

Legal Politics of Indigenous Peoples' Rights in Efforts to Protect Customary Rights.

Cyrilus Bomas Bolok Werang¹⁾, I. Nyoman Nurjaya²⁾, Rachmi Sulistyari³⁾
^{1,2,3)} Faculty of Law, Brawijaya University, Malang, Indonesia

*Corresponding Author

Email: Cyriluswerang382@gmail.com

Abstract

Land is essential for communities throughout the world, including indigenous peoples in Indonesia. However, throughout Indonesian history, indigenous peoples have continuously strived to secure their rights and strengthen their position in governance and land ownership in Indonesia. Unfortunately, these efforts have not yielded results. In fact, customary rights continue to be violated in the name of development or 'national interests'. In fact, the position of indigenous peoples in obtaining their land rights is protected by the constitution as stipulated in the 1945 Constitution and Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA). Therefore, this study aims to determine the legal status of Indigenous Peoples in obtaining protection of Customary Land Rights based on positive law draft legislation in Indonesia. This research was conducted using a normative juridical research method with a legislative approach that will examine and analyze the application of rules or norms in various laws and regulations that will become new legal products, as well as various other literature as sources that can help in answering all existing problems.

Keywords: *Legal Politics, Indigenous Peoples' Rights, Protection of Indigenous Rights.*

INTRODUCTION

From one perspective of legal science, it is said that good law is law created based on the living law of society. This is as stated by Von Savigny, in his historical school, that law is a historical phenomenon, so that the existence of each law varies depending on the place and time in which it is enacted. Law should be viewed as an embodiment of the soul or spirituality of a nation. (in Arvita et al., 2022)

Indonesia is also known as a multicultural nation, meaning its people are comprised of diverse ethnicities, cultures, and religions. This cultural diversity is what makes the Indonesian nation a multicultural nation, framed by the Bhakti Tunggal Ika (Unity in Diversity), which embodies the spirit of unity within that diversity. Indonesia's cultural diversity also serves as a strength and spirit to drive the dynamics of national and state life in order to realize the mandate of the 1945 Constitution of the Republic of Indonesia, namely to protect all the people and all of Indonesia's territory, advance public welfare, educate the nation, and contribute to realizing world order, independence, eternal peace, and social justice.

Furthermore, Indonesia is a multi-legal institution state within the framework of the Indonesian legal system. This means that in the Indonesian legal system, state law de facto applies customary law within customary law communities, religious law within religious communities, and also self-regulation mechanisms within Indonesian society. Within the Indonesian legal system, the government tends to ignore the phenomenon of legal pluralism in legal development policies, the drafting of legal instruments, and even in the implementation of laws. As a result, legal products, particularly those governing the management of natural resources (SDA) and customary rights of customary law communities, are normatively ignored, isolating and even displacing the rights of customary law communities to control, manage, and utilize their customary land under the pretext of the prosperity of the Indonesian people.

In Indonesia, this is emphasized in the State Constitution which recognizes the existence of customary law communities, namely in Article 18 B paragraph (2) of the 1945 Constitution which states that the State recognizes and respects customary law community units and their traditional rights, as long as they are still alive and in accordance with the development of the

nation, society, and the principles of the Unitary State of the Republic of Indonesia which are regulated by law. Respect and recognition of the existence of customary rights as human rights is also implicitly regulated in Article 18 I paragraph (3) of the 1945 Constitution (the result of the second amendment to the 1945 Constitution which was stipulated on August 10, 2000), that the cultural identity and rights of customary communities are respected in line with the development of the times and civilization, then in the results of the fourth amendment to the 1945 Constitution, in Article 32 paragraph (1) that the State advances Indonesian national culture in the midst of world civilization by guaranteeing the freedom of society to maintain and develop its cultural values.

