

What is the Form of Protecting Customary Land in Indonesia? A Study of the History and Construction of Settings

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Abstract

This article examines the legal protection for customary land rights based on forest law in Indonesia. The study of customary land is important because customary land is the communal ownership of land subject to customary law. Policies related to customary land rights are inseparable from regulations regarding forestry law because customary rights appear starting with the clearing of forests by customary law communities. Forestry management after Indonesia's independence cannot be separated from government legal politics, especially related to forestry law in Indonesia. This writing departs from the question of how the history of the existence of customary land and how the protection of customary land in the regulation of forestry law in Indonesia. The writing of this article uses a normative juridical method, namely studying material using theory from literature books, including scientific writing in journals and material related to laws. Based on the hypothesis, forestry regulations in Indonesia have not provided legal protection for customary lands and have even eliminated the existence of customary land itself, which is the source of life for indigenous peoples. The lack of protection can cause conflicts between the government and indigenous peoples, one of the factors due to the government's takeover of customary land ownership from indigenous peoples. With Government Regulation Number 23 of 2021 concerning the Management of Forest Areas, which also regulates customary forests as separate forest groups (not included in state forests), customary forests are recognized.

Keywords: Protection, Customary Land, Indonesian Forestry Law.

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1. Introduction

Agrarian conflicts related to customary land are increasing yearly in Indonesia. Government Regulation Number 23 of 2021 concerning Forestry Administration defines Customary Territory as customary land in the form of land, water and/or waters along with the natural resources on it within certain limits, owned, utilized and preserved for generations and in a sustainable manner to meet the community's needs obtained through inheritance from their ancestors or ownership claims in the form of customary lands or customary forests. Based on the definition above, it is clear that customary land or existing

land is land that is legally owned either through inheritance from generation to generation or ownership claims managed by indigenous peoples.

Based on data from the Consortium for Agrarian Reform (KPA), until 2018, there were 410 agrarian conflicts involving local communities, especially indigenous peoples. This conflict consists of several sectors, such as; plantations (144 cases), property (137 cases), infrastructure (16 cases), agriculture (53 cases), forestry (19 cases), coastal/marine (12 cases), and mining (29 cases). The cases mentioned above have not shown the entire agrarian conflict until 2023, so cases of land tenure in Indonesia may get out of hand, especially concerning customary lands, which causes local residents always to face armed forces, both companies and the state.¹

One area that can be used to reflect the increasing agrarian conflict since 2018 is the agrarian conflict in East Nusa Tenggara (NTT). According to WALHI's records in NTT, agrarian conflicts continue and increase yearly, especially vertical conflicts between the government and the people and companies and the people. This increase is directly proportional to the increase in the investment coming into NTT and the government's escalation of development. In a WALHI NTT press conference Thursday (2/12/2021), WALHI noted several cases that have emerged in the last 3 (three) years in public spaces.²

Based on the data above, this research article will examine the protection of customary land rights in laws and regulations regarding forestry administration. Government Regulation Number 23 of 2021 concerning Forestry Administration regulates the principles of customary land in forestry areas. Indonesia is located on the equator with two seasons: the dry and rainy seasons. Indonesia is also a tropical country because it is located on the equator. It has unique flora with various varieties reflecting Asian, Australian and endemic plant species native to Indonesia. The forest is one of the wealth of Indonesian flora, an extraordinary natural resource. Indonesia is known as a country that has the second largest area of tropical wet forest (tropical rain forest) in the world after Brazilia.³

¹Konsorsium Pembaruan Agraria, "Catatan Akhir Tahun 2018: Masa Depan Reforma Agraria Melampaui Tahun Politik" (KPA, 2019).

²Ebed de Rosary, "Meningkatnya Konflik Agraria Di NTT, WALHI Minta Gubernur Dan DPRD Cepat Bertindak," Mongabay, 2021, <https://www.mongabay.co.id/2021/12/07/meningkatnya-konflik-agraria-di-ntt-walhi-minta-gubernur-dan-dprd-cepat-bertindak/>.

³Imam Komarodin, "Sinkronisasi Pengaturan Kewenangan Pemerintah Daerah Dalam Penyelenggaraan Kehutanan Di Daerah," *Universitas Sriwijaya*, 2020.

