

Involvement of Indigenous People in the Process of Environmental Impact Assessment (Eia)

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Abstract

The problem of this research is that indigenous peoples often get the impact of various activities in the customary territory. This research on the involvement of indigenous people in the process of Environmental Impact Assessment (EIA) is aimed at obtaining an overview about indigenous people and their involvement in the process of EIA. It employed library research through literature study. The research results shows that the indigenous people can be recognized if they still has characteristic features such as customary territory, descendants who live in the customary territory, customary values and norms, and environmental wisdom. Physical development and intensive exploitation of natural resources have led to environmental degradation. Indegeneous people have been adversely affected by physical development such as loss of ownership of forest and land. EIA is an istrument to achieve sustainable development, however the process of involving indegeneous people are adequate and formality.

Keywords: Indigenous People; Involvement; Process; EIA

Introduction

In the life of indigenous people there are interaction, interrelation, and interdependence between individuals in group and between one group with another, which has regularly taken place for generations. Structure, institution, and unwritten rules are established in life and respected by all individuals and groups within the community. Therefore, there are 4 (four) characteristics of indigenous people, namely one descendant (*genealogical*), customary territory, values, norms, cultural products, and environmental wisdom. The customary territory contains natural resources which have been owned by the people for generations inherited from their ancestors. Frequently, indigenous people are the first who receive positive and negative impacts of the exploitation of natural resources. Negative impacts can take the form of damage of environmental function.

In order to anticipate the negative impacts and to increase the positive impacts, it is necessary to conduct in-depth studies. EIA is one of the instruments to prevent environmental damage. Based on the existing regulation, the process EIA is mandatory to involve indigenous people as the owners of natural resources. The involvement of indigenous people starts from the announcement and socialization of activity plan, making of EIA, decision making, and environmental license. Therefore, this research is aimed at describing the involvement of indigenous people in the process EIA. In addition, this research is aimed at explain the forms of involvement of indigenous people in the process of EIA. Regulation concerning environment containing the involvement of indigenous people in the process of Environmental Impact Assessment were enacted in 1969 in the United States of America, and in 1982 in Indonesia. Such regulation was intensively implemented in 2000 [1]. The regulation on environment contains the Environmental Impact Assessment as an instrument to prevent environmental damage. Environmental Impact Assessment is made by investors involving government and indigenous peoples. It is expected that by involving indigenous peoples in the process of Environmental Impact Assessment, the objective of sustainable development will be achieved.

In reality, although the regulation has existed, indigenous people have not been optimally involved. Their resources have not been involved in all stages of the process of environmental impact assessment. They felt that their involvement was only formal and technical to meet legislation procedures made by the government as the authority. As a result, conflict often arose in their life in the

territory in which natural resources were exploited. Moreover, conflict also often arose between indigenous people, government and investor. The conflict often occurred when an environmental feasibility license had been issued and the exploitation had started [2].

Materials and Research Method

This research employed library research, consisting of international journal, books, and research results about indigenous peoples in the process of environmental impact assessment from 1995 until 2013. The results of the research show that there are 3 (three) stakeholders in the utilization of natural resources that are supposed to have significant impact on environment. *First*, indigenous people as the owner of natural resources is a group of people who hereditarily owns same residing area, has prevailing cultural values and customary law, and has environmental wisdom which is still preserved until the present time in order to maintain the balance of social life between indigenous people and environment; *Second*, Government as the authority of the natural resources (Subsection 33 in 1945 Constitution); and *Third*, investor as the natural resources administrator. Indigenous people are the first group who will receive economic and environmental impact. Economic and environmental impact can be estimated using an in-depth study in the environmental impact assessment, an instrument to prevent environmental damage. Therefore, the involvement of indigenous people can start before the process of Environmental Impact Assessment takes place and during the process of Environmental Impact Assessment, including announcement, submission of suggestion, opinion and response along with public consultation, making of Environmental Impact Assessment, until the stage of decision making and announcement of environmental feasibility.

The procedure for the involvement of indigenous people in the process of Environmental Impact Assessment released by the government as natural resources authority is considered to have not involved all of their potentials as the owner of natural resources.

Research Results

The term customary law is often found in some literatures, visual or audio visual media. This term is often related to a group of people who have *de facto* existed for generations in a certain place, including in Indonesia. According to the law system in Indonesia, customary law is referred to as unwritten law (*unstatute law*), which is different from continental law, i.e. written law (*statute law*). Customary law is a cultural product that contains substance of cultural values in cognitive, affective, and creative aspects of human beings. Accordingly, customary law was born from the awareness of human needs and desire to live in fair and civilized manner as an actualization of human civilization. In addition, customary law is also a social product that is a result of cooperation (agreement), and is a collective work (socially-owned) from an indigenous people [3].