The reality of legal pluralism has been displaced by the ideology of legal centralism which is aimed at creating legal unification, legal codification and legal uniqueness with the stamp of national law as the only law that applies to all citizens throughout the territory of the Unitary State of the Republic of Indonesia. (in Rachmad et al., 2023: 11) Policies and regulations tend to show centralistic legal characteristics. This exploitation by large capitalists has led to the neglect of the principles of democratic justice, community participation, legal and social pluralism, indigenous legal communities have been displaced, powerless and not given space in the legal life of this country and also led to marginalization and damage to the social order of indigenous legal communities because it is centralistic and repressive, regulated, determined and changed according to the wishes of the government which isolates and even seems to eliminate the existence of the rights of indigenous legal communities, thus giving rise to various conflicts between the government, especially the Regional Government (PEMDA) and indigenous legal communities.

Considering this, on the one hand, there is recognition of the existence of customary law, which applies as a norm born and grown from society, while also meeting the development of a society's modernization. However, on the other hand, there are restrictions imposed by land law, because it more represents the interests of the authorities and businesspeople. The People's Consultative Assembly (MPR) and the House of Representatives (DPR) are deemed necessary to conduct a review of natural resource management based on the principles of decentralization and respect for the rights of customary law communities. However, to date, complete information is not available regarding the extent and boundaries of the areas covered by these various customary laws. Therefore, it is necessary to synchronize customary law with written Indonesian law to avoid overlap between customary law and other written laws.

In reality, indigenous communities in Indonesia continue to be in the weakest position when it comes to securing land rights and access to natural resources. Yet, indigenous communities have a very strong emotional and historical bond with the land and nature around their homes, and this is recognized by the State. Article 3 of the UUPA affirms the rights of indigenous communities, particularly customary land rights, and explains: "Considering the provisions of Articles 1 and 2, the implementation of customary rights and similar rights of indigenous communities, to the extent that they actually exist, must be such that they align with national and state interests, which are based on national unity and must not conflict with other laws and regulations of a higher order." Throughout Indonesian history, indigenous communities have continually strived to secure their rights and strengthen their position in land governance and ownership in Indonesia. Unfortunately, these efforts have not yielded results. On the other hand, customary rights continue to be violated in the name of development or the 'national interest', the definition of which is very fluid.

Some customary land rights, particularly customary forests, are increasingly being eroded by various government policies and regulations that exclude or even appear to forcibly eliminate the customary rights of indigenous communities, giving rise to various conflicts between the government and indigenous communities. In practice, the government often acts unfairly towards indigenous communities by taking customary land without conducting customary release. The

government often authorizes companies to manage customary land without involving indigenous communities from the planning to implementation of projects involving customary land, giving rise to disputes and conflicts. In 2024-2025, there was a significant increase in cases of seizure of customary land and criminalization of indigenous communities, with the Indigenous Peoples Alliance of the Archipelago (AMAN) recording more than 121 cases of seizure of 2.8 million hectares of customary land in 2024. Therefore, in order to create a good legal order and also the role of the government, especially local governments, in safeguarding the rights of indigenous communities so that their existence is maintained. Therefore, in the future, the government needs to review regulations and policies and involve indigenous communities in the decision-making process related to customary land, so that cooperation is established between the government and indigenous communities, so that they can maintain and manage natural resources properly and correctly, but without disturbing, reducing, or isolating the rights of indigenous communities. Based on this background, researchers are interested in examining how "*The Legal Politics Of Indigenous Community Rights In An Efforts To Protect Ulayat Rights*". This must create social justice at various levels and be able to protect and maintain the existence of customary land and local culture, including laws that live and develop in indigenous communities.

