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Acknowledgment of Adat Law-Based Tenure in the Courtroom: Study of Decisions on Criminal Acts of Land Clearing by Burning, Logging Trees Without Permits, and Collecting Plantation Products Without Permits

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Abstract: The recognition of the existence of adat communities and their rights can not only be found in the constitution but also various regional laws and regulations. However, this recognition is counterproductive because it further distances adat communities from their rights, especially tenure rights based on adat law. The diverse and minimal understanding of adat law by executives and law enforcement officials compound this condition. Sometimes, adat communities must face the law because they are suspected of committing criminal acts violating it. Therefore, this research aimed to examine the recognition of adat communities' tenure rights in the courtroom. This research is normative legal research using a case approach—four court decisions as the primary data. The results of this study indicated that in deciding cases, there are times when judges recognize how adat communities control and utilize natural resources according to their adat law. However, there are times when judges override the narrative of adat law that adat communities claim. This research also showed that adat law narratives can play a role in freeing adat communities from punishment.

Keywords: Adat law, adat communities, criminal crime, tenure rights

INTRODUCTION

There is no doubt about the state's work in recognizing the existence of indigenous and tribal peoples through the issuance of laws and regulations. At the law level, from 1960-2017 there were 33 laws related and/or related to the recognition and protection of adat communities and their customary rights, as well as three special autonomy laws (Warman, nd; Zakaria 2018). Then, at the regional level there were at least 191 legal products issued since the end of the New Order regime until the end of 2016 (Arizona, Malik, and Ishimara 2017; Mainline 2020). Since the decision of the Constitutional Court Number 35 of 2012, there have been 53 regional regulations and decrees regarding the recognition of adat communities (Utama 2020). In addition, after Law no. 6 of 2014 concerning Villages up to 2016, there were 133 traditional villages determined by the local government. The most determination of traditional villages is in Rokan Hulu Regency for 89 traditional villages (Rokan Hulu District Regulation No. 1 of 2015), followed by Siak Regency for 8 traditional villages (Siak Regency Regional Regulation No. 2 of 2015), and 36 traditional villages in the

District Jayapura (Jayapura District Head Decree No. 320/2014). This number is certainly increasing over time.

Regulating the existence of adat communities and their rights in various sectoral laws and regional regulations is considered counterproductive or according to Bedner and van Huis (2008) does not produce significant results. According to Simarmata (2004), the conditional and layered style of recognition of adat communities (established by regional regulations) instead of giving basic freedoms to adat communities, but determines boundaries. Moreover, Utama (2020) described the recognition of adat community which has implications for fulfilling tenure rights is like waiting for Godot – in the story, Godot never appears. This is because there is a tendency for recognition to be subject-oriented only, so recognition of their rights is barren. Recognition of adat community as legal subjects does not necessarily result in recognition of their customary rights (Claudia 2013; Prime 2020). Even legal recognition for the existence of subjects and rights is not enough, access is still needed to enjoy the benefits (Ribot and Peluso 2003; Sari 2020).

The recognition of adat communities and their rights in the regulations described in the previous explanation is not aligned and does not support each other. Moreover, the fulfillment and protection of customary land rights for indigenous and tribal peoples is still far from being successful and is predicted to become increasingly difficult in the future (Bedner and Arizona, 2019). Given the social and political realities in Indonesia that are still problematic in protecting adat communities from land grabbing. It is important to explore, how is the recognition of adat communities and their customary rights in the courtroom. This can be known through a study of court decisions. According to experts, adat law can be found in judges' decisions (Ter Haar, 1979; Soepomo, 2000). Today, it is very difficult to strictly distinguish between adat law and state law, because they are intertwined and there is too much overlap between the two (Irianto, 2012).