Many academics have researched the customary land rights of indigenous peoples, both in the form of books and scientific journals. An article in the form of a journal by Dian Cahyaningrum entitled customary land management rights for indigenous and tribal peoples for investment purposes has been published in the *Jurnal Negara Hukum* Vol. 13, No. 1 June 2022.⁴ Still, in journal form, there is the work of Bambang Daru Nugroh with the title management of customary forestry rights that is just about the granting of HPH permits linked to the state's right to control over natural resources in the *Jurnal Hukum Litigasi* Volume 11, No. 1, April 2010.⁵ The work in book form is the work of Julius Sembiring with the title *Dynamics of Arrangements and Problems of Indigenous Lands*, published by STPN Press 2018. Still, in book form, a work by Dyah Ayu Widowati et al. with the title *recognition and protection of land rights of indigenous peoples in forest areas* was published by STPN Press 2014.⁶

However, the research above has not clearly examined customary land from a historical perspective or the forms of existing legal provisions. Hence, the author believes it is essential to examine customary land by questioning its history and arrangements for its existence. Given that customary land has a high urgency value for indigenous peoples. As is known, Indonesia's forest area is 120.7 million hectares, and 63.09 million hectares are forests as natural resources in Indonesia, which provide enormous benefits for the state, nation and society. Basically, in principle, forests have been used for various interests, namely, the interests of the people, the state and the interests of indigenous peoples who had controlled them before Indonesia's independence. Customary land is land shared by members of the customary law community. The tenure rights of the customary law community are known as customary rights. Customary law communities own customary land, which is identical to customary law communities. Indigenous peoples are said to exist still if they have customary rights.

Policies regarding customary rights cannot be separated from regulations regarding forestry law because customary rights emerge starting with the clearing of forests by customary law communities. Customary rights existed

⁴Dian Cahyaningrum, "Hak Pengelolaan Tanah Ulayat Masyarakat Hukum Adat Untuk Kepentingan Investasi (Management Rights of Customary Law Communities Ulayat Land for Investment Purposes)," *Jurnal Negara Hukum* 13, no. 1 (2022).

⁵Bambang Daru Nugroho, "Pengelolaan Hak Ulayat Kehutanan Yang Berkeadilan Dalam Kaitan Pemberian Izin HPH Dihubungkan Dengan Hak Menguasai Negara Atas Sumber Daya Alam," *Jurnal Ilmu Hukum Litigasi* 11, no. 1 (2010).

⁶Dyah Ayu Widowati, *Pengakuan Dan Perlindungan Hak Atas Tanah Masyarakat Hukum Adat Di Kawasan Hutan* (Yogyakarta: STPN Press, 2014).

before the government of the Republic of Indonesia was born. Since the Dutch occupation period, policies regarding customary rights were given by the Dutch government's recognition of customary rights. After independence in 1945, in the Elucidation of Article 3 of the 1945 Constitution of the Republic of Indonesia, it was stated that land, water and the natural resources contained in the earth are the mainstays of people's prosperity. Therefore, it must be controlled by the state and used for the greatest prosperity of the people." Based on the 1945 Constitution of the Republic of Indonesia, it is expressly regulated in article 3 of the Basic Agrarian Law Number 5 of 1960 (UUPA), which states, bearing in mind articles 1 and 2 of the UUPA, the implementation of customary rights and similar rights of indigenous peoples as long as they exist, acknowledged its existence. The implementation of the utilization of customary rights by customary law communities may not conflict with national interests and may not conflict with laws or higher regulations.

The use of customary land may not conflict with laws and other regulations, one of which is Government Regulation No. 23 of 2021 concerning Forestry Administration and other regulations because customary land is within the forestry environment and authority. The government's legal politics regarding forestry regulation affects the existence of customary land for customary law communities. The urgency of customary land for indigenous peoples is vital because, according to research results, customary land is consistently decreasing. Examination of the existence of customary land in the regulation of forestry law in Indonesia, including: How is customary land in the regulation of forestry law in Indonesia, and how is the impact on customary land related to the regulation of forestry law in Indonesia?

2. Research Method

The article "customary land protection in forestry administration law in Indonesia" uses a juridical method, namely a study of material using theory from books, scientific journal literature, and those relating to law. Writing in this article uses descriptive analysis, and data sources are taken from secondary data with qualitative data analysis. This study is expected to provide a scientific contribution to civil law, especially customary law, regarding the existence of customary land rights.