Furthermore, we identify the term Customary People, Indigenous People, and Customary People Alliance. Customary People are an ethnic group that lives in an independent country, has its own economic, culture, and political institutions. Meanwhile, indigenous people are often used by customary law experts for theoretical-academic needs. Customary Alliance is used to formulate the rights of indigenous peoples or known as *Ulayat* Rights. This term is given to give an identity for an indigenous group which has unwritten law tradition and system.

In the life of indigenous people there are interaction, interrelation, and interdependence between individuals in group and between one group with another, which has regularly taken place for generations. Such interaction, interrelation, and interdependence establish a social and cultural system in the life of indigenous people.

In the environmental field, indigenous people is explicitly defined in Law Number 32 of 2009 concerning Environmental Protection and Management article 1 paragraph (31) stating that indigenous people is a group of people who living in a certain geographic area for generations because they have a bond with ancestral origins, strong relation with environment, and value system that determines economic, political, social, and law institutions [4].

The Deputy of Environmental Communication and Community Empowerment of the Ministry of Environment of the Republic of Indonesia mentions that the criteria of groups of people who live in certain geographic area for generations are relatively homogenous social unity, customary territory, specific cultural symbol system, and communal ownership and management system of customary territory [5]. Furthermore, the criteria for the bond to ancestral origin are kinship system and traditional social organization, and kinship lineage. Meanwhile, the criteria for the strong relation with environment are having local wisdom in environmental protection and management, having shared values in environmental protection and management, local concept for environment classification or category, and traditional calendar system related to the management of natural resources. Meanwhile, the criteria for a value system that determine economic, political, social institution and customary laws are the existence of customary law instruments, value system which serves as a guideline for the members, customary leadership system, and decision making system, value and rule system that controls economic and social solidarity, as well as traditional livelihood systems related to local potentials.

The article of the Law states that strong relation with environment is in the form of community local wisdom. Article 1 item (30) of this Law defines local wisdom is as noble values prevailing in the order of life of community to sustainably protect and manage environment. Specifically, in regard to indigenous people, Article 63 paragraph (1) and (2) states that duties and authorities of

the Central and Provincial Government concerning environmental protection and management is stipulating a policy about a procedure to acknowledge the existence of indigenous people, local wisdoms, and indigenous people's rights in relation to environmental protection and management in provincial level.

Indigenous people are also mentioned in Law Number 39 of 1999 concerning Human Rights that Article 6 paragraph (2) mentions that cultural identity of indigenous people including *ulayat* right of land is protected as in line with the current development era [6]. Land grabbing is often done by economic agents with the purpose to obtain big profits from industrial growth. Such industrial growth leads to modern industry. The development of modern industry often leads to prolonged conflict with indigenous population.

In regard to the current existence of the natural resources, human behavior based on economic motives will cause new ecological crisis. York Richard and Dunlop E. Riley argues that a new ecological crisis is proven by the damage of land promoted by exploitative practices of capitalist culture, which plays a role as the land grabber in order to maximize profits [7].

Berger R. Thomas states that indigenous population make use of renewable natural resources, while the modern industries make use of non-renewable natural resources [8]. Large projects in industrial scale rarely provide permanent employment opportunities for the indigenous. Furthermore, it is mentioned that the poverty phenomenon due to low income of the indigenous and low social status of the workers often cause a conflict between modern industry and indigenous population. Modern industrialists often ignore social and cultural values which are contained in the natural resources owned by indigenous population. The socio cultural values embedded within the life of indigenous population can be seen in their relation with the way they make use of natural resources. There are respecting values (environmental wisdom) for natural resources, which have taken place for generations and are still preserved.

This condition is often considered unimportant by industrialists. Moreover, they do not care about indigenous population because what they need is natural resources. The sociocultural aspects contained in the life of indigenous population are often ignored; especially when the decision is made occurs in the utilization of natural resources that belong to the indigenous population. This condition will have social consequences that lead to prolonged conflicts between industrialists and indigenous population.

Furthermore, Berger R. Thomas explains that there is a strong tendency from industrialists or investors to underestimate and ignore social impacts and costs [8]. The industrialists strongly believe that social impacts could be so easily overcome. Therefore, the industrialists prefer a curative approach the preventive one in their investments. They assume that social costs will be borne by the indigenous population themselves, while they only bear financial cost of the industry.