There are several studies of court decisions related to disputes involving adat communities and/or panels of judges based on adat law in their legal considerations. Utama & Aristya (2015) found that the practice of civil justice accommodates the principles of adat law in the dispute resolution process, such as the principle of light in deciding cases of gender reassignment. Furthermore, research conducted by Pradhani (2020) reported that judges use the perspective of western legal thought in making discoveries of adat law based on jurisprudence, doctrine, and the concept of adat law to measure the validity of a legal action. Then, a study conducted by Hakim & Pradhani (2021) regarding the application of a formalistic approach in finding adat law by judges in disputes over Customary Land Certificates (*Surat Keterangan Tanah Adat*/SKTA) in Central Kalimantan showed that adat law studies can no longer be separated from state law order, because judges in the court room makes discoveries of adat law through statutory regulations.

The application of positivism and formalism approaches in the discovery of adat law by judges in the courtroom makes it easier for judges to apply adat law in concrete cases. However, this approach distances the development of adat law from its empirical reality because judges focus on finding compatibility of cases with existing concepts, doctrines and jurisprudence (Pradhani, 2020; Hakim & Pradhani, 2021). Another court decision study conducted by Sari, et. al. (2021) produced varied findings. Judges use state legal measures (statutes), for example to show the release or transfer of customary rights to clan land through a statement of renunciation of customary land rights (*surat pernyataan pelepasan hak atas tanah adat*) issued by the adat authority as documentary evidence. This requirement at the same time shows that judges also make empirical discoveries on adat law, because they have accommodated letters issued by customary authorities as evidence in court. Then, the judge also did not require that there be a regional regulation that recognizes the parties as indigenous and tribal peoples in Papua. Court decisions like this show that the courts can actually be an alternative route for efforts to recognize adat communities' tenure.

This research is about the study of court decisions, but focused on court decisions that try criminal cases regarding actions that are prohibited by law because they threaten the sustainability and availability of natural resources and the environment. For example, land clearing by burning which is prohibited by Law no. 32/2009 concerning the Protection and Management of the Environment (Environmental Protection and Management Act Law), logging of trees in forest areas without a permit as stipulated in Law no. 18/2013 concerning Prevention and Eradication of Forest Destruction (P3H Law), and harvesting plantation products without permits which are prohibited by Law no. 39/2014 on Plantations (Plantation Law) and the Criminal Code (version before 2023). This research focused on exploring the following two things: (1) what are the judges' considerations in deciding the criminal case being studied; and (2) what is the role of adat law-based tenure narratives in influencing judge decisions?

METHODS

This research is normative legal research using a case approach. The normative method, or according to Soetandyo Wignyosoebroto, is called the doctrinal method, while others call it the dogmatic method (*Rechtsdogmatiek*), which compliance can be enforced by using the tools of state power (normative), taking part in the world of obligations (*das Sollen*), and the product is also moral (Sidharta, 2011). The case approach was used to reveal the legal reasons used by judges to arrive at their decisions (Marzuki, 2005).

This study aimed to explore the considerations of judges in deciding criminal cases under study, whether judges accommodated adat law and the existence of adat law communities or not. Then, to find the role of adat law-based tenure narratives in influencing judge decisions. Decisions of courts that try criminal cases related to tenure of indigenous

and tribal peoples are the main data in this study. The author conducted a search on the Supreme Court Decision Directory website: https://decian3.mahkamahagung.go.id/. In addition, the author collected relevant court decisions through the National Association of Defenders of Adat Communities (*Perhimpunan Pembela Masyarakat Adat Nusantara*/PPMAN). Based on the author's experience, the second method is more effective and on target than the first method because PPMAN as a team of attorneys has involved several cases involving indigenous and tribal peoples. The obstacle to tracing through the Supreme Court Decision Directory was that the large number of decisions available requires a lot of time and stages of screening of relevant decisions, and sometimes the relevant decision file is not available.