3. Research Results and Discussion

3.1 History of Customary Land Arrangements in Indonesia

Article 1 point 6 of Law Number 41 of 1999 concerning Forestry stipulates that a customary forest is a forest that is within the Territory of customary law communities. Meanwhile, Customary Land is the control of land by existing legal communities, which includes all land, including the environment in the Territory of customary law communities and is owned by all members of the customary law community. Customary land has the characteristics of communal land ownership, not individually, because ownership and control are shared rights of customary law community members so that they are public. However, customary land cannot be equated with communal land because customary land has a different character, namely the ownership of communal land rights, which have a civil character.

Customary law communities are groups of people living in some geographical regions for generations due to ties to ancestral origins, a strong relationship with the environment, and a value system that determines economic, political, social and legal institutions. The criteria for indigenous peoples in several laws and regulations are inconsistent. This inconsistency is reflected in the Local Government Law, Human Rights Law, Water Resources Law, Plantation Law, Coastal Zone and Small Island Management Law, Environmental Protection and Management Law, Draft Law (RUU) on the Protection of Indigenous Peoples Units and Forestry Law. However, the definitions are the same, with only a few different criteria. Specifically for the Forestry Law, the criteria are as follows:⁷

- a. The community is still in the form of an association (*rechtsgemeenschap*);
- b. There is an institution in the form of a set of customary rulers;
- c. There is a clear area of customary law;
- d. There are legal institutions, especially customary justice, which are still being obeyed; and
- e. Still collecting forest products in the surrounding forest areas to meet daily needs

⁷Arif Hidayat, "Implikasi Yuridis Terhadap Peralihan Urusan Kehutanan Dari Kabupaten Ke Propinsi Berdasarkan Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah," *JIHAD: Jurnal Ilmu Hukum Dan Administrasi* 2, no. 1 (2020), <https://doi.org/10.58258/jihad.v2i1.1109>.

Customary law communities are essential because they are identical to customary land, affecting whether an area is still designated as customary land. This relates to the contents of the Constitutional Court Decision No. 35/PUU-X/2012 dated 16 May 2012, which states, "Customary forest is a forest within the territory of customary law communities." Determination of indigenous peoples by the government through a recognition mechanism by the National Legal Development Agency, which is regulated in Law Number 32 of 2009 concerning Protection and Management of the Environment and Minister of Home Affairs Regulation Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Indigenous Peoples.

Tracing deep into the colonial era, forest management during the Dutch colonial period was divided into two, namely during the colonial period of the *Verenigde Oost Indische Compagnie* (VOC) and the Dutch East Indies Colonization. During the VOC occupation in 1620, the VOC banned illegal logging and excise collection was held on timber and forest products. On 10 May 1678, the VOC gave authority to a Chinese merchant named LIM Sai Say to cut wood around Betawi and export forest products for urban needs, subject to the obligation to pay a 10 percent excise tax.

The explanation above illustrates that forest management laws have been regulated since the Dutch occupation of Indonesia. The first regulation on forest management⁸ published on 10 September 1865 for Java and Madura. Then it was followed by an agrarian regulation called Domeinverklaring in 1870, which stated that any land (forest) where it could not be proven that there was a right on it became the domain of the government. Based on the Dutch government's land policy, every regulation issued by the Dutch government was intended to limit land ownership for the Indonesian people.

The restriction was expanded, initially regulated only for the Java and Madura regions, and then the regulations were developed for the Sumatra region and other regions. The forest area during the Dutch Colonial administration was divided into two, namely Teak Forest, which was managed regularly and jungle forest, which was not managed regularly and managed by the Resident under the orders of the Director of *Binnelands Bestuur* and assisted by a *Houtvester*. Several regulations during the Dutch administration had many weaknesses and overlaps and were not following the socio-cultural conditions of the local indigenous peoples. As a result, it

⁸Nyoman Nurjaya, "Sejarah Hukum Pengelolaan Hutan Di Indonesia," *Jurisprudence* 2, no. 1 (2005): 35-55.

did not apply effectively as a legal basis for operating forest tenure and management as expected by the Dutch East Indies government.

Traditional land ownership by customary law communities in the political history of agrarian law after independence until now has undergone several changes, especially regarding the system of control. In connection with regulations in forestry law, the existence of customary land has also changed several times, especially in relation to the protection of customary land as land belonging to customary law communities.