RESEARCH METHODS

The type of research used in this scientific work is the normative juridical research method. Normative juridical research is "studying or researching the law in terms of its normative nature, substance, and regulatory rules." (Rachmad, 2014: 14) Related to normative juridical research, the type of approach chosen to answer the problem formulation is the legislative approach (an approach using laws and regulations and draft laws), namely with various rules or legal products related to matters governing land in Indonesia related to customary law communities. In this research, the author examines and analyzes the application of rules or norms in positive law and also in the Draft Law which will become the next positive legal product, namely Law No. 5 of 1960 concerning Basic Agrarian Principles. The method of searching for materials used to complete the preparation of this research is library research. The author will use the library research method, namely studying the literature as a guideline for writing scientific work. Through literature studies in the form of book sources and laws and regulations, the author can control and confirm the theoretical framework that serves as the basis for the author's thinking. The research will also be conducted by collecting and documenting a number of data relevant to the problems discussed, to obtain material that is done by searching the literature and laws and regulations related to the existing problems. The type of legal material in this study focuses on secondary data, which consists of primary, secondary, and tertiary legal materials. Legal materials consisting of primary and secondary legal materials are analyzed by grouping laws and regulations, then interpreted according to linguistic interpretation and teleological interpretation. The purpose of linguistic interpretation is to interpret each word and/or sentence in the laws and regulations to be studied. The purpose of teleological interpretation is the interpretation of the laws and regulations used in the analysis process, so that it can be known whether the rules in the Basic Agrarian Law No. 5 of 1960 concerning provisions for indigenous legal communities in obtaining rights to their customary land, whether there is a conflict or not.

RESULT AND DISCUSSION

Recognition and protection of indigenous peoples' rights both nationally and internationally

The legal forms of land ownership by indigenous communities, known as customary rights, vary considerably across Indonesia. "Customary rights" is a term used legally and generally, although the terminology used varies within each customary law community.

Looking at the definition of customary law communities from the Indigenous Peoples Alliance of the Archipelago (AMAN), namely, customary law communities as a community that has ancestral origins that have been passed down from generation to generation and reside in a certain geographical area, and have a unique value system, ideology, economy, politics, culture, and social. (Kompas, 2023) Thus, customary law communities are communities or groups of people who are bound by their customary law system, as an association because of the similarity of residence, customs, and basic lineage.

Looking at the meaning of Customary Law, Van Vollenhoven defines customary law as the totality of positive behavior that on the one hand has sanctions and on the other hand is not modified. Meanwhile, Ter Haar said that customary law is the totality of regulations embodied in the decisions of authorized and influential legal officials, and in its implementation is legal, equitable, and complied with wholeheartedly. (Soepomo, 1987) Then Soepomo said that customary law is non-statutory law, most of which is customary law and a small part is Islamic law, including judges' decisions, deeply rooted in traditional culture, living law, and constantly growing and developing like life itself. (Soepomo, 1987: 3)

Using Soerjano's sociological and anthropological approach, Soekanto (Soerjono, 1986: 80) explains the process of the emergence or occurrence of customary law. This process begins with the interaction between humans and the process and the continuous process of interaction that gives rise to certain patterns called ways (*usage*). The way that is done repeatedly gives rise to a custom (*folkways*). The difference between the two is that if the way is violated, it will lead to criticism from other parties personally, while deviation from the custom will be opposed by society. Furthermore, if customs are recognized and accepted as rules (norms), namely standards of appropriate behavior, then these habits become rules of behavior (*mores*). If these rules of behavior become eternal and strongly integrated with the behavior of society, then their binding power will increase as customs (*customs*). Finally, customary rules become customary law when they have become a legal decision, namely a decision taken by traditional officials, namely traditional heads and traditional judges.

The environmental wisdom of indigenous communities is essentially derived from the values and religions embraced by their communities. The essence contained therein is to provide guidance to the universe to create a balanced relationship between humans and their natural environment. (Rachmad, 2023:9) According to the religious-magical mindset of indigenous legal communities, the universe is inhabited by spirits whose duty is to maintain the balance of the structure, mechanisms, and rhythms of nature. The beliefs of indigenous communities such as these are capable and clever at controlling human behavior that tends to be greedy in controlling and exploiting natural resources on a large scale. The type of law in indigenous communities is a system of norms based on values, principles, mechanisms, and religion that functions as an instrument to maintain order in interactions between community members and order with owners and spirits who are believed to have supernatural powers and also maintain order in community behavior and their environment.