The author analyzed 4 court decisions with the following reasons: (1) there are claims/narratives about adat law communities as legal subjects and control and management of natural resources (tenure) based on adat law; and (2) decisions that try criminal cases regarding land clearing by burning, felling trees in forest areas without a permit, and harvesting plantation products without a permit. The four decisions include: (1) Watansoppeng District Court decision No. 10/Pid.Sus/2018/PN Wns (Sukardi case); (2) Bengkalis District Court decision No. 89/Pid.B/LH/2020/PN Bls (Bongku case); (3) Muara Taweh District Court decision No. 148/Pid.B/LH/2019/PN Mtw (Saprudin case); and (4) Nunukan District Court decision No. 134/Pid.Sus/2021/PN Nnk (Bapuli case). An explanation of these cases is described in the summary of court decisions.

RESULTS AND DISCUSSION

Summary of Court Decisions

Four court decisions are presented to illustrate the dynamics of adat law narratives used by adat communities who are in conflict with the law to claim their actions as part of the tenure system which has been carried out for generations.

The first court decision was the Watansoppeng District Court decision No. 10/Pid.Sus/2018/PN Wns, called the Sukardi case. This ruling tells the story of Sukardi who was tried for cutting down trees in a forest area without a permit. Furthermore, the decision of the Bengkalis District Court No. 89/Pid.B/LH/2020/PN Bls, hereinafter referred to as the Bongku case. The articles charged against Bongku are similar to those in the Sukardi case. The third decision was the decision of the Muara Taweh District Court No. 148/Pid.B/LH/2019/PN Mtw, hereinafter referred to as the Saprudin case. Saprudin was tried in court for allegedly clearing land by burning. The final decision, Nunukan District Court decision No. 134/Pid.Sus/2021/PN Nnk, called the Bapuli case. In this case, apart from Bapuli, there were 3 other members of the Dayak Agabag community who were tried for allegedly stealing oil palm fruit belonging to the company. The three decisions are the other Nunukan Court decisions, which are No. 135/Pid.Sus/2021/PN Nnk (Qualification case),

No. 136/Pid.Sus/2021/PN Nnk (Abetmen case), and No. 137/Pid.Sus/2021/PN Nnk (Sintang case). Because the four cases of Dayak Agabag Community were subject to the same article, the researcher chose 1 decision to be analyzed.

The background in the first case started with Sukardi who started gardening on his family's land in 2014 after he got married. He grows cloves, ginger, lemongrass, galangal, tomatoes and chilies (subsistence crops). Prior to that, his older brother had used the land to grow coffee and bamboo. At least since his father was gardening on the land until he (before it was questioned) there had never been any problems and he had never asked for permission from the government. Nonetheless, what he and his family previously did on the land were known to the village head and residents of Umpungeng Village.

One day in 2017, Sukardi cut down trees because they were hindering the growth of his ginger plants and the wood he made into boards to build a hut near his garden. He did not know that the land he was working on was a protected forest area. As a result of his actions in cutting down the tree, Sukardi was prosecuted for deliberately logging trees in a forest area without having a permit issued by an authorized official as stipulated in Article 12 jo. Article 82 paragraph (1) letter b of Law no. 18/2013 concerning Prevention and Eradication of Forest Destruction (P3H Law). Based on the evidence presented by the public prosecutor and Sukardi's legal counsel, the panel of judges decided that Sukardi was not guilty of committing the crime charged by the public prosecutor.

The second verdict tells about the Bongku case. He is a member of the Sakai adat community tribe in Bengkalis, Riau Province who was taken by PT Arara Abadi (PT AA) security guards to the police station because he was suspected of cutting down trees in the company's Industrial Plantation Forest (HTI) concession without permission from the authorized party. Bongku cut down trees to clear land so he could plant cassava for daily consumption (a subsistence crop). The land has been cultivated by his family for generations and is included in the inner region of the *bathin Beringin Sakai*. The *bathin* region is the residential area that is controlled for generations by certain indigenous communities led by the *bathin* (adat chief). Bongku did not have proof of ownership of land rights in the form of a letter (certificate of land rights), instead it was proven by the testimony of witnesses who were family members/relatives and customary authorities (*bathin* = adat chief) and the graves of the elders of the Sakai tribe including Bongku's grandfather who were on the land.

