


## The Role of Indigenous Communities in Protecting The Environment After The Entry of Companies

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### Abstract

**Introduction:** The many cases of land disputes involving indigenous communities have created a bad image for this community.

**Purposes of the Research:** The rights of indigenous peoples as well as the legal substance that forms the basis for the implementation of development in safeguarding the environment after the entry of the Company

**Methods of the Research:** The method used is normative juridical with qualitative analysis.

**Results of the Research:** The noble values in the lives of indigenous peoples seem to have disappeared due to a number of "conflicts" disputes. In fact, feuds and struggles are not the nature of indigenous peoples. This group is actually closely linked to environmental conservation efforts to ensure the continuity of life. This cultural identity requires a foothold which is known as customary territory. This area is very important because it is the living space and livelihood of the community. Customary territories include land, forests, seas and natural resources which are seen as a unity of economic, religious values and socio-cultural ties. The presence of the State can resolve problems that arise in society, especially environmental rights owned by indigenous peoples.

**Keywords:** Rights of Indigenous Communities; Protection; Environment.


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## INTRODUCTION

The indigenous community is a permanent and orderly community unit in which its members are not only tied to the place of residence of a particular area, both in worldly terms as a place of life and in spiritual terms as a place of worship for ancestral spirits (territorial), but are also bound by relationships. Descendants through blood ties and/or the same kinship from one ancestor, either indirectly due to marriage ties or customary (genealogical) ties. Every indigenous community has customary law which is used to regulate all problems that occur within the customary environment. Customary law is a collection of rules of behavior that only apply to the native Indonesian community, which is coercive and has not been codified in the form of statutory regulations.<sup>1</sup>

The Indonesian nation consists of diverse tribes, cultures and Indigenous communities. Therefore, the State recognizes the existence of living Indigenous law communities and their existence is still recognized, which we can see in the formulation of Article 18B paragraph (2) and 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In the life of

<sup>1</sup> Abdul Manan, *Hukum Islam Dalam Berbagai Wacana* (Jakarta: Pustaka Bangsa Press, 2003), p. 221.

a society that is full of kinship and family, It does not rule out the possibility of problems relating to their own interests in the civil environment, such as the division of inherited land and other inheritance divisions, which often give rise to disputes within their own family.<sup>2</sup>

The concept of customary law communities was first introduced by Cornelius Van Vollenhoven. Ter Haar as a student of Cornelius Van Vollenhoven explored more deeply about customary law communities. Ter Haar provides the following definition, a customary law community is an orderly community group, settled in a certain area, has its own power, and has its own wealth in the form of visible and invisible objects, where the members of each unit experience life in society as a natural thing according to nature and no one among the members has the thought or inclination to dissolve the bond that has grown or leave, in the sense of breaking away from that bond forever.<sup>3</sup>

The form and structure of a legal community which is a legal association, its members are bound by territorial and genealogical factors. According to the definition put forward by legal experts in the Dutch East Indies era, what is meant by a legal community or territorial legal association is a permanent and orderly society, whose community members are bound to a certain area of residence, both in worldly terms as a place of life and in spiritual connection as a place of worship for ancestral spirits.<sup>4</sup>

The definition of customary law communities is regulated in Article 1 paragraph 15 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 9 of 2015 concerning Procedures for Determining Communal Rights to Land of Customary Law Communities and Communities in Certain Areas, stating that the recognition of the rights of legal communities Customary law is the government's recognition of the existence of the rights of indigenous peoples as long as they in fact still exist. Thus, it can be concluded that a customary law community is a group of people who have their own regulations, their own territorial boundaries, as well as norms that apply in that community and are obeyed by the community groups in that group.

Approximately three hundred and fifty (350) million people in the world are indigenous peoples.<sup>5</sup> Not much different from previous opinions, the United Nations Development Program reports that there are around three hundred and seventy (370) million people who are members of customary law communities living in more than 70 countries throughout the world, representing 5% of the world's population. Meanwhile, 80% of all biodiversity on planet earth thrives in the 22% of the earth's territory where indigenous peoples live.<sup>6</sup> The researchers stated that if their rich biodiversity is threatened, it will also threaten the long-standing and hereditary relationship between indigenous peoples and their homelands, and will threaten the health and welfare of indigenous peoples.