Forestry management after Indonesia's independence is also inseparable from government legal politics, especially related to forestry in Indonesia. In 1960 the government issued Government Regulation in Lieu of Law (Perpu) Number 19 of 1960 concerning State Companies. In connection with this regulation to realize the status of the Forestry Service to become a State Company, the government issued Government Regulation Number 17 to No. 30 of 1961 concerning the Establishment of State Forestry Companies (PERHUTANI), which includes the General Management Board (BPU) of Perhutani and Perhutani East Java, West Java, Central Java, South Sumatra, Riau, North Sumatra, Aceh, West Kalimantan, East Kalimantan, South Kalimantan, Central Kalimantan, South/Southeast Sulawesi, and Maluku. The confirmation of the Perhutani's work area of authority, which is the designation of forests to be managed by Perhutani, was issued by Government Regulation Number 35 of 1963 (LN of 1963 No 57).

Forestry management became the full authority of Perhutani after the issuance of Law Number 5 of 1967 concerning the Basic Forestry Law (UUPK). The existence of Customary Land rights in the Law shows there is no acknowledgement in Article 17 that the administration of customary forest may not conflict with the Law. In another arrangement, Law No. 5 of 1967 concerning the Basic Forestry Law (LN of 1967 Nompr 8 and Supplement to LN No. 2823) stipulates forest areas with the strengthening of state forests in forest areas with a determination of community forests not accompanied by customary forest arrangements. Implementing regulations for Law No. 5 of 1967, namely Government Regulation No. 21 of 1970 jo. Government Regulation Number 18 of 1973 concerning Forest Concession Rights (HPH) and Forest Product Collection Rights (HPHH), which are the legal basis for the exploitation of forest resources in several regions in Indonesia.

For example, the proceeds were collected in Sumatra, Kalimantan, Sulawesi, Maluku and Papua. Exploitation executors are given to State-Owned Enterprises and Private-Owned Enterprises by granting HPH and HPHH concessions. The granting of these concessions has positively increased the economy in Indonesia. However, it is undeniable that the impacts that have arisen are also extraordinary, especially on the sustainability of forests owned by indigenous peoples who have owned them for years. These impacts include:

1. From an ecological perspective, there is a degradation of the quantity and quality of tropical forests in various forest areas in Indonesia;
2. From an economic perspective, there are limitations and the loss of sources of life for the local community;
3. From a social and cultural perspective, local communities, especially those who have traditionally lived in and around forests, have emerged as victims of development who have been marginalized and neglected, and their rights to natural resources have been frozen;
4. There have been prolonged conflicts over managing and utilizing forest resources between local communities, the government, and holders of forest concessions.

The impact of Law Number 5 of 1967 concerning the main provisions of Forestry and its implementing regulations, which were legal products of the New Order era, shows that the Law is not adequately based on the spirit or soul of protecting forests and their local communities. As a result, it creates conflicts with local communities and uncontrolled exploitation of forest resources.

Several government regulations on forest management emerged during the New Order era. Namely, Government Regulation Number 7 of 1990 concerning Industrial Plant Concession Rights (HP-HTI) and Government Regulation No. 6 of 1999 concerning Forest Exploitation and Product Collection in Forest Production Forests is a government regulation that is not much different from previous government regulations (PP No. 21 of 1970 Juncto PP 18 of 1970).

During the reform period, Law Number 41 of 1999 concerning Forestry was issued, where this regulation was expected to be able to overhaul ideologically and substantially from the previous Law. However, in principle, it turns out that Law No. 41 of 1999 is ideologically and substantially not different or the same as Law No. 5 of 1967 as a product of

forestry law during the New Order era. Law Number 41 of 1999 concerning Forestry is emphasized in the preamble considering letter a, and it is stated that:

“Forests, as gifts and mandates from God Almighty bestowed upon the Indonesian nation, are assets controlled by the state, provide multipurpose benefits for humankind. Therefore they must be grateful for, managed and utilized optimally, and their sustainability is maintained for the greatest prosperity of the people, for present and future generations.”

The statement above illustrates that the state controls the wealth controlled by the state as government. Meanwhile, before the Indonesian state was formed, other communities controlled and managed parts of the forest from generation to generation. The statement that the state controls it raises the interpretation that the state or government is the sole authority (state base forest management). This statement is also inconsistent with what is stated in Article 1, paragraph 2 of the Basic Agrarian Law (UUPA), which states:

“The entire earth, water and space, including the natural wealth contained therein within the Territory of the Republic of Indonesia as a gift from God Almighty is the earth, water and space of the Indonesian people and constitutes national wealth.”