Terminologically, "recognition" means the process, method, act of recognition or acknowledgment, while the word "acknowledge" means to declare rights. Recognition in the context of international law, for example the existence of a state or government, usually refers to the terms *de facto* and *de jure* recognition. The actual recognition of a particular entity to exercise

effective power in a territory is called de facto recognition. De facto recognition is temporary, because this recognition is shown to the facts regarding the position of the new government, whether it is supported by the people and whether the government is effective which causes its position to be stable. If this bias is then maintained continuously and continues, then de facto recognition will automatically change to de jure recognition. De jure recognition is permanent and is followed by other legal actions. 8 Meanwhile, legal recognition (de jure) is the recognition of one State by another State followed by certain legal actions, for example the opening of diplomatic relations and the conclusion of agreements between the two countries.

In his book *General Theory of Law and State*, Hans Kelsen explains the term "recognition" in relation to the existence of a State as follows: There are two actions in a recognition, namely political action and legal action. The political action of recognizing a State means that the State acknowledges its desire to establish political and other relations with the community it recognizes. Meanwhile, legal action is the procedure as mentioned above which is established by international law to determine the facts of the State (indigenous legal communities) in a concrete case. Based on the above reference, related to the meaning of recognition and protection of indigenous legal communities over land, recognition of indigenous legal communities over land leads to the understanding of recognition from the State/government both politically and legally, through the regulation of the rights and obligations of the government in providing respect, opportunities, and protection for the development of indigenous legal communities and their traditional rights within the framework of the Unitary State of the Republic of Indonesia. This recognition shows that the State or government has recognized, declared legitimate and correct, or stated that indigenous communities have rights to the natural resources they own and obliges the government to protect these rights from threats/disruptions from other parties. This recognition is a recognition formulated in the form of state law regarding the rights of indigenous peoples to land and other natural resources.

Based on historical studies, it turns out that the existence of customary rights has been recognized before the independence of the Indonesian nation. Maria W. Sumardjono stated that the recognition of customary rights is natural, because customary rights and customary law communities have existed before the formation of the Republic of Indonesia on August 17, 1945. (Maria, 2001: 54) According to Maria W. Sumardjono, to determine the extent of customary rights, it is necessary to determine three main characteristics, namely:

1. The existence of customary law communities that fulfill certain characteristics as subjects of customary rights
2. Land/area with certain boundaries which is the subject of customary rights
3. The legal community has the authority to carry out certain actions as determined

From a normative legal perspective, there are various legal regulations for the existence of customary law communities regarding customary rights to customary law community land. The existence of customary law communities is recognized by the explanation of Article 18 of the 1945 Constitution. Then in the 2nd amendment to the 1945 Constitution of the Republic of Indonesia, recognition of the existence of customary law communities was further emphasized in Article 18 paragraph (2). In addition to the constitution, Article 3 of Law No. 5 of 1960 concerning basic agrarian regulations (UUPA) also explains the recognition of the rights of customary law communities, especially rights to customary land. Recognition of customary rights is also stated in various sectoral laws and regulations, for example Law No. 41 of 1999 concerning forestry, Law No. 18 of 2004 concerning plantations, Law No. 23 of 2014 concerning Regional Government, Law No. 39 of 1999 concerning human rights.

Indigenous legal communities and their lands are recognized in international legal instruments as part of human rights as stated in the Universal Declaration of Human Rights (UDHR), namely:

1. Everyone has the right to own property, either individually or together with other people.

2. No one can have their property arbitrarily confiscated.

ILO Convention No. 107 of 1957, ILO Convention No. 169 of 1989. In addition, Indonesia also signed *the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* which was ratified on September 13, 2007. (Sukirno, 2018: 9)

Article 26 of the 2007 United Nations Declaration on the Rights of *Indigenous Peoples (UNDRIP)* specifically defines customary land ownership, namely:

1. Indigenous peoples have rights to the lands, territories and resources which they own, occupy or use or which they have traditionally acquired;
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources which they have traditional ownership of or which they occupy or use, as they own them or otherwise acquire them;
3. The state will provide legal recognition and protection for these lands, territories, and resources. This recognition will be implemented with respect for the customs, traditions, and land ownership systems of the indigenous communities concerned.

