

Ius Constituendum Formulating Basic Values of Indigenous Peoples in Constitutional Amendments

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Abstract

Introduction: Regulation of Customary Law Communities in a state constitution is important to guarantee their existence and guarantee their protection. The regulation of Indigenous Law Communities in the constitution is also intended so that the regulations under the constitution can be in line with the constitution in facilitating Indigenous Law Communities.

Purposes of the Research: The aim of this research is to formulate the basic principles of MHA which must be regulated in the constitution as well as efforts to amend the constitution to formulate the basic principles of MHA in the constitution.

Methods of the Research: Normative legal research using case, concept and legislative approaches.

Results / Findings / Novelty of the Research: The basic principles of MHA that need to be formulated in the constitution include various basic values of MHA, such as having customary legal norms, having ulayat rights or traditional rights related to natural resource management, and having traditional apparatus with various characteristics that exist in each MHA. Revision of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia as an effort to amend the constitution to include the basic principles and values of the MHA can be carried out by including basic values and principles in the MHA which include: the existence of customary legal norms, having customary rights or related traditional rights. with natural resource management, as well as having traditional apparatus with various characteristics that exist in each MHA.

Abstrak

Introduction: Pengaturan Masyarakat Hukum Adat dalam suatu konstitusi negara penting untuk menjamin eksistensi dan jaminan perlindungannya. Pengaturan Masyarakat Hukum Adat dalam konstitusi juga dimaksudkan supaya peraturan di bawah konstitusi dapat sejalan dengan konstitusi dalam memfasilitasi Masyarakat Hukum Adat.

Purposes of the Research: Tujuan penelitian ini yaitu merumuskan prinsip-prinsip dasar MHA yang harus diatur dalam konstitusi serta upaya amandemen konstitusi untuk merumuskan prinsip-prinsip dasar MHA dalam konstitusi.

Methods of the Research: Penelitian hukum normatif dengan pendekatan kasus, konsep, dan perundang-undangan.

Results / Findings / Novelty of the Research: Prinsip-prinsip dasar MHA yang perlu diformulasikan dalam konstitusi yaitu meliputi berbagai nilai dasar MHA, seperti memiliki norma hukum adat, memiliki hak ulayat atau hak

tradisional yang berkaitan dengan pengelolaan sumber daya alam, serta memiliki aparatur adat dengan berbagai kekhasan yang ada pada masing-masing MHA. Revisi terhadap Pasal 18B ayat (2) UUD NRI 1945 sebagai upaya amandemen konstitusi dalam memasukkan prinsip dan nilai-nilai dasar MHA dapat dilakukan dengan memasukkan nilai dan prinsip dasar dalam MHA yang meliputi: adanya norma hukum adat, memiliki hak ulayat atau hak tradisional yang berkaitan dengan pengelolaan sumber daya alam, serta memiliki aparatur adat dengan berbagai kekhasan yang ada pada masing-masing MHA.

Kata Kunci: *Amandemen Konstitusi, Masyarakat Hukum Adat, Prinsip DasarI.*

1. INTRODUCTION

Customary Law Communities (MHA) are local community communities that have special characteristics and identities whose existence existed even before the Republic of Indonesia was founded. MHA can even be called a self-governing community, namely a group of people who have the competence to be able to regulate and govern their own territory.¹ Apart from having the characteristic of being able to organize and govern its own territory, MHA also has special characteristics in the form of having special control over the resources in its territory. Special control over the resources in the territory, whether in the form of land rights or other resources, is what is commonly referred to as customary rights. In fact, in its development, there are also customary rights in the form of marine customary rights which facilitate MHA's control over the sea, which is especially exercised by MHA who live and reside in the marine environment.²

The development of customary rights and the existence of the MHA actually further emphasizes the position of the MHA in the Indonesian constitutional system. In the Indonesian constitution, namely the 1945 NRI Constitution, the state has actually facilitated the existence of MHA as regulated in Article 18B paragraph (2) of the 1945 NRI Constitution. Article 18B paragraph (2) of the 1945 NRI Constitution in principle emphasizes that the state has an obligation to guarantee and protect its existence. MHA and its traditional rights as long as the MHA is still alive and in accordance with the

¹ Ludvig Beckman, Kirsty Gover, and Ulf Mörkenstam, "The Popular Sovereignty of Indigenous Peoples: A Challenge in Multi-People States," *Citizenship Studies* 26, no. 1 (2022): 1–20, <https://doi.org/10.1080/13621025.2021.2011142>.