Based on the evidence presented by the public prosecutor and Bongku's legal advisors during the evidentiary trial, the panel of judges considered that Bongku's actions met the elements of the offense Article 82 paragraph (1) letter b of the P3H Law. Therefore, he was found guilty of committing the crime of logging trees in a forest area without having a permit issued by an authorized official. He was sentenced to imprisonment for 1 year and a fine of IDR 200,000,000.00 (two hundred million), a subsidiary of 1 month's imprisonment.

The third case tells of land clearing by burning. Saprudin, a member of the Dayak community in Murung Raya Regency, was charged with Article 108 jo. 69 paragraph (1) of Law no. 32/2009 concerning Environmental Protection and Management Act Law for allegedly burning land. Even though the law prohibits it, it has become a habit of the local community and has been carried out from one generation to another to clear land by burning.

This 61-year-old man has never been arrested by the police or questioned by other residents because he has set fire to land. Unfortunately, when he set fire to the land in August 2019, he was caught by the police on patrol. At that time, the Regent of Murung Raya declared an emergency alert status for forest and land fires which was in effect from July 15 to November 11, 2019. In the verdict, the panel of judges decided that Saprudin had been legally and convincingly proven guilty of committing the crime of clearing land by burning. He was sentenced to imprisonment for 7 months and a fine of IDR 50,000,000.00 (fifty million), a subsidiary of 1 month's imprisonment.

The latest decision was in the case of Bapuli, a member of the Dayak Agabag community in Nunukan, North Kalimantan Province. Bapuli and other Dayak Agabag residents had lived and cultivated oil palm long before the issuance of the Cultivation Rights (HGU) to PT Karang Hijau Lestari in 2004. PT KHL obtained the HGU to establish an oil palm plantation. The presence of the company makes the local residents uneasy, because their living space will be narrowed by their oil palm plantations.

This anxiety was proven in April 2021, 4 (four) members of the Dayak Agabag community, one of whom was Bapuli, was reported to the police for allegedly harvesting oil palm belonging to the company. According to Bapuli's statement and witness testimony presented by his legal counsel, Bapuli explained that Bapuli harvested his oil palm. Because he planted the fruit since 2007, the seeds were obtained from the local government through the Association of Farmers Groups (*Gapoktan*). Based on the evidentiary trial, the panel of judges decided that Bapuli was not proven guilty because he had not been proven guilty of committing palm oil theft as charged by the public prosecutor. According to the judge, the palm oil he harvested belonged to him, not the company's. There is a dissenting opinion in this decision. The presiding judge of the assembly is of the view that the oil palm harvested by Bapuli belongs to the company. Because in 2014 the company has provided compensation to Bapuli accompanied by a statement of willingness to no longer cultivate and harvest the land.

Judge's Consideration of Adat Law-Based Tenurial System

The 4 (four) court decisions reviewed show that judges have different legal considerations regarding the control and management of natural resources based on adat law as claimed by the defendant for carrying out his actions. In one case the judge

recognized the adat law, but in another case the judge ignored the application of adat law to certain adat communities.

The first explanation is that the judge recognizes ways of managing natural resources based on customary rules. In legal considerations in the Sukardi case, according to the judge the felling of trees carried out by Sukardi for gardening to plant cloves, ginger, lemongrass, galangal, tomatoes, chilies, and the wood he made into boards to build huts was the use of land and forest products in the form of wood not for the purpose of commercial but to meet subsistence needs. Some of the harvest he consumes himself and some is sold to traders or sold directly to the market. Then, Sukardi's method of gardening is by using a *subbe* tool to dig the soil, then put the seeds in the hole and after that close the hole again. The judge considered this method to be a traditional method and based on the knowledge of the local community which had been passed down from generation to generation. In this case the judge is carrying out the mandate of the P3H Law, that the law recognizes adat law-based tenure systems.

