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The Rights of Indigenous Law Communities in Forest Management in the West Seram Regency: A Perspective of National and Customary Law

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Abstract: Recognition of indigenous legal communities as legal subjects with rights over their territories and natural resources is a constitutional mandate, as stipulated in Article 18B, paragraph (2) of the 1945 Constitution of the Republic of Indonesia. In West Seram Regency, indigenous legal communities have a traditional governmental structure that manages customary forests as part of the territorial domains. This article aims to analyze the implementation of the rights of indigenous legal communities in forest management from a constitutional perspective and local practices. The research method employed is a juridical-empirical approach, utilizing data collection techniques that include literature studies and interviews with local leaders and regional officials. The research findings indicate that although there is a normative recognition of the rights of indigenous peoples, the implementation at the local level, especially in West Seram Regency, still faces regulatory, administrative, and political obstacles. This causes the legal status of customary forests to be unclear and vulnerable to overlap with state claims or corporate permits. Therefore, affirmative steps are needed from local governments through regional regulations and collaborative programs that strengthen the position of indigenous communities as key actors in the management of forests based on local wisdom. The local wisdom of customary law communities, accumulated throughout the history of customary law development, plays a significant role in the rights of customary law communities, including communal land rights in both marine and terrestrial areas.
Keywords: Community Rights; Forest Management; National Law; Customary Law.

Introduction

Forest management by the state places indigenous communities in a marginalized position, as it is stated that customary forests are part of state forests that are located within the area and managed by the community.[1] In the context of indigenous peoples, customary forests are not recognized as forests based on their status, thus the rights of indigenous peoples over forest resources are positioned as part of state management rights.[2] Customary forests are established by the government as long as they still exist and are recognized by the local government based on research by legal experts, the aspirations of the community and customary leaders, and relevant agencies.[3] Factually, this bureaucratic technocratic scientific matter denies the existence of indigenous communities.

[1]Timothy Cadman, et al. "Forest governance in Nepal concerning sustainable community forest management and red panda conservation." *Land* 12.2 (2023): 493.

[2]Kartika Winkar Setya, Abdul Aziz Nasihuddin, and Izawati Wook. "Fulfilling Communal Rights through the Implementation of the Second Principle of Pancasila towards the Regulation on Agrarian Reform." *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6.1 (2023): 89-102.

[3]Kazuhiro Harada, et al. "The role of NGOs in recognition and sustainable maintenance of customary forests within indigenous communities: The case of Kerinci, Indonesia." *Land Use Policy* 113 (2022).

The rights of indigenous legal communities as a collective unit over all resources in their territory, commonly known as customary rights, are rights related to the management as well as the utilization of resources.[4] The management rights to forest resources for indigenous legal communities are based on the Basic Agrarian Law (UUPA) Number 5 of 1960, Article 2, paragraph 4.[5] However, Article 2, paragraph 4 has not been followed up with lower regulations for its operationalization. The absence of further regulations from Article 2, paragraph 4 of the UUPA results in the indigenous legal community being granted only the right to utilize forest resources. This law has also not been able to accommodate the rights of indigenous peoples to own their natural resources. The rights of indigenous peoples that are recognized are only the rights to utilize natural resources and manage them in a limited manner for daily living needs.

So far, research related to the rights of indigenous communities in forest management has been conducted in various forest areas in Indonesia. Asteria et al. studied the forest preservation by the Baduy indigenous people in the form of customary law. Their findings indicate that the Baduy community applies the concept of sustainable forest management, where local people are directly involved in forest management activities to enhance welfare and achieve sustainable forests.[6] Meanwhile, Ungirwalu et al. focus on customary forests in West Papua between desires and needs.[7] Similarly, Sopaheluwakan et al. studied decentralization and the recognition of customary forest rights for two decades in West Papua.[8] Leo and others are more interested in the Dayak Iban traditional views on sustainable forest management in West Kalimantan.[9] However, research related to the implementation of community rights in the management of customary forests focused on the Maluku Province, which is one of the archipelagic regions in Indonesia, is still insufficiently addressed. This area is different from others, so it is possible that there are also differences in the management of customary forests. This research aims to explore this by selecting the West Seram Regency in Maluku Province as the research location.

Recognition and respect for the existence of customary law communities in various regions that live based on customs with their rights such as rights over customary lands within the governance of the state which includes land and sea areas.[10] The granting of recognition and respect must mean the existence of freedom and opportunities for indigenous legal communities to live and develop within the Unitary State of the Republic of Indonesia.[11] Countries in the West Seram

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[4]Sepri Antoni Sitopu, and Yati Sharfina Desiandri. "Perlindungan Tanah Adat Terhadap Hak Hidup Masyarakat Dalam Prespektif Hak Asasi Manusia Dalam Negara Demokrasi." *Quantum Juris: Jurnal Hukum Modern* 6.1 (2024).