² Irfa Ronaboyd Dicky Eko Prasetyo, "Bajo Tribal Marine Customary Rights Supervision: A Reform with Archipelagic Characteristics," *Jurnal Kajian Pembaruan Hukum* 2, no. 2 (2022): 235.

principles of the Unitary State of the Republic of Indonesia. In connection with Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, further efforts to protect the existence of MHA and their traditional rights are confirmed by the 1945 Constitution of the Republic of Indonesia to be regulated in law.

The problem related to regulating the existence of MHA is that until 2023, there will be no special regulations regarding MHA. In fact, the MHA Bill, which was proposed since 2014 and has been included in the National Legislation Program (Prolegnas) several times, has yet to reach a consensus to be ratified.³ This has implications for regulations related to the existence of MHA which are also spread across various laws and regulations. Another problem related to regulating the existence of MHA is the weak constitutional basis regarding MHA in the 1945 Constitution of the Republic of Indonesia. Apart from only being regulated in one paragraph (namely in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia), the constitutional principles regarding MHA are also regulated quite a bit in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Textually, Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia only confirms that the principles relating to MHA only include: its existence is guaranteed by the state, has traditional rights, and can be recognized by the state as long as in reality still exists and is in accordance with the principles of the Republic of Indonesia.⁴ In fact, as part of the important pillars of the formation of the Indonesian State, it is appropriate that the 1945 Constitution of the Republic of Indonesia can formulate various basic principles regarding MHA so that it is hoped that these values can be used as a tester for legal regulations under the 1945 Constitution of the Republic of Indonesia as well as being a guide for drafting existing laws and regulations. regulates MHA.

This research aims to answer two legal issues, namely the basic principles of MHA which must be regulated in the constitution and efforts to amend the constitution to formulate the basic principles of MHA in the constitution. There are three previous studies that specifically discuss aspects of MHA in constitutional reviews, including those conducted by: (i) Sebar and Nordin (2021) who discuss MHA as regulated in Canada and New Zealand.⁵ The novelty of Sebar and Nordin's (2021) research is that in Canada and New Zealand the formulation of the basic principles of MHA actually also received attention in the constitutions of Canada and New Zealand. This is to maintain the value and existence of MHA itself. Further research was conducted by (ii) Indrawati and Zahidi (2022) who discussed the existence of MHA when dealing legally with industries related to natural resource management.⁶ The novelty of Indrawati and Zahidi's (2022) research is that in Ecuador, there are actually various regulations, especially in the constitution which emphasizes the independence and autonomy of the MHA in relation to industries that exploit natural resources. Further research was conducted by Salam (2023) who analyzed

³ A H Rachman, "Ketidakpastian Status Lahan Dan Potensi Deforestasi Dalam Wacana Pembangunan Bandar Antariksa Biak," *Jentera: Jurnal Hukum* 4, no. 1 (2021): 394, <https://jurnal.jentera.ac.id/index.php/jentera/article/view/26%0Ahttps://jurnal.jentera.ac.id/index.php/jentera/article/download/26/18>.

⁴ Wendra Yunaldi, *Nagari Dan Negara: Perspektif Otentik Kesatuan Masyarakat Hukum Adat Dalam Ketatanegaraan Indonesia*, 1st ed. (Yogyakarta: Jual Buku Sastra, 2021).

⁵ Rohaidah Nordin Hind Sebar, "Rights of the Indigenous Peoples to Self-Government: A Comparative Analysis between New Zealand and Canada," *Journal of Dinamika Hukum* 21, no. 1 (2021): 432-45, <https://doi.org/10.20884/1.jdh.2021.21.1>.