It was different in the Bongku case, who was charged with a similar article to the Sukardi case, namely cutting down trees in a forest area without permission from the authorities (P3H Law). Bongku cut down trees claimed as industrial plantations belonging to the company, for the purpose of clearing land so he could grow cassava, the staple food of the local people. The way of gardening by Bongku and the local people, in general, is shifting cultivation. However, the migration is still on land controlled or cultivated by previous family members in one inner area (tribal unit). In this case, it was not found how the judge's view of the customary-based tenure system was found in his legal considerations. The panel of judges tended to rule out the application of adat communities.

The judge's considerations are not always black and white in one case. In the case of land burning committed by Saprudin in Central Kalimantan, it can be seen how ambivalent the judges are in considering an act. The panel of judges acknowledged that clearing land by burning has become knowledge and has been practiced by the Dayak community in Kalimantan for generations. Even though Article 69 paragraph (1) of the Environmental Protection and Management Act Law prohibits clearing land by burning, paragraph (2) stipulates that the prohibition "pays close attention to local wisdom in each area". Then, in the elucidation of Article 17 of Government Regulation Number 4/2001 concerning Control of Environmental Damage and or Pollution Relating to Forest and or Land Fires stipulates that the prevention of land fires does not apply to customary or traditional communities who clear land for their fields and gardens, unless the land fires are occurs outside the area of their fields and gardens. The law allows the tradition of clearing land by burning at the local community level (adat communities or traditional communities) with these conditions. However, the judge did not consider the provisions of this article in the Saprudin case. The law allows the tradition of clearing land by burning at the local

community level (adat communities or traditional communities) with these conditions. However, the judge did not consider the provisions of this article in the Saprudin case. In fact, the law allows the tradition of clearing land by burning at the adat communities with these conditions. However, the judge did not consider the provisions of this article in the Saprudin case.

According to the judge, Saprudin's act of setting fire to land was deemed wrong, because it was carried out under conditions prohibited by the Regent of Murung Raya, namely the establishment of an emergency alert status for forest and land fires. There was another court decision that decided the land burning case, namely the decision of the Sekayu District Court No. 540/Pid.B/2020/PN Sky. Syahrizal was sentenced to 1 year and 10 months in prison for clearing land by burning. Even though the legal facts at trial showed that the burning was under control and this activity had been carried out by the locals for generations, or what is known as the local term *manduk*.

It is inevitable that the ban on clearing land by burning makes the position of local communities insecure. Burning to clear land has been a traditional practice of smallholders and indigenous and tribal peoples and there is evidence that in the past the use of fire was relatively small-scale and well managed (Saharjo, 2022). Today, companies use fire to clear land, more than 50 companies in 1999 and 100 companies in 2001 were identified as still using fire for land clearing (Saharjo & Munoz, 2005). At least since 2000, many companies that have cleared land by burning have been tried and punished by the courts (Saharjo & Munoz, 2005). The rise of burning by companies on a large scale can provoke traditional burning by local communities which is relatively small and controlled.

In 3 (three) court decisions, which are the cases of Sukardi, Bongku, and Bapuli, it showed that judges tend not to delve into the issue of land ownership. In simple terms and based on the documentary evidence and state authority presented by the public prosecutor, the judge ruled that Sukardi and Bongku cut down trees in the forest area. The judge ruled out customary-based land tenure claimed by Sukardi and Bongku. For example, in the Bongku case, the judge ignored the socio-anthropological evidence (ancestral graves) that was explained by the customary authorities as the basis for mastery over customary land rights. In this case the judge tends to apply a formalistic approach in his legal findings.