Article 16 of ILO Convention No. 109 of 1989 further stipulates that the use of land for the purposes of parties outside the customary law community must be carried out using a free, prior and informed consent procedure, preceded by a statement of consent, namely:

1. The main discussion of the next paragraph of article 16 is that the people concerned cannot be moved from the land they live on.
2. If the relocation of indigenous peoples is deemed necessary as an extraordinary measure, then relocation must be carried out with the consent of the communities given freely and after prior consultation. If their consent is not obtained, relocation can only be carried out following procedures established by national law, including public hearings where necessary, which provide an opportunity to effectively express the views of the communities concerned.

The recognition of indigenous peoples' rights is not only regulated by national laws but also by the recognition and support of the international community. Numerous international agreements, both binding and non-binding, address this issue. To date, there are at least 19 types of international support for indigenous peoples through international agreements, including protection of human rights, the right to assemble, the right to land and territory, religious freedom, intellectual property, customary property rights, recognition of customary spatial planning, and so on.

Future legislation for the protection of indigenous peoples' rights

By looking at various regulations, customary rights are recognized in various laws and regulations, but have not been able to provide legal protection because all of these recognitions are carried out half-heartedly and do not comply with the expected implementation. Government policy uses Articles 1, 2, 3 and 5 of the UUPA which subordinates this matter to the extreme by treating all uncertified land as land directly controlled by the State. Defense conflicts, especially regarding customary rights to land, stem from issues of land, water and natural resources, which are stated in Article 33 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which is known as the doctrine of the right to control by the state. Until now, the interpretation of the doctrine of the right to control by the State is still considered unclear in formulating the relationship between the people's government in the management of natural resources, thus giving rise to land conflicts, especially the customary land of customary law communities. At the national level, there are also no legal regulations that are able to protect the customary rights of customary law communities to land.

In line with Van Vollenhoven, Sudargo Gutama argues that by unifying these various laws, we must first remember the need for and acceptance by Indonesian society, so that the unified law becomes a living law. (Sukirno, 2018) The unification of nationally applicable laws or the unification of national law enforcement requires quite stringent conditions, namely a sense of justice must be achieved, needed, and accepted by society. In addition to respecting legal

pluralism, lawmakers must also have an understanding of multiculturalism, namely respect for cultural differences, including understanding the differences in the way of life of indigenous legal communities and society in general. According to Felix Baghi, everyone, regardless of who they are or where they come from, has the right to be different as part of human rights. In the context of the right to be different and the obligation to integrate, radicalism or extreme attitudes, such as separatism, are not expected. Conversely, the obligation to integrate does not need to fall into homogenization that eliminates the identity and differentiation of each group. (Sukirno, 2018)

The terminology of the state in Article 33 paragraph (3) of the 1945 Constitution must be interpreted as the government and the people, not the state as the government alone. Therefore, there must also be a realignment of the position between the government and the people, not as a subordinate but in a relationship of equality. This means that the principle that requires the government to inform, involve, and seek the consent of the people in every decision-making must be a reference in the administration of government. This is because the state and the people should be equal because the state has the right to control in its position as a representative of all the people. Therefore, in making decisions related to customary rights, the state must inform, involve, and seek the consent of the people.

Building a regional legal system based on local wisdom and customary law represents a strategic opportunity for realizing regional autonomy based on the principles of equality, justice, convenience, certainty, simplicity, decentralization, and *regional accountability*. Otherwise, there is irony and incoherence in the implementation of regional autonomy, which in principle outlines decentralization and regional authority to implement their own regulations and provisions specific to their regions. These regulations and provisions are specific to the region, for example, the formation and implementation of regional regulations (perda) and the revival of customary law, including customary rights that have been suppressed and have not received proportional recognition in the national legal system. However, from the perspective of justice, humanity, and the dignity and status of the community, the position of regional customary law is far more guaranteeing of justice and is perceived to have valid values compared to national law, which tends to be less supportive of the rights of indigenous peoples. (Fathullah, 2000)