⁶ M. Syaprin Zahidi, "Indigenous Ecuadorians' Challenges and Attempts To Combat Extractive Industries: A Human Rights-Based Approach," *Jurnal Ilmiah Dinamika Sosial* 6, no. 2 (2022): 175-91, <https://doi.org/10.38043/jids.v6i2.3693>.

the legal theory aspect regarding protection for MHA. The novelty of Salam's (2023) research is that in terms of legal theory, there is a need for harmonization of various laws and regulations related to MHA, where there are several regulations related to MHA that give rise to disharmony.⁷

Of the three previous studies above, in fact this research, whose focus is the formulation of the basic values and principles of MHA in the constitution, has not been analyzed in depth by the three previous researchers so this research is original research..

2. METHOD

This research, with an analytical focus on aspects of the formulation of basic values and principles of MHA in the 1945 Constitution of the Republic of Indonesia, is normative legal research.⁸ The primary legal materials in this research are: the 1945 Constitution of the Republic of Indonesia and Constitutional Court Decision No. 35/PUU-IX/2012 (MK MHA Decision). Secondary legal materials in this research include: journal articles, books, and research results discussing the MHA from a constitutional perspective. Non-legal materials are legal dictionaries. The approaches used are conceptual, case and statutory approaches. Data analysis was carried out qualitatively-prescriptively, namely by collecting and analyzing legal materials to then look for legal solutions or prescriptions to answer the problem formulation.⁹

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3. RESULTS AND DISCUSSION

3.1. The Basic Principles of Customary Law Communities and the Urgency of Their Regulation in the 1945 Constitution of the Republic of Indonesia

MHA is a society with local genius characteristics which emphasizes the existence of unique principles and characteristics of MHA that differentiate it from other communities.¹⁰ In Ter Haar's view, the distinguishing characteristic between MHA and other communities is customary rights. Ulayat rights are actually rights based on the traditional rights of MHA to manage natural resources, especially land. Therefore, it is not uncommon for customary rights to sometimes be identified with management rights over customary land.¹¹ Although generally synonymous with land, customary rights are in principle related to management rights over natural resources. This indicates that customary rights are not always synonymous with land, but can also be various other objects of wealth related to the management of natural resources. In its development, apart from being related to land, customary rights in some MHA are also linked to aspects of the sea which are then commonly referred to as marine customary rights. Maritime customary rights are commonly found in MHA which are oriented towards life in waters or life at

⁷ Safrin Salam, "Legal Protection of Indigenous Institutions in the Frame of the Rule of Law (Perspective of Legal Protection Theory)," *Cepalo* 7, no. 1 (2023): 65–76, <https://doi.org/10.25041/cepalo.v7no1.2898>.

⁸ J. Ibrahim J. Efendi, *Metode Penelitian Hukum Normatif Dan Empiris* (Jakarta: Kencana, 2016).

⁹ Zainudin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2009).

¹⁰ Elizabeth MacPherson, Julia Torres Ventura, and Felipe Clavijo Ospina, "Constitutional Law, Ecosystems, and Indigenous Peoples in Colombia: Biocultural Rights and Legal Subjects," *Transnational Environmental Law* 9, no. 3 (2020): 521–40, <https://doi.org/10.1017/S204710252000014X>.

¹¹ Wimba Roofi Utama, "Eksistensi Hak Ulayat Pasca Berlakunya Peraturan Menteri Agraria Nomor 18 Tahun 2019," *Notaire* 4, no. 3 (2021): 489, <https://doi.org/10.20473/ntr.v4i3.28036>.

sea.¹² The development related to customary rights above actually shows an interesting development because, according to Ter Haar's view, customary rights are one of the substantive aspects related to MHA.