In the Bapuli case, the judge did not delve into land ownership because to prove that Bapuli's actions met the element of offense or not, he only needed to consider the ownership of the oil palm fruits he harvested. The judge did not provide another elaborative explanation regarding this matter. Based on the facts presented at trial, the judge considered that the oil palm fruits harvested by Bapuli belonged to him and not the company's since he planted them himself in 2007.

The Role of Adat Law Narratives in Influencing Judge Decisions

Sometimes adat law narratives related to adat community tenure systems can work and their validity is recognized in the courtroom by judges. However, often this adat law cannot be apprehended by judges, so it is ignored or sidelined in the courtroom. Learning from the four court decisions in the cases of Sukardi, Bongku, Saprudin, and Bapuli, the narrative of adat law is not sufficient if it is only used as a means of defense for the accused. However, it is also necessary for judges to understand how to apply and synergize state law and adat law. In this case, a judge's in-depth understanding of the development of adat law and agrarian law is also required, particularly regarding adat law-based tenure systems.

For example, in the cases of Sukardi and Bongku, both were charged with the same article, namely "cutting down trees in a forest area without permission from the authorities" as stipulated in Article 82 paragraph (1) letter b P3H Law, but have different fates. The panel of judges at the Watansoppeng District Court acquitted Sukardi, while the Bengkalis District Court sentenced Bongku to imprisonment. Legal discoveries made by judges as can be found in very different legal considerations, especially the judge's consideration of the elements of the first offense, the element of each person.

In Sukardi's case, the judge considered that the element of "everyone" was not met, so he was not proven and free from all charges. Judges make legal discoveries on state law and adat law. To define the element of "every person" the judge based on Article 1 number 21 of the P3H Law, namely "individuals and/or corporations that commit acts of organized forest destruction in Indonesian jurisdiction and/or have legal consequences in Indonesian jurisdiction". Apart from that, the judge also based other relevant notions such as illegal logging, illegal use of forest areas, and being organized. According to the judge, the definition of organized in Article 1 point 6 of P3H Law "contains immunity for groups of people who live in or around forest areas who carry out traditional farming and/or carry out logging for their own needs and not for commercial purposes, and that P3H Law is made to eradicate corporate crime or organized crime".

Then, the judge made a discovery of adat law in the Sukardi case. Based on Sukardi's statement, witnesses, experts, and evidence presented at trial, according to the judge's considerations, Sukardi practiced traditional farming. He did a gardening in a traditional way, using simple equipment (*subbe*) and which is not possible for large-scale gardening which can damage the environment. The plants that Sukardi planted were also included in subsistence crops, namely for daily food needs (chili, tomato, ginger, etc.). He didn't sell the trees that Sukardi cut down, but instead used them as boards for building material for a hut in the garden. According to the judge, Sukardi did not cut the wood for commercial purposes.

The judge's consideration in the Sukardi case above was not found in the Bongku case. In considering the elements of each person, the judge did not base it on the definition of organized in Article 1 number 6 of the P3H Law. Even though the provisions of this article provide an opportunity for adat communities, communities living in or around forest areas to be free from punishment. Because the adat law-based tenure system, including local wisdom and traditional knowledge, has been recognized for its validity by this law. The Bongku case is a reflection that adat law narratives are unable to influence judge decisions that are favorable to indigenous and tribal peoples. This will also often be found in cases of adat communities clearing land by burning (the Saprudin case).

In both the Bongku case and the Sukardi case, the panel of judges did not consider their position as members of the adat community who carry adat law. Even though Bongku submitted evidence in the form of his statement, witness testimony explaining that he was a member of the adat community, the panel of judges did not conduct an in-depth study. In the decision on the Bongku case, the judge explained that "Bongku are people who live in and/or around the HTI concession area of PT. Arara Abadi."