[5]Ni Komang Putri Sari Sunari Wangi, Komang Febrinayanti Dantes, and Ketut Sudiatmaka. "Analisis Yuridis Hak Ulayat Terhadap Kepemilikan Tanah Adat Berdasarkan Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria." *Jurnal Ilmu Hukum Sui Generis* 3.3 (2023): 112-121.

[6]Donna Asteria, et al. "Forest conservation by the indigenous Baduy community in the form of customary law." *Journal of Cultural Heritage Management and Sustainable Development* 14.2 (2024): 175-189.

[7]Antoni Ungirwalu, et al. "Customary forests in West Papua: Contestation of desires or needs?." *Forest and Society* 5.2 (2021): 365-375.

[8]William R.I. Sopaheluwakan, et al. "Two-decade decentralization and recognition of customary forest rights: Cases from special autonomy policy in West Papua, Indonesia." *Forest Policy and Economics* 151 (2023).

[9]Sandy Leo, et al. "Indigenous Dayak Iban customary perspective on sustainable forest management, West Kalimantan, Indonesia." *Biodiversitas* 23 (2022): 424-435.

[10]Garciano Nirahua, and Merlien Irene Matitaputty. "Kewenangan masyarakat adat dalam pengelolaan sumber daya alam di wilayah laut Nuhu Evav." *Bacarita Law Journal* 2.2 (2022): 103-124.

[11]Lusiana Margareth Tijow, Hayat Hayat, and Tengku Elmi Azlina. "The Equilibrium Principal Application to The Customary Law of Indigenous Peoples Based on Pancasila." *ADLIYA: Jurnal Hukum dan Kemanusiaan* 18.1 (2024): 47-66.

Regency, namely Manusa, Kaibobu, and Luhu, as a federation of customary law communities, have customary rights as traditional rights, one of which is the right to manage forest resources as part of the customary governance in those Countries.

The realization of the regulation of the rights of indigenous legal communities in the constitution, as stipulated in Article 18, paragraph (2) of the 1945 Constitution, requires that the constitutional rights of indigenous legal communities be clearly defined in the concept of recognition and respect by the state. The implementation of State Rights, which simultaneously creates State authority in the management of forest resources as part of the State's jurisdiction, needs to be affirmed both through Law, Regional Regulations, and State Regulations. Therefore, this research aims to analyze the rights of indigenous peoples in forest management from the perspective of national and customary law in the West Seram Regency. Furthermore, this research is divided into two studies: the implementation of the rights of indigenous legal communities over forests in the West Seram Regency, and the concept of limited recognition of the existence of indigenous peoples and customary law within Indonesia's positive law.

Method

This research is an empirical study conducted in the West Seram Regency. The problem approach used is a legislative approach and a conceptual approach. The legislative approach is carried out by reviewing all laws and regulations related to the research objectives or the legal issues being addressed. In this approach, the researcher seeks the ratio legis and the ontological basis for the emergence of the legislation so that the researcher can grasp the philosophical content contained in the legislation. Thus, the researcher can conclude whether there is a philosophical conflict between the legislation and the faced issue.

The conceptual approach departs from the views and doctrines that have developed in legal science, allowing researchers to discover ideas that give rise to legal understandings, legal concepts, and principles of law relevant to the issues at hand. Understanding these views and doctrines serves as a foundation for researchers in constructing legal arguments to address the issues faced. Data collection is conducted through in-depth interviews with local figures, community members, and local government officials in the West Seram Regency. Additionally, a literature study on regulations related to the management rights of forests for customary law communities is carried out as analytical material. The problem-solving strategy refers to the stages of problem-solving proposed by George Polya,[12] namely, understanding the problem, making a plan to solve the problem, executing the plan, and reviewing the results obtained.

Results and Discussion

Implementation of the Indigenous People's Rights over Forests in the Western Seram Regency

The Maluku Province is one of the archipelagic regions in Indonesia located in the eastern part of the archipelago. The West Seram Regency, often abbreviated as SBB, is one of the regencies on Seram Island, Maluku Province. SBB has an area rich in natural resources, particularly forests and marine products, as well as traditional cultural values that are still strongly preserved. The

[12]Triana Jamilatus Syarifah, and Puput Nikmaturrohmah. "Profile of Students' Problem-Solving Skills Viewed from Polya's Four-Steps Approach and Elementary School Students." *European Journal of Educational Research* 10.4 (2021): 1625-1638.

topography of SBB Regency is very diverse, ranging from coastal areas to mountains. The livelihoods of its people still largely depend on agriculture, fishing, and forest products. Traditional governance and social structures remain an important part of community management, where traditional communities play a strategic role in preserving local wisdom and cultural identity.