Von Vollenhoven's view further emphasizes that apart from the aspect of customary rights, MHA also has the uniqueness of the application of customary legal norms which bind community communities.¹³ The customary law norms that apply to MHA can be said to be unique because at least customary law norms are manifested in three aspects, namely: first, unwritten customary law norms found in the community's legal beliefs. In this context, customary law norms are believed to have been in force for generations and even though they are not formulated rigidly and in writing, the MHA believes in their validity.¹⁴ Therefore, even though they are not written, the implementation of customary norms in the MHA must also be taken into account, especially those that have been recognized for generations by the community. Second, customary law norms are manifested in the actions and decisions of traditional leaders. Traditional leaders occupy the most important position, especially in relation to traditional norms.¹⁵ Authoritative traditional leaders do have the authority to provide interpretations or concretization of customary legal norms which are generally unwritten. This confirms that the actions or decisions of traditional leaders relating to customary law norms are authoritative and even become "official interpretations" regarding the application of customary law norms.¹⁶

Third, the next manifestation related to customary law norms is related to the characteristics of customary law norms which are "written" in nature. Written customary law norms mean that these customary law norms are actually unwritten, but under certain conditions the MHA is oriented to be written down as a guide and reminder for future generations.¹⁷ Even though they are written down, customary law norms in their development can also change and develop according to the needs and developments of the times. This confirms that, even though customary law norms have been written down, the interpretation, concretization and application of customary law norms continues continuously, thus making customary law norms a living law in the MHA community.¹⁸ Based on the three manifestations of customary law norms above, it can be seen that apart from customary rights, MHA also has special characteristics that need to be facilitated, namely customary law norms. In the view of Maria S.W. Sumardjono, one aspect that is also important and needs to be considered regarding MHA is the customary law apparatus. This is because the customary law apparatus is actually customary law "in

¹² Heryanti Heryanti, "Pengakuan Eksistensi Hak Ulayat Laut Masyarakat Hukum Adat Berdasar Nilai-Nilai Kearifan Lokal," *Halu Oleo Law Review* 3, no. 2 (2019): 196, <https://doi.org/10.33561/holrev.v3i2.8650>.

¹³ Keebet von Benda-Beckmann, "Anachronism, Agency, and the Contextualisation of Adat: Van Vollenhoven's Analyses in Light of Struggles Over Resources," *Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 397–415, <https://doi.org/10.1080/14442213.2019.1670242>.

¹⁴ Dita Perwitasari Dicky Eko Prasetyo, Fradhana Putra Disantara, Nadia Husna Azzahra, "The Legal Pluralism Strategy of Sendi Traditional Court in the Era of Modernization Law," *Rechtsidee* 8, no. 1 (2021): 4.

¹⁵ Gustiana Anwar Kambo, "Local Wisdom Pasang Ri Kajang as a Political Power in Maintaining Indigenous People's Rights," *Etnosia: Jurnal Etnografi Indonesia* 6, no. 2 (2021): 265–80, <https://doi.org/10.31947/etnosia.v6i2.10585>.

¹⁶ Kent McNeil Karen Drake, Kirsty Gover, Tim Goodwin, "Rights Of Indigenous Peoples Interest Group Newsletter," *American Society of International Law* 8, no. 2 (2021): 595–626.

¹⁷ Shahid Rasool Nur Faaizah Md Adam, Md Noor Saper, Ciptro Handrianto, "Social Phenomenology of Kensiur Indigenous People," *International Journal of Education, Information Technology and Others* 5, no. 5 (2022): 104–14.

¹⁸ Lisa Knisley et al., "Examining the Experiences of Indigenous Families Seeking Health Information about Caring for Sick or Injured Children: A Scoping Review," *BMJ Open* 13, no. 3 (2023): 1–12, <https://doi.org/10.1136/bmjopen-2022-069697>.

concreto" which means that the application of customary law norms is actually carried out by the customary law apparatus in the MHA community. If viewed based on Lawrence M. Friedman's legal system theory, then MHA actually has three main systems that support each other, namely substance, structure and culture.¹⁹ In MHA, substance is a customary law norm whose main characteristic is that it is not written. Apart from that, in terms of structure, the MHA also has traditional officials whose job is to implement and enforce customary norms. In the aspect of legal culture, MHA also holds certain values and principles including customary rights which are believed in and maintained by MHA.