With regional autonomy, which means concerning the rules of values, legal issues of society and governance of regional government as well as the parties involved assist and handle local regional problems based on existing mechanisms in the autonomous region, except those concerning inter-regional or national interests, or those included in the field of public law. The implementation of customary law or regional legal regulations in the form of regional regulations means the independence and freedom for individuals and communities in the region in implementing the decentralization and democracy that have long been aspired to. The recognition and implementation of customary law and regional regulations as part of the national legal system will be able to resolve crucial legal and law enforcement issues and at least provide new light for the upholding of the rule of law and the rule of law. The substance of UUPD no. 22 of 1999 places the State as a central force in making strategic policies. Meanwhile, the role of community participation is actually marginalized. This can be seen in Chapter IV concerning Regional Regulations and Decrees of Regional Heads, especially Article 69 which contains the following provisions; that the Regional Head establishes Regional Regulations with the approval of the DPRD in the context of implementing regional autonomy and further elaborating higher-level laws and regulations. (in Rachmad et al., 2023: 60)

Article 70 further emphasizes that when establishing regional regulations, these regulations must not conflict with higher-level laws and regulations. Thus, the authority to make strategic decisions and policies concerning the livelihoods of many people in the regions is still too heavily entrusted to state institutions, such as the Regional People's Representative Council (DPRD) and regional heads, while direct community involvement appears to be lacking, or even nonexistent. Yet, the key to decentralization, namely how to optimize community involvement

in state dynamics, can be realized to prevent a gap between state dynamics and community dynamics. Ultimately, regional policies are neither accommodating nor sensitive to the local wisdom of the community. (in Rachmad et al., 2023)

The current direction of regional autonomy legal policy remains centralized and insensitive to local wisdom. Empirically, the use of this ideological method of legal centralism has implications that ignore legal pluralism, social and cultural implications that dehumanize and negatively stigmatize indigenous communities, and further ecological implications in the form of damage to indigenous communities' sources of life. It is also important to recognize that realizing the spirit of regional autonomy based on optimizing community participation, local wisdom, and specific customary laws is not easy. This presents a challenge and can also become a threat if the freedom to re-enact customary law and establish regional regulations is misinterpreted. A threat is said to be if the implementation of customary law and the establishment of regional regulations are solely based on temporary regional interests and tend to give rise to primordialism and chauvinism based on ethnicity, religion, race, and class. What will result is not the formation and implementation of democratic law, but rather the implementation of anarchic community law and regional dictatorship.

In order to realize a government that is able to form good laws and regulations, which respect, acknowledge and accommodate access, interests and rights, as well as the wisdom of indigenous communities, the ideology of legal pluralism is adopted *in* the development of regional autonomy, by providing space for the principles of justice, democracy, participation, transparency, appreciation and recognition of local wisdom as reflected in the knowledge system (Nurjaya, 2000) as well as traditions that are truly alive and developing in indigenous communities.

Regional governments need to review legal products that do not reflect a sense of justice, democracy, and sustainability as mandated by MPR Decree No. IX/MPR/2001 concerning Agrarian Reform and Natural Resource Management. Natural resource management must realize social justice at various levels and be able to protect and maintain the existence of local culture, including laws that live and develop within indigenous communities. Thus, the prosperity and welfare of the people can be realized in a just and sustainable manner in accordance with the mandate of the 1945 Constitution, which is based on cultural diversity and the unity of the Indonesian nation.

CONCLUSION

Indonesia is also known as a multicultural nation, meaning that the Indonesian nation consists of various ethnicities, cultures, and religions. This cultural diversity makes Indonesia a multicultural nation, framed by *Bhinneka Tunggal Ika* (Unity in Diversity), which has a spirit of unity within that diversity. This diversity of Indonesian culture is also a strength and spirit to drive the dynamics of national and state life to realize the mandate of the 1945 Constitution of the Republic of Indonesia, namely to protect all the people and all of Indonesia's homeland, advance public welfare, educate the nation's life, and participate in implementing world order, independence, eternal peace, and social justice. In addition, Indonesia is a multi-legal institution within the framework of the Indonesian legal system. This means that in the Indonesian legal system, state law *de facto* applies customary law in customary law community units, religious law in religious communities, and also self-regulation mechanisms in Indonesian social life.