The Luhu village is one of the customary villages located in the Huamual District, West Seram Regency. This village is situated on the western coast of Seram Island and is known as one of the oldest villages in the area. Luhu has a strong historical value and was once a center for the development of Islam and trade in the past. Socio-culturally, Luhu adheres to a robust customary system, led by a Village King and supported by Kewang, Saniri Negeri, and other customary institutions. The pela tradition and customary legal system are still practiced in the daily lives of the Luhu people, making this village a prime example of local cultural preservation amidst modernity. In addition, there is also the Kaibobu village, which is also located in the Huamual District and is a customary village that borders the sea. Similar to Luhu, Kaibobu has an active customary government system that is legally recognized by the state. The Kaibobu community mainly earns their living as fishermen and farmers, and upholds the values of customs and ancestral traditions. Kaibobu is known for the strong social bonds among its members, as well as the respect for the environment through customary institutions such as customary prohibitions and the collective management of forest and sea areas. Community involvement in decision-making at the state level reflects the principle of participation that thrives in the local context.

The indigenous legal community in the West Seram Regency generally still practices forest management based on customary rules. In the Negeri Luhu and Kaibobu, for example, the community knows the sasi system, which is a temporary prohibition on utilizing forest products in certain areas to maintain their sustainability. This prohibition is usually established in customary deliberation forums and marked with certain symbols such as coconut leaves tied at the entrance to the forest area or specific trees. Knowledge of the boundaries of customary forest areas is derived from ancestral stories supported by the collective memory of the community. These boundaries are marked by natural signs such as rivers, large rocks, or old trees. Although there are no formal legal documents, the recognition of these boundaries is consensual among the community. In addition, the community has an internal monitoring system for violations of customary rules. They believe that violations of customary prohibitions can bring about disasters both spiritually and socially. Therefore, the social control mechanism operates independently without relying on state authorities.

The recognition of the rights of indigenous legal communities has normatively found its place in the national legal system. Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia emphasizes that the state recognizes and respects the unity of indigenous legal communities along with their traditional rights, as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. Furthermore, the Constitutional Court Decision No. 35/PUU-X/2012 marks an important milestone in the constitutionalization of rights over customary forests by stating that customary forests are forests that exist within the territory of indigenous legal communities and are not part of state forests. Nevertheless, at the local level, this recognition has not been fully implemented. In the context of West Seram Regency, there are currently no regional regulations or decrees from the regent that explicitly establish recognition of the existence and territory of indigenous legal

communities. This causes the legal status of customary forests to become unclear and susceptible to overlap with state claims or private company permits.

The results of in-depth interviews with traditional leaders, local communities, and regional government officials indicate several obstacles in the implementation of the rights of indigenous peoples over forests. First, the absence of legalization or formal recognition of customary territories leads to legal uncertainty in forest area management. Second, in practice, local governments rarely involve indigenous communities in the planning process or in granting permits for forest utilization to third parties. This impacts the reduced control of communities over the land and forests they have historically managed. Third, there are overlapping territorial claims between indigenous communities and state forest areas as designated in the forest area maps by the central government. Fourth, the capacity of indigenous communities regarding legal understanding, territorial documentation, and advocacy mechanisms remains limited. Although the collective spirit of the community remains strong, the lack of access to information and legal assistance hinders their struggle to obtain legitimate recognition from the state. Amidst the limited structural support, indigenous communities in West Seram have developed various local initiatives to assert their rights over the forest. One prominent strategy is participatory mapping of customary areas conducted in collaboration with non-governmental organizations. This mapping serves as evidence of the existence of customary territories and a basis for legal recognition advocacy.

Based on the results of interviews with several figures in the Land of Kaibobu, Alex Kuhuwael (the King) stated that "The forest in the Kaibobu area is communal land that has been passed down from our ancestors. We protect the forest according to our customs. We have a 'forest sasi', so no one can carelessly take wood or hunt without permission. If violated, there is a customary fine. Regarding the boundaries of our land, we have natural markers, such as rivers and large stones in the forest. However, sometimes neighboring lands have not yet reached a consensus, so discussions must be held frequently."

Then according to Robby Louhatapessy (Chairman of BPD), "The Kewang must protect nature. We regulate when it is permissible and not permissible to enter the forest. For example, during the deer hunting season or when collecting rattan, we must wait for Kewang to open the sasi. We also collaborate with the local youth for forest patrols, so there are no encroachers from outside. We continue to adhere to customary law, but also start to cooperate with the forestry department." For the Luhu people, they have a similar perspective. According to one informant, "In Luhu, we have a sacred forest area that must not be disturbed. It is part of our ancestral heritage. We have clear customary rules about who can enter, for what purpose, and when. The management of this customary forest is also a source of our identity. Regarding the boundaries of our land, we uphold the customary law based on the history of the founding of our land. We are always open to discussions if there are differences with neighboring regions."