Forests which are part of the natural wealth within the Territory of the Republic of Indonesia in the two regulatory statements mentioned above are unanimously declared as gifts from God Almighty, which are used for the prosperity of the people. The gift of God Almighty shows sacred and religious values. The Indonesian state is a country that is based on God, even though it is not a religious country. However, there is an inconsistency; in the UUPA Article 1, paragraph 2, there is a statement that “earth, water, air and the wealth contained therein are national assets.” This shows that control, including management, is carried out by all Indonesian people with control rights over forests. As for Law Number 41 of 1999 concerning Forestry, it is stated that the state controls it, although it does not mean that the state owns it. Its management is carried out by the state, in the sense of the government.

Law No. 41 of 1999 determines the concept of forestry regarding the status of forests listed in Article 5, paragraph 1 and divides into 2 (two), namely state forest and private forest. In paragraph 2, it is emphasized that state forests

can be customary forests which are reaffirmed in paragraphs 3 and 4 concerning customary forests, although customary land is not explicitly stated. According to Maria Sumarjono⁹, The Forestry Law does not recognize the existence of customary forests besides state forests and private forests. Customary forest in the general provisions of letter 6 (six) states that customary forest is a state forest in the Territory of customary law communities. In contrast, a state forest is defined as a forest on land burdened with land rights.

His explanation further emphasized that the inclusion of forests controlled by indigenous peoples in the sense of state forests is a consequence of the existence of the right to control and manage by the state as an organization of the power of all the people. If, in reality, the customary law community still exists and is recognized as able to carry out forest management activities and utilization of forest products.

About the fact that customary rights or customary land are identical to customary law communities or primarily the legal relationship between customary forests/land and customary law communities if customary forests/land are not recognized as a separate intensity separate from rights forests and state forests, their existence should not need to be regulated in the Forestry Law. Customary land rights are more appropriately included in the land institution, in this case, the ATR BPN ministry. The criteria for the existence of customary rights are detailed in Article 67 of the Basic Forestry Law, namely:

- a. Society is still in the form of association;
- b. There is an institution in the form of customary rulers;
- c. There is a clear jurisdiction;
- d. There are legal institutions and instruments, especially the judiciary, which are still being obeyed;
- e. Still holding levies on forest products in the surrounding forest areas.

While the criteria for continuing customary land rights must include the elements specified in Article 6, paragraphs 3, 4 and 5 of the Forestry Law, namely: the existence of customary law community areas that have a relationship of interdependence with customary land, the customary law

⁹Maria S.W. Sumardjono, *Tanah Dalam Perspektif Hak Ekonomi, Sosial Dan Budaya* (Jakarta: Penerbit Buku Kompas, 2008).

community has the authority to jointly regulate the use of land, waters, plants and animals in the Territory of the relevant legal community using customary law that applies and is obeyed by the community. In more detail, land/customary rights do not include land parcels already owned by individuals or legal entities with land rights following statutory regulations.

Law Number 41 of 1999 concerning Forestry contains substantial weaknesses in the existence of customary rights. Then in 2004, it was revoked with the issuance of Law Number 19 of 2004 concerning the stipulation of Government Regulations in Lieu of Law 1 of 2004 concerning Amendments to Law Number 41 of 1999 concerning Forestry to become Laws. It turns out that the amendments to the law only regulate changes to mining licenses to provide legal certainty for investors, not customary land. In relation to customary land, several government regulations under the Law are stipulated separately, for example, Regulation of the Minister of Home Affairs Number 52 of 2014 concerning Guidelines for Recognition and Protection of Customary Law Communities, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2019 concerning Procedures for Administration of Customary Land of Indigenous Peoples, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 10 of 2019 concerning Procedures for Determining Communal Rights to Land of Indigenous Peoples and Communities Located in Certain Areas.

The latest Forestry Law is Law No. 18/2013 on the Prevention and Suppression of Forest Destruction, issued on 6 August 2013. The concept of this law is to eliminate opportunities for forest destruction and to take legal action against perpetrators of forest destruction, both direct and indirect or related. As for customary forests/land, it is not mentioned, but the existence of customary rights led to the Constitutional Court Decision No. 35/PUU-X/2012, which decided that customary forests are a separate forest group and are part of the Customary Rights of Indigenous Peoples.