Human life on earth cannot be separated from its environment, as well as human life and other living creatures such as animals and plants. Humans need other living creatures to

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<sup>2</sup> Ibrahim Ahmad, "Menyelesaikan Sengketa Pembagian Harta Warisan Melalui Peran Kepala Desa," *Jurnal Legalitas* 5, no. 1 (2012): 1-11, <https://doi.org/10.33756/jelta.v5i01.874>.

<sup>3</sup> Husen Alting, *Dinamika Hukum Dalam Pengakuan Dan Perlindungan Hak Masyarakat Hukum Adat Atas Tanah* (Yogyakarta: LaksBang Pressindo, 2011), p. 30.

<sup>4</sup> Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia* (Bandung: Mandar Maju, 2003), p. 118.

<sup>5</sup> Eddie Riyadi Terre, *Masyarakat Adat, Eksistensi Dan Problemnnya : Sebuah Diskursus Hak Asasi Manusia Dalam Buku Rafael Edy Bosko, Hak-Hak Masyarakat Adat Dalam Konteks Dalam Konteks Pengelolaan Sumber Daya Alam* (Jakarta: ELSAM, 2006), p. 1.

<sup>6</sup> United Nations Development Programme, *Human Development Report 2011 Sustainability and Equity : A Bear Future for ALL* (New York: Palgrave Macmillan, 2011), p. 54.

fulfill their living needs. So that humans and other living creatures are related to each other. Humans together with animals, plants and microorganisms occupy a certain space. Apart from living things, in that space there are also non-living things, such as air which consists of various gases, water in the form of steam, liquid and solid, soil and rocks. The space occupied by a living creature together with non-living objects in it is called the living environment of that living creature.<sup>7</sup>

However, in essence, balance of nature states that this does not mean that the ecosystem does not change. The ecosystem is very dynamic and not static. Plant and animal communities found in several ecosystems always gradually change due to changes in the components of the physical environment. Plants and animals in ecosystems also change due to fires, floods, erosion, earthquakes, pollution and climate change. Even though the ecosystem is always changing, it has the ability to return to its original state as long as the changes are not drastic. According to Law Number 32 of 2009 concerning Environmental Protection and Management, Article 1 paragraph 1, the environment is a spatial unity with all objects, forces, conditions and living creatures, including humans and their behavior, which influence nature itself, the continuity of life and the welfare of humans and other living creatures.<sup>8</sup>

In an effort to improve the quality of life, care must be taken to ensure that the environment's ability to support life at a higher level is not damaged. Because if damage occurs, instead of improving the quality of life that will be achieved, it will actually be a decline. Even if the damage is too severe, our own life could become extinct or at least the ecosystem in which we live could experience a collapse which would result in many difficulties. Such development is unsustainable. The development currently occurring in Indonesia is development in the industrial sector, where development in the industrial sector is indirectly one of the factors that can increase economic growth in Indonesia. However, this industrial development often pays little attention to the environment in its implementation, both regarding the rights of indigenous peoples and the legal substance that is the basis for implementing the development.

## METHODS OF THE RESEARCH

Search for data and information with the provision of reading, taking notes and quoting books and other literacy in order to understand the essence of the themes discussed as well as studying laws and regulations related to the issues discussed, with this method used is normative juridical with qualitative analysis. The method used correctly makes this research discover facts. In searching for information by exploring data and literacy from various sources to obtain results, you can use document study techniques, as well as study analysis using qualitative analysis. So that you get a satisfactory conclusion.

## RESULTS AND DISCUSSION

### A. The Rights of Indigenous People to the Environment

According to the definition provided by the UN Economic and Social Council, Indigenous or Traditional Law Communities are tribes and nations which, because they

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<sup>7</sup> Otto Soemarwoto, *Ekologi Lingkungan Hidup* (Jakarta: Djambatan, 2001), p. 51-52.

<sup>8</sup> Agoes Soegianto, *Ilmu Lingkungan: Sarana Menuju Masyarakat Berkelanjutan* (Surabaya: Airlangga University Press, 2010), p. 1.

have historical continuity with society before the arrival of colonialists in their territory, consider themselves different from other groups of people living in their territory." Customary Law Communities according to Law No. 32/2009 concerning environmental protection and management CHAPTER I Article 1 point 31 are: Customary Law Communities are communities that have hereditary ancestral origins that live in certain geographical areas, and have a value system, distinctive economic, political, cultural and social ideologies. This society still holds traditional values in its life system.