Then in Saniri, according to one informant, it was explained that "Our Kewang actively protects the forest areas from illegal logging. We have mapped out our customary territories, including the locations of prohibited forests. If anyone violates customary rules, they can be subjected to sanctions according to the state's law. We also educate the youth about the importance of protecting the forest, so that this knowledge does not disappear. The boundaries of our territory are not just lines on a map, but are about historical relationships and customary ties. We in Saniri often remind each other about the importance of maintaining harmony with neighboring territories.

There are sometimes small disputes regarding boundaries, but they can usually be resolved through pela or customary discussions. We also discuss forest management in Saniri, because the forest is a shared property that must be preserved for future generations."

In addition, the community is beginning to compile customary legal documents that contain customary norms in forest management and collective decision-making. Traditional consultations are being revived periodically to strengthen community solidarity and formulate steps for local-based environmental protection. Involvement of indigenous youth is also a focus, especially in monitoring forest areas and community-based legal education.

Field findings show that indigenous legal communities have great potential in conserving forests if given recognition and adequate space for participation. The absence of local regulations that acknowledge the existence of indigenous communities and weak coordination among agencies are the main hindering factors. Therefore, affirmative actions from local governments are needed, including the development of regional regulations on the recognition of indigenous communities, legal assistance, and institutional facilitation at the village or state level. Furthermore, the integration of customary law into regional forestry policies can be a strategic approach to bridging the legal dualism between the state and customary law. Thus, sustainable forest management can be achieved through collaboration between the government and indigenous legal communities based on the principles of ecological justice and recognition of constitutional rights.

The Concept of Limited Recognition of the Existence of Indigenous Communities and Customary Law within Indonesian Positive Law

As a country that adheres to the Civil Law System tradition, in understanding Indonesia's positive legal system one must start from the hierarchy of legislation, with the strongest being the constitution embodied in the 1945 Constitution.[13] Similarly, in elaborating on the regulations concerning the existence of indigenous communities and customary law in Indonesia's positive legal system, the easiest approach is to first examine its regulations in the 1945 Constitution.

In the 1945 Constitution, there are no regulations that specifically govern customary law, but only regulations regarding the existence of customary law communities, namely in Article 18B paragraph 2 and Article 281 paragraph 3. The regulation concerning customary law communities in the second amendment of the 1945 Constitution of the Republic of Indonesia as stipulated in Article 18B paragraph (2) represents a new regulation in the administration of government, especially in its regulation in the constitutional law that regulates the recognition and respect from the state towards customary law communities along with their traditional rights.

Article 18B paragraph 2 states: "The state recognizes and respects the unity of indigenous legal communities and their traditional rights as long as they are alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia, which is regulated by law."[14] Meanwhile, Article 281 paragraph 3 states: "Cultural identity and the rights of traditional communities shall be respected by the development of time and civilization."[15]

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[13]Lita Tyesta Addy Listya Wardhani, Muhammad Dzikirullah H. Noho, and Aga Natalis. "The adoption of various legal systems in Indonesia: an effort to initiate the prismatic Mixed Legal Systems." *Cogent Social Sciences* 8.1 (2022).

[14]Republik Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. Pasal 18B Ayat 2.

[15]Republik Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.Pasal 281 Ayat 3.

Based on the provisions of the two articles above, it is clear that there is a form of regulation stating that the existence of indigenous and/or traditional communities is recognized only if they meet certain criteria, namely: not contrary to the development of society and the principles of the Unitary State of the Republic of Indonesia (NKRI). The concept of this limited recognition is further evident in the regulations at the legislative level (laws), which can be traced back to the UUPA (Law No. 5 of 1960) as a law that explicitly regulates not only the existence of indigenous communities but also customary law. The UUPA's regulations regarding indigenous communities can be found in Article 2, paragraph 4, and Article 3, while the regulations regarding customary law can be found in Article 5.[16]

Table 1. UUPA regulations related to indigenous peoples and customary law

Article	Description
Article 2 paragraph 4 UUPA	The authority of the State mentioned above can be delegated to autonomous regions and indigenous legal communities, as necessary and not in conflict with national interests, in accordance with Government Regulations.
Article 3 UUPA	Taking into account the provisions of articles 1 and 2, the implementation of customary land rights and similar rights of indigenous legal communities, as long as they still exist in reality, must be carried out in such a way that it conforms to national and state interests, which are based on national unity and must not conflict with laws and other higher regulations.
Article 5 UUPA	The agrarian law that applies to the earth, water, and space is customary law, as long as it does not contradict national and state interests, based on national unity, with Indonesian socialism, as well as with the regulations contained in this law and with other legislation, all while taking into account elements that rely on religious law.