Although in further arrangements related to customary forests, according to the Regulation of the Minister of Environment, Law and Forestry Number P.32/MenLHK-Setjen/2015 with Minister of Environment and Forestry No. P83/Menlhk-Setjen/2016 customary forest is included in the social forestry section, not as a separate forest group. This shows the inconsistency of policies towards the existence of customary forests/customary lands, which causes their arrangements to be equated with social forestry. The term social

forestry and its related fields, regulations, and implementation only emerged after the issuance of Minister of Environment and Forestry Regulation P83/Menlhk Setjen/2016, while customary forests/land existed before the existence of the unitary state of the Republic of Indonesia. The government's political law regarding customary land leads to institutionalizing customary land equal to community plantation forests, village forest management, community forestry, and partnerships.

The progress of the identification of customary forests is a development of the protection of customary forests/customary lands from 2016 to 2022 of 106,576 ha for the regions of Jambi, Central Sulawesi, South Sulawesi, Banten, Jambi, West Kalimantan, East Kalimantan, West Java, South Kalimantan, Bali, Central Java, Riau, Maluku, North Sumatra, South Sumatra, and North Kalimantan with 98 tribes and 45,930 households.¹⁰ Identifying these forests is a step forward for the government so that legal certainty regarding the ownership of customary forests for customary forest owners becomes clear. Based on the identification of customary forests, it is hoped that the government's steps regarding customary forests will provide clear boundaries and cannot be taken over or reduced to customary land rights, which are the rights of customary law communities.

The Job Creation Law Number 11 of 2020 has influenced changes in several regulations related to the political policy of government law, including, among others: MSMEs, Taxation, Village-Owned Enterprises, Implementation of Housing and Settlement Areas, Management Rights, Land Rights, Flats and Land Registration, Abandoned Land, Agriculture, Marine and Fisheries, Trade, and Forestry and many more, namely there are 45 new regulatory policies.

Government Regulation No. 23 of 2021 on the implementation of Forestry in articles 203 to 247 is one of the government's political and legal policies, which is a follow-up to the Job Creation Law No. 11 of 2020 with the status of revoking several Government Regulations on forestry and amending three Government Regulations namely on State Forestry Public Companies (Perum), Forest Protection Procedures and Forest Protection.

¹⁰Veggy Shintya Putri, Ibrahim Ibrahim, and Luna Febriani, "Peluang Dan Tantangan Pengelolaan Kawasan Konservasi Taman Hutan Raya Bukit Mangkol," *Jurnal Sosial Sains* 1, no. 6 (2021), <https://doi.org/10.36418/sosains.v1i6.117>.

The fundamental changes contained in Government Regulation No. 23 of 2021 when compared to Government Regulation No. 41 of 1999 (only private forests and state forests) concerning forest status (Article 15) are differences, namely consisting of three types of forests including:

- a. A state forest is a forest located on land that is not encumbered with land rights;
- b. Customary Forests are forests that are within the Territory of customary law communities;
- c. A private forest is a forest located on land encumbered with land rights.

The customary forest is included in Government Regulation Number 23 of 2021 as a type of forest that has a different existence from the private forest and state forest. Customary forests specifically stipulate that forests are in customary law communities. Indigenous peoples themselves are interpreted as traditional communities that are still related in the form of associations, have institutions in the form of customary law institutions and instruments that are still adhered to and still collect forest products in the surrounding forest areas whose existence is confirmed by regional regulations. Regional Governments, through Regional Regulations, become the legal umbrella regarding the recognition or existence of indigenous peoples in a regional area. Recognition by the local government is essential concerning the existence of customary law communities because it is related to the existence of customary forests. This is related to the meaning of customary law communities, which are interpreted as customary law communities because they are still collecting forest products. These forest products are recognized within customary forest/customary land belonging to customary law communities.

3.2. Customary Land Protection in Forestry Law in Indonesia

Forests are rich natural resources to be able to contribute to the economy of Indonesia. Economic contributions to Indonesia's development originating from forests must still pay attention to the basic rights of indigenous peoples. Customary land in forest areas must be maintained and protected without reducing state revenues from the forest sector. Forestry can increase economic growth in Indonesia, and it must be accompanied by proper and good forest management without destroying or usurping indigenous peoples' land rights.

Correct and good forest management is forest management that not only

prioritizes the growth of economic benefits but must pay attention to forest resources, the existence of indigenous peoples, and equity in utilizing forests because forests are national wealth. The destruction of forest resources occurs because of the choice of a state-based resource development paradigm and the use of centralized development management oriented towards economic growth, supported by legal instruments and repressive policies.