In the case of Bapuli, who was tried for allegedly harvesting oil palm owned by PT Karangjuang Hijau Lestari (Article 362 of the Criminal Code), it further emphasizes that adat law narratives can be used as a basis for defending adat communities. The judge did not explicitly write down his legal considerations, but the researcher caught that in this case the judge applied the principle of horizontal separation to assess the legitimacy of the owner of the oil palm. In his legal considerations, the judge stated that: "What is meant by goods in this case is palm fruit, so in this case the panel of judges does not need to consider land ownership and will only consider ownership of palm fruit obtained by the Defendant".

The principle of horizontal separation (*horizontale scheiding*) is indeed regulated in Law no. 5/1960 concerning Basic Agrarian Principles (Basic Agrarian Law). However, this principle also applies in adat law long before it is stated in the Basic Agrarian Law. Based on the principle of horizontal separation, ownership of land and objects on it are separate. Ownership of houses, buildings, plants, or other items on the land is different from the owner of the land itself (Sudiyat, 1981; Hasbullah, 1992; Harsono, 1994). Based on this principle, the judge wants to prove oil palm without proving ownership of the land where the oil palm was planted.

In addition, Bapuli's status as a member of the Dayak Agabag community whose recognition was confirmed in the Nunukan Regency Regional Regulation No. 16/2018 concerning the empowerment of Adat Community can free themselves from the First alternative indictment. In considering the legal considerations for the first alternative charge, the judge stated that: "Because the defendant is a member of the Dayak Agabag community, in accordance with the Constitutional Court Decision No. 138/PUU-XIII/2015, Article 107 letter a Law no. 39/2014 concerning Plantations cannot be applied in this case,

because the phrase everyone illegally must be interpreted as not including members of the adat community, so that the defendant is excluded from this element. Then, Bapuli also escaped the second alternative indictment, due to the application of the horizontal principle above. Therefore, Bapuli was acquitted by the judge.

Based on the study on the Bapuli case above, it shows that status as an adat community provides more opportunities to be released from punishment or at least be given a reduced sentence. Moreover, if the recognition is confirmed by regional regulations. This further strengthened his position as a member of Adat Community (legal standing). However, this does not mean that the recognition of a tenure system based on adat law arises as a result of the recognition of subjects as outlined in regional regulations. Both are negatively correlated or cannot be determined. Like for example in the case of Sukardi. The judge acknowledged the traditional farming that Sukardi did, without asking whether he was a member of the adat community or not, and whether there was recognition or not. Whereas, traditional farming is carried out within the framework of adat law. Meanwhile, the bearers of adat law are adat communities (Simarmata, 2017).

Therefore, the courtroom can be said to be an arena that is different from regulations to strive for recognition and protection of the existence of adat communities and their rights, including their tenure system. The judges have full prerogative rights to make legal discoveries, including adat law in constructing cases being tried. This can also be a sign that the courtroom can be an alternative as efforts to recognize adat communities and their rights.

CONCLUSION

The judge consideration of the adat law-based tenure system claimed by the defendant in each case boils down to 2 things. First, the judge considered the narrative of adat law regarding the control and management of natural resources. This is a form of judge's recognition of adat communities and their rights. Second, the judge set aside the narrative of the adat law-based tenure system, which was used as the basis for the defendant's claim that his actions were within the corridors of adat law.

The adat law narrative can provide recognition of the adat law-based tenure system in court decisions. This confession can also have implications for the acquittal of the accused from prosecution, if regulated by law. For example, there are acts that are categorized as criminal acts, but the law also stipulates that if they are committed according to adat law or by adat communities, they can be excluded (P3H Law, Environmental Protection and Management Act Law, and the Plantation Law). In criminal cases, this is the principle of legality (*it is said that there is no action that can be punished without the rules that preceded it*).

Lawyers, legalists, and civil society organizations that provide social and legal assistance to adat communities who are caught in criminal cases or are widely called

"criminalized" must produce adat law discourse for defense and evidence materials. This can also serve as a reminder (update) to the judges that many adat law studies have been updated in line with the many findings that have been produced.

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