Based on the provisions of the articles in the UUPA above, it is clear that the existence of indigenous communities and customary law is recognized only if it does not conflict with legislation and national interests, where the matter of national interests must refer to Article 33 paragraph 3 of the 1945 Constitution as mentioned in Article 3 of the UUPA, namely the interest of state control at the highest level over the land, water, airspace, and all the natural resources contained within.

Specifically regarding the regulation of customary law as mentioned in Article 5 of the UUPA, in the explanation of that article which then refers to the general explanation point III item (1), it is stated that what is meant by the term "customary law" here is "customary law that has been adapted and adjusted to the interests of society in a modern state and in relation to the international community, as well as aligned with Indonesian socialism," which merely means law that embodies the awareness of the Indonesian people that differs from Western civil law (which is no longer in use). Thus, the term customary law mentioned in Article 5 of the UUPA is not law applicable within the environments of customary communities as understood in the traditional sense, but rather is

[16]Republik Indonesia, Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria.

customary law that has had its regional characteristics removed and replaced with national characteristics.[17]

Regulations regarding indigenous peoples and their traditional rights under the concept of limited recognition as outlined in the Basic Agrarian Law can also be found in the Forestry Law (Law No. 41 of 1999). Several articles that regulate the existence of indigenous peoples in this Forestry Law include Article 4 paragraph 3, and Article 67. Article 4 paragraph 3 of the Forestry Law states: "The state's control over forests must take into account the rights of indigenous legal communities, as long as they actually exist and are recognized, and do not contradict national interests."[18] Meanwhile, Article 67 of this Law states:

(1) Indigenous legal communities as long as they actually still exist and their presence is recognized are entitled:
   a. Conducting the harvesting of forest products to meet the daily living needs of the indigenous community concerned;
   b. Conducting forest management activities based on applicable customary laws that do not conflict with the law; and
   c. Obtaining empowerment in the context of improving well-being.
(2) The establishment and deletion of the existence of customary law communities as referred to in paragraph (1) shall be determined by Regional Regulations.
(3) (3) Further provisions as referred to in paragraph (1) and paragraph (2) shall be regulated by Government Regulation.[19]

Furthermore, the explanation of article 67 states: "Paragraph (1): Indigenous law communities are recognized in their existence if, according to reality, they meet the criteria, among others: a) the community still exists in the form of a social group (rechtsgemeenschap); b) there is an institution in the form of its customary authority; c) there is a clear customary legal area; d) there are norms and legal instruments, particularly customary courts, that are still adhered to; and e) they still collect forest products in the surrounding forest areas to meet their daily needs."[20]

Based on the explanation above, according to the Forestry Law, the existence of indigenous communities is recognized only if their existence has been established by regional regulations based on the criteria as described in the explanation of article 67 paragraph 1 above, and the most fundamental aspect above all is that the recognition of the existence of indigenous communities must not be contrary to national interests as stated in article 4 paragraph 3. As long as there has not yet been established a specific law regulating the existence of customary law communities as mandated by Article 18B paragraph 2 of the 1945 Constitution, there are actually many other laws along with their technical regulations that govern the existence of indigenous peoples. However, among these numerous legislations, there is one commonality, which is that the concept of recognition of the existence of indigenous communities is a limited recognition concept, meaning that indigenous communities are recognized in their existence (along with their rights) as long as it does not contradict the interests of the state and does not conflict with legal provisions.

The consequence of the existence of the recognition concept as such, as a direct derivative of the concept of the Rule of Law, is that if there is an existence of indigenous communities along with

[17]Andi Aco Agus, "Eksistensi Masyarakat Adat dalam Kerangka Negara Hukum di Indonesia." *Jurnal Sosialisasi* 4.1 (2017): 5-15.

[18]Republik Indonesia, Undang-Undang Nomor 41 Tahun 1999 tentang Kehutanan. Pasal 4 Ayat 3.

[19]Republik Indonesia, Undang-Undang Nomor 41 Tahun 1999 tentang Kehutanan. Pasal 67.

[20]Republik Indonesia, Undang-Undang Nomor 41 Tahun 1999 tentang Kehutanan. Penjelasan Pasal 67.

their rights and interests that conflict with the interests of the state (national interests), or if there are customary laws that conflict with the positive legal rules of the state in legislation, then the existence of indigenous communities along with their interests and traditional rights regulated in those customary laws can be disregarded.[21] This is often the cause of social conflicts that generally involve indigenous communities on one side and the state along with companies on the other side, who have interests in investing and developing in areas where the indigenous people live, thrive, and base their livelihoods. These conflicts are rooted in the contradictions of interests among the parties, each of which is based on a normative framework of completely different legal systems, namely customary law (which is used as a basis for thinking and acting by indigenous communities) and positive law (which is used as a basis for thinking and acting by the state and the involved companies).[22]

So how is the basic concept of customary law and indigenous peoples actually different from the positive law system of the state? This will be explained in the points below.