The reality of legal pluralism has been displaced by the ideology of legal centralism, which is aimed at creating legal unification, legal codification, and legal uniqueness, with the stamp of national law as the sole law applicable to all citizens throughout the territory of the Unitary State of the Republic of Indonesia. Policies and regulations tend to exhibit centralistic

legal characteristics. This exploitation by large capitalists has led to the neglect of the principles of democratic justice, community participation, legal and social pluralism, indigenous legal communities being displaced, powerless, and denied space in the legal life of this country. It has also led to the marginalization and destruction of the social order of indigenous legal communities due to its centralistic and repressive nature, regulated, determined, and changed according to the wishes of the government, which isolates and even appears to eliminate the existence of the rights of indigenous legal communities, thus giving rise to various conflicts between the government, especially the Regional Government (PEMDA), and indigenous legal communities. Facing ethnic and cultural diversity, the government needs to respect and use a pluralist approach first. Once cultural barriers have disappeared, a cosmopolitan approach can be taken. Therefore, for now, the State needs to provide space for customary law communities to manage their customary rights in accordance with their respective customary laws.

However, some customary rights to land, especially in the form of customary forests, are increasingly being eroded by various government policies and regulations that exclude or even appear to forcibly eliminate the existence of customary rights of customary law communities, thus giving rise to various conflicts between the government and customary law communities. In normative juridical terms, there are various legal regulations for the existence of customary law communities regarding customary rights of customary law communities to land. The existence of customary law communities is recognized by the explanation of Article 18 of the 1945 Constitution. Then in the 2nd amendment to the 1945 Constitution of the Republic of Indonesia, recognition of the existence of customary law communities was further emphasized in Article 18 paragraph (2). In addition to the constitution, Article 3 of Law No. 5 of 1960 concerning basic agrarian legislation (UUPA) also explains the recognition of the rights of customary law communities, especially rights to customary land. Recognition of customary rights is also stated in various sectoral laws and regulations, for example Law No. 41 of 1999 concerning Forestry, Law No. 18 of 2004 concerning Plantations, Law No. 23 of 2014 concerning Regional Government, Law No. 39 of 1999 concerning Human Rights.

Building a regional legal system based on local wisdom and customary law represents a strategic opportunity for the realization of regional autonomy based on the principles of equality, justice, convenience, certainty, simplicity, decentralization, and *regional accountability*. Failure to do so would lead to irony and incoherence in the implementation of regional autonomy, which essentially outlines decentralization and the authority of regions to implement their own regulations and provisions specific to their regions. These regulations and provisions, for example, involve the creation and implementation of regional regulations (*perda*) and the revival of customary law, including customary rights that have been suppressed and have not received proportional recognition in the national legal system. However, from the perspective of justice, humanity, and the dignity of the community, local customary law is far more likely to guarantee justice and is perceived to have valid values compared to national law, which tends to be less supportive of the rights of indigenous communities. In order to realize a government that is capable of forming good laws and regulations, which respect, acknowledge and accommodate the access, interests, rights and wisdom of customary law communities, the development of regional autonomy adopts the ideology of legal pluralism, by providing space for the principles of justice, democracy, participation, openness, respect and recognition of local wisdom as reflected in the knowledge systems and traditions that are truly alive and developing in customary law communities.

Regional governments need to review legal products that do not reflect a sense of justice, democracy, and sustainability as mandated by MPR Decree No. IX/MPR/2001 concerning Agrarian Reform and Natural Resource Management. Natural resource management must realize social justice at various levels and be able to protect and maintain the existence of local culture, including the laws that live and develop within indigenous communities. Thus, the prosperity

and welfare of the people can be realized in a just and sustainable manner in accordance with the mandate of the 1945 Constitution, which is based on cultural diversity and the unity of the Indonesian nation.

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