The issue of customary land located in forest areas means that there are two ownerships, namely that of the customary law community and the government as the holder of state power. As a result, it often creates conflicts which is one of the wrong implementations of forest management. Several issues related to the existence of customary forest/land can be stated as follows:¹¹ The confiscation of the customary rights of the Amungme tribe by PT Freeport in 2015, data for 2016 from the Alliance of Indigenous Peoples of the Archipelago (AMAN) of 2,359, stated that¹² until now there are still many indigenous peoples who have been displaced from their land due to the expansion of large-scale mining or oil palm plantations in Kalimantan and Sumatra.¹³

In 2014, there was a conflict in the Dayak Iban customary forest, Samunying Village, Bangkayang Regency, West Kalimantan, which PT Ledo Lestari confiscated for oil palm development. The people of Samunying Village were shocked by logging activities in the customary forest area belonging to the indigenous Dayak, Iban, Village of Samunying Jaya, using excavators. Seeing this logging activity, the local people reprimanded him, but he ignored it. Then the customary law community reported to the Regent of Bekayang to stop the activity but was also ignored, so the logging and harvesting of wood in the customary forest area continued. Even the people of Semunying Village were surprised to receive information from the Regent about the

¹¹Kompas, "Pemerintah Dan Freeport Disebut Merampas Hak Tanah Adat Suku Amungme," Kompas.com, 2017, <https://nasional.kompas.com/read/2017/02/24/16342521/pemerintah.dan.freeport.disebut.merampas.hak.tanah.adat.suku.amungme>.

¹²Fat'hul Achmadi Abby, "Sengketa Pertanahan Hak Masyarakat Adat Dengan Hak Guna Usaha (HGU) Perkebunan Sawit Di Kalimantan Selatan," *Al-Adl : Jurnal Hukum* 8, no. 3 (2017), <https://doi.org/10.31602/al-adl.v8i3.675>.

¹³Muhammad Farkhan Hanif Rakan Simamora and Andico Putra Perdana Fajar Kusuma Ramadhani, Caesar Lintang Aprilliano, Achmad Aldy Hifdillah, Muhammad Rifqi, "Perampasan Hak Ulayat Masyarakat Hukum Adat Desa Semunying Oleh PT Ledo Lestari," ResearchGate, 2019, https://www.researchgate.net/publication/338005406_Perampasan_Hak_Ulayat_Masyarakat_Hukum_Adat_Desa_Semunying_oleh_PT_Ledo_Lestari.

logging and harvesting of wood by PT Ledo Lestari for oil palm plantations.¹⁴

At the beginning of 2012, there was a conflict over the customary rights of the Gunung Sahilan village community with PT RAPP; chronologically, the community submitted to PT RAPP that their Industrial Plantation Forest (HTI) was on the customary land area of the Gunung Sahila community and the community asked the company to return the land because the company does not have the right and authority to release the land. This is because the concession land managed by the company is state-owned land after obtaining permission from the government through the Minister of Forestry.

Some of the cases mentioned above occurred because the laws and regulations in the forestry sector did not correctly protect customary rights. On the other hand, there are also cases of deprivation of customary rights by the government, which were carried out after changes to the Forestry Law regulations. The existence of laws and regulations, which are the legal umbrella in the event of an act that violates the rights or interests of other parties. Government support through government policies embodied in laws and regulations and the awareness of every individual, whether government officials or not, must be aware of and understand that customary land owned by customary law communities is very much needed.

Government Regulation Number 83 of 2016, followed by Government Regulation Number 23 of 2021 concerning Forestry Administration, has changed the management of forest management with the existence of a social Forestry Institution. According to Nur Hasan Ismail, forestry law politics is normatively oriented towards 3 (three) objectives, namely:¹⁵

1. Yielding productivity through the granting of Forest Concession Rights/forest Utilization Permits to large investors with an area of thousands of hectares;
2. Improving community welfare;
3. Maintaining the ecological sustainability of forest resources.

Forestry management is essential for legal protection to not significantly

¹⁴Liga Rahayu, "Problematika Penyelesaian Konflik Tanah Ulayat Masyarakat Adat Di Kabupaten Kampar (Studi Kasus: Desa Gunung Sahilan Kecamatan Gunung Sahilan Kabupaten Kampar Tahun 2012-2013)," *Angewandte Chemie International Edition*, 6(11), 951-952., 2017.