1. Regulations Related to State Rights in Forest Resource Management

Indigenous law communities are a group of people bound by their own customary laws as a collective community based on common origin and geography. The subjects, objects, and authorities of indigenous law communities in Indonesia are societies based on territorial (region), genealogical (descent), and territorial-genealogical (region-descent) similarities, resulting in the diversity of indigenous law communities between one region and another. The Judicial Review of the Forestry Law has been conducted, leading to changes in Article 1 number 6 of the Forestry Law in the Constitutional Court Decision Number 35/PUU-X/2012 from "Customary forests as state forests" to "Customary forests as forests located within the territory of indigenous law communities." The consequence of this decision is that the government must acknowledge that indigenous legal communities and their customary territories have the authority to manage their customary forests. In the basic principles of the Agrarian Law (UUPA), land ownership is not transferred to the state (staatsdomein). Instead, Part II of UUPA explains that Article 33 paragraph (3) of the Republic of Indonesia Law does not grant the state the right to own land, but only the right to control land, water, and airspace, including the natural resources contained within them.

The rights of indigenous legal communities are also based on Government Regulation Number 24 of 1997 concerning Land Registration, which includes the authority over their customary territories, including the ownership of customary land that can be proven through written documents such as land certificates, inheritance letters, maps, historical records, and handover documents. This can also be proven through oral evidence such as oral recognition by the indigenous community or the traditional leader regarding their authority over their customary land.[23]

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[21]Maryo Sengkandai, "Tinjauan Hukum Internasional Dan Nasional Atas Hak-Hak Masyarakat Adat Di Indonesia." *Lex Privatum* 13.2 (2024).

[22]Sumitro Sumitro, Idham Irwansyah, and Syukurman Syukurman. "Pola Interaksi Sosial Dan Konflik Agraria Antara Masyarakat Adat Cek Bocek Dengan Pt. Amnt Di Sumbawa." *Edu Sociata: Jurnal Pendidikan Sosiologi* 6.1 (2023): 265-273.

[23]Wiby Darmawan Elkas, Yani Pujiwati, and Bambang Daru Nugroho. "Program pendaftaran tanah sistematis lengkap (PTSL) untuk memberikan kepastian hukum pada masyarakat adat Minangkabau." *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 7.1 (2023): 1-14.

Physical evidence such as ancestral graves, remnants of agricultural activities, former residential places, gardens, cultivated plants, historical relics, pottery or inscriptions, and others. The authority to organize customary institutions is carried out through the recognition of the customary law community itself, the recognition of the existence of the customary law community by the judicial institution based on court decisions, and the recognition of the existence of the customary law community by the council of the customary law community selected by the customary law community itself.[24]

The authority to manage forest resources is based on the indigenous knowledge that exists and grows within the customary law community, along with various rules that regulate limitations and sanctions. The presence of power greatly depends on the relationship between the party that has the ability to exert influence and the party that receives that influence, either voluntarily or forcibly. If the power resides with an individual, that person acts as a leader and those who receive their influence are followers. Power and authority have differences; power is the ability to influence others, while authority is the power held by an individual or group that is recognized by society. However, in practice, power and authority often reside with the wrong individuals.

2. State Authority in Forest Management

Forest resources play a crucial role in maintaining the balance of the natural ecosystem. Forests are not only habitats for flora and fauna, but they also have a significant impact on human survival. Communities living around forests benefit greatly for their livelihoods.[25] However, this does not rule out the possibility of encouraging the community to exploit forest resources in order to fulfill basic needs and improve the welfare of the community. This pattern of utilizing forest resources leads to a perspective in society that views forest resources purely in material terms. They believe that forests are used only for the material value they provide. Forest areas must be preserved in terms of physicality, climate, and spatial planning, as well as the socio-economic needs of the community and the nation.[26] The classification of customary forests as state forests has caused conflicts, and customary law communities often clash with the government and related legal entities.[27]

Since the issuance of the Constitutional Court Decision Number 35/PUU-X/2012 which revised customary forests from state forests to forests located within the areas of customary law communities. Subsequently, the Ministry of Forestry issued a Circular Letter on May 16, 2013, No. SE 1/Menhut-II/2013/PUU-X/2012 addressed to Governors, Regents/Mayors, and Heads of Forestry Departments throughout Indonesia. The circular issued contains the determination of customary forest areas remaining with the Ministry of Maritime Affairs. This determination is made with the aim that if local governments have established customary law communities first through regional regulations. Many customary areas, including customary forests, are unilaterally claimed by forestry as state-owned forest areas. Therefore, communities must manage their customary

[24]Garciano Nirahua, and Merlien Irene Matitaputty. "Kewenangan masyarakat adat dalam pengelolaan sumber daya alam di wilayah laut Nuhu Evav." *Bacarita Law Journal* 2.2 (2022): 103-124.