Referring to the views of Ter Haar, Von Vollenhoven, and Maria S.W. Sumardjono above, as well as referring to Lawrence M. Friedman's legal system theory, can be seen that the MHA actually has three basic values that universally apply to all MHA, especially in Indonesia. The three basic values of MHA are customary legal norms, customary rights, and customary apparatus.²⁰ If we look at the formulation of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it can be seen that in reality an MHA is characterized by its community (which is termed the MHA unit) along with its traditional rights. The formulation of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia actually creates legal ambiguity, especially in the "community" aspect which is termed MHA unity.²¹ MHA unity as the main characteristic of MHA also does not specifically indicate the main characteristics and characteristics of MHA, so that the term MHA unity can cause mis-interpretation. In the regulations in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, there are also regulatory problems related to MHA, namely that the condition for recognizing the existence of MHA by the state is as long as it factually still exists and does not conflict with the principles of the Republic of Indonesia. Regarding the factual condition that it still exists, it is a relevant condition in recognizing the existence of the MHA.

However, the requirement that the MHA does not conflict with the principles of the Republic of Indonesia is ambiguous. What principles of the Republic of Indonesia do the state use to assess whether an MHA still exists or not? This also of course creates legal uncertainty and has the potential to give rise to differences in interpretation regarding the principle of the Republic of Indonesia which can be used as a means to accommodate whether an MHA is still said to exist or not. In further development, the provisions in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia are not the only constitutional provisions that regulate MHA because apart from the constitution (1945 Constitution of the Republic of Indonesia), the role of the judiciary is also important in providing an interpretation of Article 18B paragraph (2) 1945 Constitution of the Republic of Indonesia. One of the court decisions which also provides a constitutional interpretation of the development of MHA regulations in constitutional provisions is Constitutional Court Decision No. 35/PUU-IX/2012 (MK MHA Decision).²² The Constitutional Court MHA's decision is actually a judicial review process related to Law no. 41 of 1999 concerning Forestry (Forestry Law) which substantively derogates the existence of customary forests. The MHA's own Constitutional Court decision emphasized

¹⁹ Ariel Zuckerbrot, "Impact: How Law Affects Behavior, by Lawrence M. Friedman," *Osgoode Hall Law Journal* 3, no. 55 (2019): 846–52.

²⁰ Bruno Lopes Ninomiya et al., "Indígenas Sob Um Contexto Vulnerável de Seguridade Social Em Meio À Crise Sanitária," *Journal of Law and Sustainable Development* 9, no. 1 (2021): e676, <https://doi.org/10.37497/sdgs.v9i1.81>.

²¹ Sartika Intaning Pradhani, "Traditional Rights of Indigenous People in Indonesia: Legal Recognition and Court Interpretation," *Jambe Law Journal* 1, no. 2 (2019): 177–205, <https://doi.org/10.22437/jlj.1.2.177-205>.

²² Devrayno. Devrayno, "Interaksi Hukum Negara Dengan Hukum Adat Dalam Kebijakan Alih Fungsi Lahan Hutan Untuk Perkebunan," *Jurnal Ilmu Hukum Tambun Bungai* 05, no. 1 (2020): 17.

that customary forests which are traditionally managed by the MHA cannot actually be categorized as state forests.

Customary forests in the MHA perspective are actually part of customary rights which orient the MHA's authority in managing natural resources, in this context forest resources.²³ The formulation of customary forests as state forests by the Constitutional Court MHA Decision is considered a form of determination and hegemony by the state which seizes customary forests which even factually existed earlier than the State of Indonesia. The above MK MHA decision can be categorized as an embodiment of the living constitution, which is the flexibility of interpreting the constitution based on a particular context.²⁴ Apart from that, in the essence of the living constitution, the MK MHA Decision above also increasingly emphasizes one of the basic principles of MHA, namely the existence of customary rights which is generally interpreted as the right for MHA to manage natural resources independently and sustainably in accordance with applicable customary law norms. in each MHA. With the MK MHA Decision and the MHA Bill not yet being adopted as law, there is an orientation to formulate the basic principles of MHA in the constitution. The formulation of the basic principles of MHA in the constitution is at least aimed at accommodating three aspects related to MHA, namely: first, the basic principles of MHA in the constitution are oriented as an affirmation and affirmation of the basic values of MHA in the constitution to strengthen legal certainty as well as guarantee the existence of MHA in the constitution .