Sociologically, the Customary Law Community is a form of social life regulated by customary law. According to Ter Haar, Bzn is called a sediment of social reality. Then the deposit is formed and maintained in the decision of the holder of power which is imposed on a legal action or on a dispute. The decision relates to disputes both internally within the community itself and with other parties, relating to rights to its land, water, plants, buildings, sacred objects and other belongings belonging to it. Customary Law society is also seen by us as a legal subject (*rechtssubjecten*) who can fully participate in legal society. The community itself can be said to be a federation where the boundaries of an organized mob are fixed by having its own power, as well as its own wealth in the form of visible and invisible objects.

In the context of environmental and natural resource management, the government tends to enforce statutory regulations as a form of state law and the only law that regulates environmental and natural resource management. Thus, regulations in the form of customary law are ignored in the process of forming legislative regulations in substance and implementation. The rights of customary communities to carry out environmental management of natural resources of customary forests are restricted by the state through licensing instruments, without considering local wisdom or local customary values that are still enforced by indigenous communities and exploitation of the environment of customary forest areas.<sup>9</sup>

In Article 1 of the Forestry Law there are two types of forests, namely private forests and state forests. It is said to be a private forest if the forest grows or is located on land that is encumbered with a land right. On the other hand, it is said to be a state forest if the forest grows or is located on land that is not burdened with land rights. Customary forests are even directly defined as state forests that grow on land within the territories of customary law communities. Even without reasonable arguments as stated in Article 1 point d, point e and point f, customary forests are immediately included in the state forest category. It is even more clearly stated that state forests can be customary forests, as stated in Article 5 paragraph (1) of the Forestry Law.<sup>10</sup>

In the context of environmental protection and management in the forestry sector, indigenous communities have a strategic role in being able to manage themselves as guaranteed by the constitution. There are a number of customary laws known for various types of land rights, namely: a. Community rights to land; customary rights b. Individual rights to land.

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<sup>9</sup> Stefanus Laksanto Utomo, *Budaya Hukum Masyarakat Samin* (Bandung: Alumni, 2013), p. 7.

<sup>10</sup> Wahyu Nugroho, "Konstitusionalitas Hak Masyarakat Hukum Adat Dalam Mengelola Hutan Adat: Fakta Empiris Legalisasi Perizinan," *Jurnal Konstitusi* 11, no. 1 (2014): 109-29, <https://doi.org/10.31078/jk1116>.

Customary law communities are also given a place to protect the forests in their area, namely customary forests. This is confirmed in Government Regulation no. 45 of 2004 concerning Forest Protection, Article 8 paragraph (4). Protection of forest areas by indigenous communities is carried out based on the traditional wisdom that applies in the indigenous communities concerned with assistance from the government, provincial government and district/city governments.<sup>11</sup>

In reality, customary forests are within customary rights areas. In the customary rights area, there are parts of land that are not forests, which can be in the form of grazing fields, cemeteries which function to meet public needs, and land owned individually which functions to meet individual needs. The existence of individual rights is not absolute, at any time their rights become thinner or thicker. If it becomes thinner and disappears, it will eventually return to the community. The relationship between individual rights and customary rights is flexible.

## **B. The role of Indigenous Communities In Protecting The Environment**

The many cases of land disputes involving indigenous communities have created a bad image for this community. The noble values in the lives of indigenous peoples seem to have disappeared due to a number of "conflicts" disputes. In fact, feuds and struggles are not the nature of indigenous peoples. This group is actually closely linked to environmental conservation efforts to ensure the continuity of life. In early 2022, the Alliance of Indigenous Peoples of the Archipelago (AMAN) recorded at least 14 cases of land disputes which resulted in the confiscation of customary territories, criminalization, and even loss of life in several areas. The conflicts that occur always involve mining companies, plantations and government projects.<sup>12</sup>

In the framework of environmental protection and management which is based on Law no. 32 of 2009, in the context of the implementation of licensing in the environmental sector, it is regulated in sectoral law, namely Law no. 41 of 1999 concerning forestry. The forestry licensing system is briefly explained in the general explanation, namely: "Control of forests by the state does not constitute ownership, but the state gives authority to the government to regulate and manage everything related to forests, forest areas and forest products; determine forest areas and/or change the status of forest areas; regulate and determine legal relations between people and forests or forest areas and forest products, as well as regulate legal acts regarding forestry. Furthermore, the government has the authority to grant permits and rights to other parties to carry out activities in the forestry sector. However, for certain matters that are very important, have a wide scale and have a wide impact and are of strategic value, the government must pay attention to the aspirations of the people through approval from the House of Representatives.