[25]Hamzah Hamzah, et al. "Sustainable Development of Mangrove Ecosystem Policy in South Sulawesi from the Perspectives of Siyāsah and Fiqh Al-Bi'ah." *Juris (Jurnal Ilmiah Syariah)* 22.2 (2023): 367-380.

[26]Andika Bangun Sanjaya, "Socio-Economic and Legal Analysis on Forest Protection." *Journal of Law and Legal Reform* 2.4 (2021): 493-504.

[27]M. Nazir Salim, et al. "From tradition to transformation: Customary land dynamics and state protection in Manggarai, Indonesia." *Humanities, Arts and Social Sciences Studies* (2025): 78-90.

forests well, as the management of customary areas is very vulnerable to overlapping claims of land and customary forest ownership.

Customary forests are one form of the indigenous peoples' customary rights.[28] Maria Soemardjono as quoted by Rizki et al., expresses the opinion that customary rights have a relationship between the legal community (subject of the rights) and its territorial land (object of the rights).[29] From the explanation above, the authority of customary law communities over land and forest resources is as follows:

a. Regulating and managing land use, preparation and maintenance of land.
b. Regulating and managing legal relationships between people and land (granting certain rights to specific subjects).
c. Regulating and creating legal relationships between people and legal actions related to land (buying and selling, inheritance, etc.)

The authority of the customary law community's customary rights does not only encompass land but also the resources located on the land as objects of customary rights. The authority of the customary law community over customary forests is the subject of customary rights that occupy a specific area, and the forest is one of the sources of life for the customary law community, which is an object of customary rights. The forests recognized as objects of customary rights are customary forests. Customary forests are those that are recognized as objects of customary rights as customary forests. In general, the management of forests by the customary law community is distinguished by the characteristics of its management, namely that forest management is exploitative, which involves utilizing forest products in the form of wood and non-wood resources for agricultural needs.[30]

Conservative forest management consists of protection and utilization. Conservative forest management that is protective is the action of protecting the forest to maintain its sustainability in the form of "forest prohibitions" or "customary forests." On the other hand, conservative forest management that is protective involves managing forest areas that are protected, but their forest resources can be utilized directly as long as they do not alter the function of the forest. Commercial utilization of forests is only permitted if it meets the needs of the village or provides public facilities. Customary forests are the communal rights of indigenous people. Communal rights include water, plants, animals, economically valuable stones (in the ground), minerals, coastal areas, and above and below the water surface, as well as parts of the land within it. Regarding this customary area, its boundaries are clearly defined, both factually (natural boundaries or markers in the field) and symbolically (the sound of the gong that still resonates). To see how customary law regulates and resolves relationships, it can be easily observed whether transactions regarding land are conducted according to customary rules and institutions.[31] Customary land rights are the authority held by certain customary law communities in specific areas that are the environment of their society to utilize the natural resources of that area, including land.

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[28]Obed Edotalino Sudiro, and Slamet Suhartono. "Perlindungan Hukum Kawasan Hutan Adat dan Hak Ulayat." *Politika Progresif: Jurnal Hukum, Politik dan Humaniora* 1.3 (2024): 274-289.

[29]M. Fathur Rizki, Agung Basuki Prasetyo, and Triyono Triyono. "Eksistensi Hukum Adat Masyarakat Suku Sakai Dalam Pelaksanaan Hak Ulayat Di Provinsi Riau." *Diponegoro Law Journal* 11.4 (2022).

[30]Nasri Wijaya, Handika DA Pelu, and Fransiskus Samderubun. "Analisis Sosio-Legal Peran Lembaga Adat Dalam Penyelesaian Konflik Lahan Pada Hutan Adat Di Wilayah Kabupaten Merauke." *Jurnal Komunikasi Hukum (JKH)* 8.2 (2022): 282-291.

[31]Messalina Lovenia Salampessy, Bramasto Nugroho, Hariadi Kartodiharjo, and Cecep Kusmana. "Local Institutions Performance in Mangrove Forest Management on Small Islands: Case Study in Buano Island, Maluku Province, Indonesia". *Jurnal Sylva Lestari* 12.2 (2024): 296-323.

The Authority of Forest Management in the Ancestral Territory of the State The Decision of the Constitutional Court Number 35/PUU-X/2012 regarding the annulment of a number of verses and articles concerning the existence of customary forests in Law Number 41 of 1999 concerning Forestry has implications including the procedure for recognizing the existence of customary law communities, the determination of customary forest boundaries, and the division of forest management authority between customary law communities and the State. Therefore, all customary forest concessions need to be reviewed to obtain consent from the indigenous people regarding the management of these forests. The ownership of customary forests does not need to be certified like personal or legal entity land, but just needs to be registered like State land.