Hadi P Sudharto, states that social consequences of the development activities require accurate observation so that negative impacts can be eliminated or even made without such impacts [2]. Accurate observation can be done through the process of Environmental Impact Assessment. Although the development activity has been equipped with EIA, social conflicts resulted from the development still often occur. One of the causes is inaccurate social study conducted, so that the studies are not able to predict or accommodate aspirations and interests of local communities. As the result, there is no recommendation to anticipate the impacts.

Environmental Impact Assessment was first introduced in the United States of America on December 31, 1969 since the enactment of National Environment Protection Act (NEPA). This Act requires the projects that have impacts on biophysical environment to make an Environmental Impact Assessment [1,2].

According to Canter: "*Environmental impact assessment*" (EIA) can be defined as the systematic identification and evaluation of the potential impact (effects) of proposed projects, plans, program, or legislative actions relative to the physical-chemical, biological, cultural, and socioeconomic components of the total environment [1]. This definition explains that each activity plans or programs starts by carrying out systematic identification and evaluation towards potential environmental impacts totally including physical, chemical, biological, cultural, and socio-economic impacts.

According to Soemarwoto, the concept of EIA is actually an activity which predicts the further consequences of the action, and considers the follow-ups needed to enlarge and minimize the consequences of action [9]. Furthermore, the concept of EIA is to study development impacts or environmental impacts towards a development based on the concept of ecology (a study of the interaction of living organisms with their environment). Impact is a change that occurs as a result of an activity. Environmental impact assessment is carried out due to human activities plan that can change environmental components and due to changes of environmental components which will have impacts on human activities. Physical and biological impacts could be quantified, but social impact is often difficult to be quantified.

For example, according to Hadi, a specific social impact is difficult to quantify [10]. Advantages obtained from the presence of the project (in the form of provision of energy and employment) have not been able to eliminate the worries or suffering which may be experienced by the community surrounding the project.

Environmental Impact Assessment (EIA) is a process of analyzing and evaluating environmental impacts resulted from human activities. It is aimed at guaranteeing sustainable development, i.e., creating harmony between human beings and ecosystem conservation. Therefore, until now, EIA is an effective instrument to plan environmental management [11]. Environmental impact

Assessment is an activity which involves communities starting from providing information about activity plan, identification and evaluation of changes in the environment resulted from project activities and involvement in the decision-making process. In addition, EIA is a technical key to incorporate concepts such as a principle to prevent the loss of natural resources and proper decision-making to achieve the main objectives of sustainable development [12].

The concept of public participation in the process of environmental impact assessment has started since The US National Environmental Policy Act (NEPA) started developing the EIA. Also, in 1992, Development and Environment Summit in Rio De Janeiro in the Declaration of 10 (ten) stated that public participation in environmental decision-making is the main process that must be carried out at each stage of the process of environmental impact assessment in all countries in accordance with its level [13].

According to Marion Hourdequin, there are four (4) principles of ethics in public participation, namely equal opportunity for participation, equal access to information, deliberation and mutual commitment [14].

Furthermore, community involvement that has equal access to information, deliberation and mutual commitment may affect the results of environmental impact decision [15]. In the process of public participation, there is a provision of information about activity plan. Such information is provided for the community as the receiver of information. This process is important leading to the decision-making so that the community can prepare to anticipate the impacts of the project. In addition, the information giver, in this case the initiator, can secure the project [16].

Basically, participation approach is designed to ensure that all relevant information including information about the impacts created by the activity plan can be obtained from the community. Thus, the decision maker can make an informative and beneficial decision for all components of community. Public participation is not the ultimate goal, but the ultimate goal in this process is a proper decision-making [16].

Hadi argues that public participation is a process in which the community takes part in making the decision [2]. Such community means the affected people. Public participation brings a positive influence. They will be able to perceive or understand various problems that occur and understand the final decision to be made. Furthermore, community involvement is a part of the planning process to accommodate their needs, aspirations and concern. It is aimed at eliminating the possibility of negative impacts to take place. Meanwhile, the target is to obtain feedbacks from the community about everything related to their life. There are 2 (two) elements of participation which must be met; *first*, the continuous two-way communication and; *second*, information about a project, program or policy delivered actively and passively, formally and informally.

In many cases, the objective of public participation in the process of EIA is to obtain feedbacks for the sake of proper decision making. In addition, it is aimed at providing information to the public elsewhere, filling information gaps, and striving for solving social problems. Decision making in the community reflects the application of the principles of democracy, the form of the practice of democracy, and the representation of diverse opinions. In order that decision-making is not dominated by the Government and the initiator, the distribution of power and decision-making structure in the process of EIA can be achieved by involving marginalized groups, shifting the place for decision-making and siding with on marginalized community. Such efforts are taken because they have full and strong access to information about ecological impacts, nature of the impacts and strategies for impact mitigation [16].