Second, the formulation of the basic principles of MHA in the constitution is formulated as a guide in the formulation of various laws and regulations relating to MHA. Third, the formulation of the basic principles of MHA in the constitution is intended as a touchstone for the court (in this case the Constitutional Court) to test laws and regulations related to MHA that conflict with the constitution. Based on the analysis above, it can be concluded that the formulation of the basic principles of the MHA is important to ensure recognition of the existence of the MHA in the constitution. The basic principles of MHA that need to be formulated in the constitution include various basic values of MHA, such as having customary legal norms, having customary rights or traditional rights related to the management of natural resources, as well as having traditional apparatus with various unique characteristics that exist in each MHA. The affirmation of the basic principles of MHA in the constitution is actually intended to ensure that the basic principles of MHA in the constitution are used as a guide for the formulation of laws and regulations related to MHA as well as being used as a testing value by the Constitutional Court in reviewing laws related to MHA which are deemed to be contrary to the constitution..

3.2. Constitutional Amendment Efforts to Formulate the Basic Principles of Indigenous Law Communities

The regulations regarding MHA in the constitution as regulated in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia can actually still be said to be limited or at least have not comprehensively regulated the basic principles and values of MHA in the

²³ Linda Etchart, "Indigenous Peoples and International Law in the Ecuadorian Amazon," *Laws* 11, no. 4 (2022): 1–15, <https://doi.org/10.3390/laws11040055>.

²⁴ Istilah *living constitution* sejatinya memiliki makna yang secara substantif sama dengan *living ideology* yang esensinya untuk menunjukkan konkretisasi suatu konstitusi yang tetap hidup dan relevan dengan perkembangan zaman. Selanjutnya dapat dilihat dalam Dicky Eko Prasetyo, "Pancasila Sebagai Pengembangan Moral Virtual Dalam Perspektif Living Ideology," *Pancasila : Jurnal Keindonesiaan* 3, no. 2 (2023): 127.

3 constitution. The formulation of Article 18B paragraph (2) of the 1945 NRI Constitution is actually the product of constitutional amendments carried out from 1999 to 2002. Article 18B paragraph (2) of the 1945 NRI Constitution itself is the result of the formulation of the second amendment, namely in 2000, one of the aims of which is to emphasize existence of MHA.²⁵ This is because before there were amendments to the 1945 Constitution of the Republic of Indonesia, there were no special regulations regarding MHA in the constitution at that time, namely the 1945 Constitution.

8 Efforts to specifically regulate MHA in the constitution as formulated in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, if seen in the reform situation between 1998-2002, actually show a progressive formulation from the omission of regulations related to MHA in the constitution before the amendment to the existence of MHA regulations in the post-amendment constitution. . However, in further development, Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia also has several weaknesses regarding the regulations regarding MHA, including: first, the regulations related to MHA in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia are actually still general in nature and have not yet been implemented. emphasizes the identity, characteristics, and basic principles and values of MHA. The fact that this aspect has not yet been regulated actually mandates further regulation in statutory legal products. However, it becomes a problem when the law regarding MHA as mandated by Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia has not been immediately formulated with the political problems that accompany it.²⁶

The importance of formulating basic values and principles in the constitution related to MHA is important so that the existence of MHA does not always depend on the formation of the MHA Law which has a political dimension and cannot be ascertained when it will be ratified. Second, another weakness in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia is that it has not provided confirmation regarding the rights to manage natural resources for MHA. Confirming the management of natural resources for MHA is actually an important aspect along with the importance of the existence of customary legal norms. The importance of the existence of natural resource management for MHA is actually in line with the concept of customary rights which was then emphasized in the MK MHA Decision which emphasized that natural resource management for MHA is part of customary rights which must be guaranteed in line with the existence of MHA. In Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia itself, it only emphasizes the recognition of traditional rights for MHA. Even though the term traditional rights can be extensively interpreted as including customary rights, it cannot optimally guarantee the management of natural resources by MHA.²⁷ Therefore, the weakness of the substance of traditional rights for MHA must also be emphasized, including the rights to manage natural resources by MHA in accordance with their customary rights regulations.