Regarding customary forests, the power of the state is limited to the extent that its authority is included within the customary forests. Customary forests fall under the rights of customary land in a specific area of customary law communities.[32] The authority to manage forests is regulated in Article 21 of Law Number 41 of 1999 concerning Forestry which states that "forest management activities include forests and the preparation of forest management plans, utilization of forests and the use of forest areas, forest rehabilitation and reclamation, forest protection, and nature conservation."[33]

The protection and management of the environment regulated in Law Number 32 of 2009 concerning Environmental Protection and Management states that the existence and recognition of customary rights are increasingly taken into account. The recognition of indigenous legal communities along with their local wisdom is not only the authority of the government but also the authority of the indigenous legal community. Despite the existence of the Environmental Protection and Management Law, regulations related to its implementation at both central and regional levels are still needed to strengthen this law.[34] In the protection and management of forests in the customary realm, the government must continue to pay attention to the local wisdom of the indigenous community in order to achieve the implementation and its goals as maximally as possible.[35]

Law Number 6 of 2014 concerning Villages also regulates the authority of villages in customary land or state territory. Article 18 of this law explains that the authority of villages includes the authority of village government, village development, social community development, and empowerment of village communities based on community initiatives, origin rights, and village customs.[36] Article 19 (a) authority based on the right of origin. The right of origin in this law includes: the regulation and implementation of the government council based on the initial order, the regulation and control of ulayat or customary land, the preservation of the socio-cultural values of customary villages, the resolution of disputes based on customary law conducted in customary villages in accordance with principles of human rights that prioritize deliberation, the organization

[32]Amallia Mawaddah, Mirza Satria Buana, and Erlina Erlina. "Problematika Penatausahaan Tanah Ulayat Masyarakat Hukum Adat Di Indonesia." *Banua Law Review* 4.2 (2022): 140-155.

[33]Republik Indonesia, Undang-Undang Nomor 41 Tahun 1999 tentang Kehutanan. Pasal 21.

[34]Nyoman Gede Aditya Jay Medhika, Anak Agung Sagung Laksmi Dewi, and Luh Putu Suryani. "Konsep Anti Eco-Slapp dalam Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup." *Jurnal Interpretasi Hukum* 3.1 (2022): 220-224.

[35]Jenni Kristiana Matuankotta, "Peran Aktif Masyarakat Hukum Adat dalam Pembangunan Ekonomi." *Sasi* 24.2 (2019): 101-113.

[36]Republik Indonesia, Undang-Undang Nomor 6 Tahun 2014 tentang Desa. Pasal 19.

of peace assemblies in customary villages conducted based on legal provisions, the maintenance of peace and order based on customary law, and the development of customary legal life in general based on the socio-cultural conditions of the customary village community.

Conclusion

The implementation of the rights of indigenous legal communities over forests in the West Seram District has not yet seen the establishment of regional regulations or a regent's decree that explicitly recognizes the existence and territory of indigenous legal communities. This has resulted in unclear legal status for customary forests, making them susceptible to overlapping claims from the state or permits from private companies. In fact, the recognition of indigenous legal communities by the state is mandated in the Constitution of the Republic of Indonesia, which is a high mandate for the Indonesian Government to acknowledge and protect the customary rights of indigenous legal communities. Basically, the Republic of Indonesia acknowledges the existence of indigenous legal communities along with their rights; this recognition is inherent to the indigenous legal communities without the need for other regulations to legitimize that recognition. Ideally, every policy for natural resource management in Indonesia should automatically and harmoniously base its policy on the consideration of the existence of indigenous legal communities. The customary land rights of indigenous peoples must be well preserved within customary territories due to the local wisdom values that grow, develop, and are practiced by the indigenous legal communities.

The recognition of the existence of customary land rights by the state can be based on the values of local wisdom of customary law communities. The existing local wisdom values have both religio-magical, socio-cultural, and economic significance, so the utilization of land rights must be by the norms, behaviors, and regulations that have been traditionally adhered to by the community. Government support plays an important role as a facilitator, coordinator, and policymaker. For the countries granted rights in the management of natural resources in the customary land areas of customary law communities, it is deemed necessary to provide opportunities for them to participate in business activities or to offer partnership opportunities to customary law communities, as the government has a social responsibility to assist the surrounding communities. It is essential to preserve the values of local wisdom of indigenous communities to protect nature both on land and at sea; therefore, a regulation is needed that can accommodate the values of local wisdom of indigenous communities in its regulation.

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