The decision-making in the process of EIA requires information about the values of the affected people. Such information is obtained through public participation. Therefore, decision-making should consider the relationship between significant impact of predicted impacts, risk of impacts and the development of alternative impact handling accepted by the community [16].

In the decision-making process, the decision maker is required to consider political consequences, distribution of benefits and costs of the project that will be carried out [16]. Sometimes the decision maker only gives information access to the public in accordance with the perceived purpose of the initiator or the Government. For example, the initiator gives information to customary elders and the leaders of the Government, but the customary elders provide information about local knowledge, local culture, and traditional lifestyle of indigenous people. This technique is very weak in terms of the control over decision-making. Thus, the policy of implication in decision-making is not substantial [16].

Hadi mentions that the people will feel comfortable expressing their views around the place they live, and their participation is not only to meet formal provisions, but to give substantial contribution [10]. Decision makers may simply involve people who have a particular interest in the project. Such participation involving only certain people in decision making is usually done because the initiator wants the project activities to be approved by the community.

The efforts to achieve the objectives of initiator are taken by exaggerating economic impacts and ignoring other negative environmental impacts [16].

Public participation can also be done only to the community that supports the initiator. However, they will be confused when they have to make a decision. Therefore, in terms of participation, it is necessary to properly examine the process in which the people are involved (for example: the environmental impact assessment for Bauxite project in Suriname) [16]. In the process of decision

making, the professionalism of consultants in assessing the impacts of the project is very important. It includes perceiving socio-cultural aspect from the point of view of customary elders concerning environmental impacts. The involvement of professionalism will complete the decision-making by taking all aspects of the impacts into consideration. Therefore, no one can dominate the decision-making process [16].

Public participation is needed in decision making. It is not only a way to obtain information or test its strength, but also to assist in problem-solving. The public can give ideas, concepts, solutions and resources that can be mobilized to address complex environmental problems mentally or socially [16].

Public participation can be a source of creativity and innovation, which allows decision makers to draw alternatives from various responses of the community [16].

In the approach of public participation, there is a process of social learning in which stakeholders work together to share information in order to maximize strategies for identifying the impacts and opportunities for addressing impacts that are socially acceptable [16].

Some of the cases in several countries show that public participation in the process of EIA can be used as a forum to obtain various potential social problems. A case in China shows that the government of China utilizes public participation to obtain demographic data concerning the impacts of industrial development on the existence of land including potential problems in the form of anxiety, and the expectation of people for the industrial development plan [16]. Another Case in Hungary in 1996 shows how important information from the people is for the decision-making of environmental feasibility. Information and suggestions from the people concerning various environmental reasons is a part of the materials for the decision-making of the project. Subsequently, the decision will be implemented by the initiator. Such public participation in the decision-making of environmental feasibility can resolve conflicts between the local community and the initiator [17].

In India, there is a different case that public participation in the process of EIA did not have positive relation with the existence of the initiator. Empirically, there was very little evidence that the community stated that they were directly involved with the results of clean water project [18].

A case in Bangladesh indicated a great event in social evolution in the field of EIA. The EIA perceived from humanity side shows that environmental impact assessment is done to minimize the environmental damage impacts on humans. There are three (3) components in human environment component, namely health and safety, social, and economic, and aesthetic and culture. Therefore, public participation in the process of EIA is important to find social issues in the community.

Community is a key component in the process of EIA because they are is the final impacts receiver from economic benefits and environmental damage. As a result, the community must be involved in the decision-making process of environmental impact assessment.

The empirical fact in Bangladesh shows that public participation can be carried out effectively through various means of communication such as radio, television, news broadcasts, newspapers, polls, lobbying, workshops, public meetings, public audience, and information from community leaders. All of the means are adopted in the process of public participation in order to obtain maximum participation [19].

Conclusion

Based on the aforementioned results, it can be concluded that indigenous people is a group that has existed since for generations. They have natural resources that have been managed wisely and skillfully. Massive exploitation of natural resources in indigenous territories will have economic impacts and cause environmental damage. In order to estimate important impacts as a result of the exploitation of natural resources, an instrument to prevent environmental damage is needed. One of the instruments to prevent environmental damage is Environmental Impact Assessment. Many countries have made regulations that require governments and investors to involve indigenous people in the process of EIA. The involvement of indigenous people in the process of EIA can take the forms of suggestions, opinions and responses through electronic media, print media, meetings, audience or customary meetings.

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