This general explanation is a substantial reason for the government's role in managing forest resources in Indonesia. Indonesia as a welfare legal state has logical consequences for the welfare of its people in the forest sector, including customary law communities who have a strategic role in being given a place in customary forest management. The

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<sup>11</sup> Bambang Eko Supriyadi, *Hukum Agraria Kehutanan; Aspek Hukum Pertanahan Dalam Pengelolaan Hutan Negara* (Jakarta: Rajawali Pers, 2013), p. 72.

<sup>12</sup> Yoeseop Budianto, "Masyarakat Adat Menjaga Kelestarian Lingkungan," Kompas.id, 2022, <https://www.kompas.id/baca/riset/2022/06/16/masyarakat-adat-menjaga-kelestarian-lingkungan>.

participation of the community, especially the customary law community as the living law, contains a number of local wisdoms which are upheld by the community. This has received normative recognition and is strengthened in Article 70 paragraph (3) letter e of Law no. 32 of 2009 concerning Environmental Protection and Management, namely: "developing and maintaining local culture and wisdom in the context of preserving environmental functions. What happens in several countries in North West Seram is in accordance with the issue of land control for plantation purposes, when you want to clear land, The company involves the country and society in the process, because there is a Working Partner agreement. The contents of the agreement are 30 years of agreement with the state, the agreement with the village head and saniri is 3 billion, but all of it has not been paid, this is also a problem with land that has been demolished but is not included in the land that can be planted with oil palm. What makes the community disappointed is that this was not informed to us beforehand, later when the final payment reached more than 1 billion, they no longer wanted to pay. Meanwhile, this has been regulated in the employment agreement.

The forestry service has visited the company's construction site, but there has been no visible effort by the community. The community is involved, from planting to harvest, both as permanent workers and freelance workers, with a daily wage of IDR 109,000. Monthly payment system but daily wage type. Starting work from 06-00 to 17:00 then returning home. So the land was handed over, because it became idle land, so it was handed over for oil palm planting. There were indeed agreements with the company, such as employing local workers, some daily, or permanent employees. For payments through the Saniri traditional institution, after that the Saniri distributes it to the community, so the company does not deal directly with the community, but through the state government. Because basically the right to use is only for 30 years, so the country knows better.

At the beginning of the land clearing, the company leadership stepped down, but many things made the community aware that this was enough. Because this company is smart, previously this agreement was with the old people, and when the new people took over everything changed. So that is the reality that society accepts. That all the initial agreements were not in accordance with what was implemented. The problem is, the presence of the state, both in terms of government and security forces, is not really felt, therefore the community's efforts are to carry out polite negotiations, even blocking roads as a form of protest against the problems they are experiencing.

There is a work agreement that we have agreed to, but we are not paid according to the agreement, therefore we feel uneasy about this. Payments also exceed the specified limit, paid once every 6 months, for the 30 year contract period. For field workers, wages are indeed more than 100, but the workload increases, so wages do not match the workload given. There are efforts from the community, such as protesting, coming to companies, blocking roads, but they think we are small and ordinary people.

Cooperation agreements that have been notarized in notarial deeds and notarial deeds of entry will be distributed to each person or owner and the government, but to date there is no Notarial deed. So some time ago we went to the company during the distribution of wages, we asked, why until now we have not been given a notarial deed, they answered, it will definitely be distributed, even though there are points of agreement that we can use as a reference. So that if we protest in accordance with what was agreed in the notarial deed

The presence of the State in providing protection to indigenous communities, regarding the environment and customary rights is very much needed, the role of the Regional People's Representative Council is also highly expected, all sectors must be able to support each other, do not treat the community as weak, but on the contrary, protect the Forest in accordance with the mandate of the Law -applicable laws.

## CONCLUSION

The role of the government in protecting community rights to the environment is very much needed, the importance of policies in terms of legal protection of local community rights to land can be implemented well, many efforts have been made to obtain legal protection, but the community is still far from justice, because there are a separate space between interests and needs, indigenous peoples are present to protect and safeguard every natural product and environment they have, efforts ranging from ordinary to extraordinary efforts are often carried out, but they still experience obstacles. Therefore, based on the mandate of law, the State must exist as a defender of the community and protect the rights of indigenous peoples.

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