explains legal life could not be separated from *Pancasila* and 1945's Constitution.<sup>30</sup>

<sup>27</sup> In the concept based on local wisdom, forest that belong to *mukim* measured by indicator of “*siuroe jak*” or “*Sehari pergi*”. This concept have to elaborated based on the present context, given the various development that could increasingly debatable, such as the “limit” that can be reached in one day travels.

<sup>28</sup> Nobuyuki Yasuda, “Law and Development from the Southeast Asian Perspective: Methodology, History, and Paradigm Change”, in Christoph Antons (Ed.), *Law and Development in East and Southeast Asia*, Routledge Curzon, London, 2005, p. 25-67.

By such paradigm, the recognition of customary law community can be a force for developmental concept in a broad sense. Customary law community that being recognized by such requirements, based on Indonesian legal paradigm, may increase the awareness of the spirit on nationhood.

By referring to the *Qanun* of West Aceh regarding the government of *mukim*, there would be one thing to assert regarding the boundaries of *mukim* that has to be implemented by *Peraturan Bupati* (Regent Decree). In *Qanun* of West Aceh it is determine that the arrangement of *mukim*'s boundaries can be done in conjunction along with the inventoried and registration of *mukim* assets.

By that assumption, two questions would be comes up: *Firstly*, if *Mukim* has to be interpreted only in the context of customary institution, is it *mukim* could manage the natural resources? *Secondly*, how the extent of *Imuem mukim* actually realized his position not only merely limited as customary institution? So when he doing his activities, he thoroughly knew his authority, thereby understand what should be fought of?

From these two important questions, to be expected, there would be appeared the understanding of *mukim* on the importance of regulation on co-ownership and collaboration in natural resources management. This regulation should be an answer for the expectations of welfare in one hand, and sustainability assurance in the other hand.

Thus concept of regulation and arrangement, have to concretize the *mukim* rights and responsibilities in the management, utilization, and preservation of natural resources in the *mukim* level.

However, such concept would not without challenges. Empowering governance in the *mukim* level should be done. In the derivation of regulation, several features have to be accommodated, such as *mukim* boundaries and inventory assets of *mukim*.

## Conclusion

On the basis of the explanation, it can be conclude that the legal recognition of customary law community in Indonesia has not so much developed within four (4) periods of national development. The development of recognition on customary law community requires the condition of community to be alive and thrive. In their existence, it should in line with the State principles of Indonesia and regulated by the Law.

With the development of legal recognition for customary law community in Indonesia, it should not be doubted, as the Constitution itself has recognized its existence. Even with the concept in reinforcing the spirit of Indonesian law paradigm based on Pancasila and the 1945's Constitution, it should further have empowered the spirit and awareness of customary law community to be in the life of nationhood.

Since the reformation era, several laws and regulations have been issued by the government to regulate the Government of *mukim* in Aceh, ranging from the Law no. 44/1999, the Law no. 18/2001, and the Law no. 11/2006. Especially, the Law no. 18/2001 became the basis for the formulation of *Qanun* Aceh no. 4/2003 on Government of *Mukim*.

After the enactment of the Law no. 11/2006, the position of *mukim* has to be regulated/ derived to *Qanun* of District/Municipal. The District of West Aceh is the only one that already enacted the *Qanun* of *mukim*. Thus, several things that should be regulated in relations with the government of *mukim* in district have been promulgated.

Based on the *Qanun*, it is necessary to followed up with *peraturan bupati* (Regent Decree) to answers various enforcements belong to the Government of *mukim*. By this offered arrangement and model, it is expected, that *Qanun* of *mukim* could become operationalize and implementable in the field.

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<sup>29</sup> Paradigm is "... universally recognized scientific achievements that for a time provide model problems and solutions to a community of practitioners. Thomas Kuhn, *The Structure of Scientific Revolution*, Chicago University Press, Chicago, 1970, hlm. viii.

<sup>30</sup> Soetandyo Wignjosoebroto, "Permasalahan Paradigma dalam Ilmu Hukum", Makalah Simposium Nasional Paradigma dalam Ilmu Hukum Indonesia, PDIH Undip, 10 Februari 1998.

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