

ABSTRAK

Disertasi dengan judul Revitaliasi Model Tata Laksana Penguasaan Tanah Hak Milik Menurut Hukum Adat Suku Dayak Aoheng Berbasis Nilai Keadilan ini sesungguhnya dimaksudkan untuk mendapatkan justifikasi faktual dari amanat Konstitusi sebagaimana dinyatakan pada Pasal 18B ayat (2) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 hasil amandemen pertama di mana dinyatakan bahwa “*Negara mengakui dan menghormati kesatuan-kesatuan Masyarakat Hukum Adat beserta hak-hak tradisionalnya sepanjang masih hidup dan sesuai dengan perkembangan masyarakat dan prinsip Negara Kesatuan Republik Indonesia, yang diatur dalam Undang-Undang.*” Demikian penelitian disertasi ini dibuat dengan tujuan: 1) Mengkaji dan menganalisis pelaksanaan tata laksana penguasaan tanah Suku hak milik menurut Hukum Adat suku Dayak Dayak Aoheng; 2) Mengkaji dan menganalisis tata laksana penguasaan tanah hak milik menurut hukum adat Suku Dayak Aoheng berbasis nilai keadilan, dan 3) Mengkaji dan menganalisis revitalisasi tata laksana penguasaan tanah hak milik menurut hukum adat tanah suku Dayak Aoheng berbasis nilai keadilan.

Pengakuan dan penghormatan Negara atas kesatuan-kesatuan Masyarakat Hukum Adat tersebut oleh Negara harus didahului oleh adanya bukti “keberadaan masyarakat hukum adat” sebagai “prasyarat hukum”. Itulah Negara hukum. Mahkamah Konstitusi dalam MK No. 35 tahun 2012 terhadap Pasal 18 b ayat (2) UUD 1945 telah menjelaskan indikator keberadaan masyarakat hukum adat yang ada, hidup secara *de facto* (*actual existence*), baik yang bersifat teritorial, genealogis, maupun yang bersifat fungsional, yakni bahwa suatu persekutuan masyarakat hukum adat *de facto* ada, setidaknya-tidaknya bila terdapat unsur-unsur, sebagai berikut: **Pertama**, adanya masyarakat yang warganya memiliki perasaan kelompok (*in group feeling*), **kedua**, adanya pranata pemerintahan adat, **Ketiga**, adanya harta kekayaan dan/atau benda-benda adat, **Keempat**, adanya perangkat norma hukum adat dan; **Kelima**, terdapat unsur adanya wilayah tertentu.

Penelitian disertasi dengan judul Revitalisasi Model Tata Kelola Penguasaan Tanah Hak Milik Menurut Hukum Adat Suku Dayak Aoheng Berbasis Nilai Keadilan ini mengkaji, menganalisis dan mengungkapkan realitas *de facto* keberadaan praktek tata kelola penguasaan tanah hak milik menurut hukum adat di dalam masyarakat hukum adat suku Dayak Aoheng berbasis nilai keadilan. Model tata kelola penguasaan tanah hak milik menurut hukum adat suku Dayak Aoheng ini dalam seluruh proses dan semua tahapnya berlangsung di atas basis nilai keadilan, mulai dari memperoleh, menguasai dan mempertahankan tanah hak milik adalah bagian dari adanya empat unsur *de facto* (*actual existence*) masyarakat Suku Dayak Aoheng sebagai Masyarakat Hukum Adat, yakni adanya 1) suatu masyarakat yang warganya memiliki perasaan kelompok (*in group feeling*); 2) adanya pranata pemerintahan adat; 3) adanya perangkat norma hukum adat; dan 4) adanya wilayah tertentu.

Dengan demikian, revitaliasi model tata kelola penguasaan tanah hak milik menurut hukum adat suku Dayak Aoheng berbasis nilai keadilan ini dapat menjadi instrument bagi Negara untuk menegakan keadilan bagi masyarakat adat dalam memiliki tanah hak milik menurut hukum adat. Dengannya, masyarakat hukum adat sungguh dapat menikmati keadilan sosial dalam kondisi sebagai masyarakat hukum adat yang menata penguasaan tanah hak milik menurut hukum adat yang secara *de facto* masih berlaku di dalam suatu masyarakat hukum suku Dayak Aoheng.

Kata kunci: Revitalisasi Tata Laksana Penguasaan Tanah Hak Milik Menurut Hukum Adat.

ABSTRACT

Dissertation with the title “The Revitalization of Model of the Right of Ownership of Land According to Customary Law of Dayak Aoheng Tribe Based on Value of Justice” in fact aimed at attain factual justification of the mandate of the Constitution of the Republic of Indonesia of 1945, resulted in the first amendment of the mentioned Constitution as it is stated in article 18B verse (2) that “*Negara mengakui dan menghormati kesatuan-kesatuan Masyarakat Hukum Adat beserta hak-hak tradisionalnya sepanjang masih hidup dan sesuai dengan perkembangan masyarakat dan prinsip Negara Kesatuan Republik Indonesia, yang diatur dalam Undang-Undang (The state shall recognize and respect their traditional community units as long as these remain in existence and are in accordance with societal development and the principle of Unitary State of the Republic of Indonesia, and shall be further regulated by law)*”. Therefore this dissertation research made by the goals of: 1) to study and analyze the customary system of private ownership of land according to customary law of the Dayak Aoheng tribe; 2) to study and analyze the customary system of private ownership of land according to customary law of the Dayak Aoheng tribe based on justice value and; 3) to study and analyze revitalization the customary system of private ownership of land according to customary law of the Dayak Aoheng tribe.

The recognition and respectful by the state on those traditional community units must be preceded by the proofs that “these traditional community units remain in existence” as “legal precondition”. Constitution Court in its decision No. 35 in 2012 explaining the article of 18B verse (2) of the Constitution of the Republic of Indonesia of 1945 established indicators of the existence of traditional community units, *de facto* or actual existence of these traditional community units, whether territorially, genealogically, of functionally, at least there must the following elements: **Firstly**, there must be exist a community in which its members have *in group feeling*; **Secondly**, there must be exist an institution of customary governance; **Thirdly**, there must be exist traditional treasures or custom objects; **Fourthly**, there must be tools of customary law and; **Fively**, there must be exist the element of certain territory.

This dissertation research with the of “The Revitalization of the Model of the right of the Ownership of Land According to Customary Law of Dayak Aoheng Tribe Based on Value of Justice” is to study, to analyze and to reveal the fact of the *de facto* existence of the right of the ownership of land according to customary law of the Dayak Aoheng based on justice value. This model of right of ownership of land according to customary law of the Dayak Aoheng based on justice value in all of of it process and stages undergo on the basis of justice value, starting from how to get, to keep and to defend the right of ownership of a private land is the proof of at least three elements of *actual existence* of traditional community of the Dayak Penihing tribe namely, 1) the existence a community in which its members have *in group feeling*; 2) the existence of an institution of customary governance; 3) the existence of tools of customary law and 4) the existence the element of certain territory of the tribe.

Therefore, the study on the revitalization of the Model of the right of the Ownership of private Land According to Customary Law of the Dayak Aoheng Tribe Based on the Value of Justice could be an instrument for the State to do justice for traditional community of indigenous people members to maintain their right to own private land according their customary law. By doing this the State does recognize, protect and to respect traditional community in enjoying real social justice in owning private land according to customary law which is *de facto* in existence in traditional community of indigenous people of the Dayak Aoheng.

Key words: Revitalization of the right of ownership of private land according customary law.