¹⁵Titin Marliyana, "Pengorganisasian Kelompok Tani Dalam Memperjuangkan Perhutanan Sosial (Studi Kasus Pengorganisasian Stam Di Desa Mentasan, Kecamatan Kawunganten, Kabupaten Cilacap)," *Jurnal Analisa Sosiologi* 9 (2020), <https://doi.org/10.20961/jas.v9i0.41369>.

impact the existence of forests in general and local communities in the forest environment and use the forest. From Indonesia's independence from 1945 to 1960, the government took over forest control from the Japanese government by issuing regulations regarding forestry control, namely Perpu No. 19 of 1960 concerning State Enterprises. The government manages forests through the legal umbrella of Law Number 5 of 1967 concerning Forestry. However, forest management is carried out only to increase Indonesia's economic growth. The impact of only forest management to increase economic growth causes forest damage, including reducing the protection of customary land.

Likewise, changes to Law No. 41 of 1999 by dividing forests into private and state forests only mean customary forests do not exist. Government Regulation Number 41 of 1991 explains that customary forests are included in state forests, so the state or government, through their authority, can take over customary rights belonging to customary law communities. Conflicts between the government and indigenous peoples occur to defend the land that indigenous peoples have controlled for generations.

Government Regulation Number 23 of 2021 concerning Forest Management is the implementation of Article 36 and Article 185 letter b of Law Number 11 of 2020 concerning Job Creation which creates a forest management system with the Regional Head/Governor as the organizer of the forest inventory, which is carried out once a year. The establishment of forest areas that include state forests and customary forests and the separation of state forests and customary forests have the impact that customary forests factually exist and must be protected.

Legal protection for customary land in forest areas must be based on Government Regulation Number 23 of 2021 concerning the Administration of Forest Areas, which includes customary forests as separate forest areas (not included in state forests). This arrangement is a translation of Article 36 and Article 185 of Law Number 11 of 2020 concerning Job Creation. Law Number 41 of 1999 concerning Forestry, which explains that customary forests are included in state forests, must be corrected. Thus, all laws and regulations derived from the forestry law must comply with and recognize customary land in forest areas. If it is not corrected, then the article can still be used as a basis for the state or the government, through its authority, to take over customary rights belonging to customary law communities.

4. Closing

4.1. Conclusion

1. Forests are rich in natural resources and contribute to the country's economic growth. Excellent and correct forest management is needed to protect all ecosystems within the forestry sphere. This includes customary land or customary land owned by customary law communities. The existence of customary land is closely related to Forestry Regulations because of its existence within the forest area. The current arrangement has not provided legal protection for Customary Land and even eliminated the existence of customary land, which is the source of life for customary law communities. This has created systemic conflict between the government, companies and indigenous peoples due to the government taking over customary land ownership from indigenous peoples or granting concession permits to companies.
2. The government's legal politics influence policies to be developed and forestry policies. Forestry Arrangements very much influence the existence of customary rights in Indonesia. The impact of the existence of customary land related to Forestry Arrangements is tremendous, especially for customary law communities. Indigenous peoples need the consistency of forestry regulations to protect customary land due to customary land, which is the source of their life. Legal protection for customary land in forest areas must be based on Government Regulation Number 23 of 2021 concerning the Administration of Forest Areas, which includes customary forests as separate forest areas (not included in state forests). This arrangement is a translation of Article 36 and Article 185 of Law Number 11 of 2020 concerning Job Creation. Law Number 41 of 1999 concerning Forestry, which explains that customary forests are included in state forests, must be corrected. Thus, all laws and regulations derived from the forestry law must comply with and recognize customary land in forest areas. If it is not corrected, then the article can still be used as a basis for the state or the government, through its authority, to take over customary rights belonging to customary law communities.

4.2. Suggestion

The government, the executive and the legislature, and both at the central and regional levels, must make a breakthrough in adjusting laws and regulations regarding customary land in forest areas. Laws and regulations governing forestry must recognize the existence of customary land. Recognition of customary land in regulations must be specifically stated that customary land is not part of forests or state land. The government must enact statutory regulations which, in terms of legal substance, strictly stipulate that customary land is the land of indigenous peoples' rights so that no one, including companies and the state, can confiscate it.

The legal community must continue struggling to maintain their customary land rights. Indigenous peoples must be in tune with the struggle to defend and reclaim customary lands that certain parties have confiscated. Of course, this struggle must remain within the corridors of law.

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