Judging from the two weaknesses of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia regarding the regulations regarding MHA

²⁵ Adriaan Bedner and Yance Arizona, "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?," *Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 416–34, <https://doi.org/10.1080/14442213.2019.1670246>.

²⁶ WALHI, "Urgensi Pengesahan RUU Masyarakat Adat" (Wahana Lingkungan Hidup Indonesia, 2019), <https://www.walhi.or.id/urgensi-pengesahan-ruu-masyarakat-adat>.

²⁷ Mohammad Jamin, Mulyanto, and Sahid Teguh Widodo, "Reformulation of a Legal Policy Affirming Recognition of Indigenous Community Units," *International Journal of Innovation, Creativity and Change* 11, no. 8 (2020): 473–90.

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above, it can be concluded that Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia does not yet include the basic values and principles of MHA. The orientation of the idea so that the basic values and principles of the MHA can be formulated comprehensively in the constitution is by amending the constitution. A constitutional amendment is actually an effort to perfect and improve the constitution through replacing or changing the constitution of a country.²⁸ The term amendment itself comes from the term amendment which according to Black's Law Dictionary has the same meaning as revision and reform.²⁹

Constitutional amendments are actually something that is necessary in a country based on at least two reasons, namely: first, viewed from the social-social aspect, constitutional amendments are actually aimed at accommodating social-social aspects that continue to change and experience their own dynamics. Changes in these social-social aspects under certain conditions require constitutional amendments so that the constitution can facilitate the development of existing social-social conditions.³⁰ Second, viewed from a legal aspect, constitutional amendments are actually oriented to meet the legal needs of society. This confirms that if there are legal needs of society that need to be regulated in the constitution, then the law should facilitate these legal needs to be formulated in the constitution.³¹ In connection with efforts to amend the constitution to include the basic principles and values of the MHA in the constitution, this is actually a necessary effort to ensure certainty and guarantee of legal protection for the MHA. Efforts to amend the constitution to include the basic principles and values of the MHA can be carried out by revising Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which includes basic values and principles in the MHA which include: the existence of customary legal norms, having customary rights or traditional rights related to management of natural resources, as well as having traditional apparatus with various characteristics that exist in each MHA.

CONCLUSION

The basic principles of MHA that need to be formulated in the constitution include various basic values of MHA, such as having customary legal norms, having customary rights or traditional rights related to the management of natural resources, as well as having traditional apparatus with various unique characteristics that exist in each MHA. The affirmation of the basic principles of MHA in the constitution is actually intended to ensure that the basic principles of MHA in the constitution are used as a guide for the formulation of laws and regulations related to MHA as well as being used as a testing value by the Constitutional Court in reviewing laws related to MHA which are deemed to be contrary to the constitution..

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Revision of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia as an effort to amend the constitution to include the basic principles and values

²⁸ Andrew T.Young Danko Tarabarar, "What Constitutes a Constitutional Amendment Culture?," *European Journal of Political Economy* 66, no. 1 (2021): 101.

²⁹ Bryan A.dan Henry Campbell Black Garner, *Black's Law Dictionary* (Minnesota: West Group, n.d.).

³⁰ Yaniv Roznai, *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*, 1st ed. (Oxford: Oxford University Press, 2017).

³¹ Athari Farhani and Ibnu Sina Chandranegara, "Penguasaan Negara Terhadap Pemanfaatan Sumber Daya Alam Ruang Angkasa Menurut Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Jurnal Konstitusi* 16, no. 2 (2019): 235, <https://doi.org/10.31078/jk1622>.

of the MHA can be carried out by including basic values and principles in the MHA which include: the existence of customary legal norms, having customary rights or related traditional rights. with natural resource management, as well as having traditional apparatus with various characteristics that exist in each MHA.

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