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Recognition and Determination of Customary Forests by Indigenous Peoples in the West Sumatra Province

Syofiarti[1*]
[1]Faculty of Law, Andalas University, Padang, Indonesia

[*]Corresponding author: syofiarti@law.unand.ac.id

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Abstract

Forests are a natural resource used by communities around the forest to support their lives, including the Customary Law Community or Masyarakat Hukum Adat (MHA). However, various tenurial conflicts are often encountered in forest utilization, such as claims over forest areas. The basis of the problem, which then causes the community around the forest, often conflicts with government policies. However, the issuance of Constitutional Court Decision No.35/PUU-X/2012 provides a form of recognition to MHA in managing forests and determines customary forests as the forest within the territory of MHA. This research will focus on two issues: first, how is the recognition and determination of customary forest by MHA after the presence of the Constitutional Court Decision No.35/PUU-X/2012. Second, how are efforts to recognize and determine customary forests through social forestry schemes in the Province of West Sumatra. To answer the focus of the study, this study used normative juridical research methods with descriptive research specifications and analyzed them through library research. The conclusion of this study is obtained

INTRODUCTION

Hutan Forests are natural resources owned by the people of Indonesia, which are authorized and mandated by the State to be managed. For this reason, the State, in this case, the government, must be able to regulate and manage these natural resources to be utilized for the greatest possible prosperity of the people. This is the goal of managing natural resources. In order to realize this, the principles of just and sustainable forestry development are needed.[1] This is by the mandate of Article 33 paragraph (3) of the 1945 Constitution, which reads that earth, water and natural resources contained therein shall be controlled by the State and used for the greatest prosperity of the people.[2] The true meaning of the article states that the government as a representative of the State is given the right to manage (management rights) natural resource wealth so that it can be enjoyed by the people fairly and equitably. Charles V. Barber's research revealed that the right to control state land is a reflection of the implementation of values, norms and configurations of state law governing control and utilization of the environment and natural resources or is an expression of ideology that gives authority and legitimacy to the State to control and utilize the environment and natural

[1] Intan Nevia Cahyana, "Legal Protection of the Existence and Participation of Indigenous Peoples in Forest Management in Customary Forest Areas", *Prioris Journal*, 6.2 (2017), p.204.https://doi.org/10.25105/prio.v6i2.2440.
[2] Adrian Sutedi, Mining Law, (Jakarta: Sinar Graphic, 2012), p.24.

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resources within its sovereign territory.[3] Furthermore, the prosperity of the people is the ultimate spirit and ideals of a welfare state that must be realized by the State and the government of Indonesia. Natural resource management is one of the instruments to achieve this.[4]

Forest control 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 area and or change the status of forest area; regulate and stipulate legal relations between people and forests or forest areas and forest products, as well as regulate legal actions regarding forestry. Furthermore, the government has the authority to grant permits and rights to other parties to carry out activities in the forestry sector. Government policy consistency is what it is gonna be an essential key to the success of forest protection and utilization.[5] However, for some critical issues that have a large scale and have a broad impact and strategic value, the government must pay attention to the aspirations of the people through the approval of the House of Representatives.[6]

For Indigenous Peoples or *Masyarakat Hukum Adat* (MHA), the forest is an integral part of their life because it supports their daily life. Like other objects, customary forests can be controlled in some ways, exploited, and utilized the results.[7] They have lived in the forest for thousands of years, are even hereditary and are a strategic place in building their civilization. MHA have the view that humans are part of nature. The system emphasizes the belief in respect for the natural environment.[8] The existence of MHA itself has been recognized based on Article 18B paragraph (2) of the 1945 Constitution, which states that the State recognizes and respects MHA units and their traditional rights as long as they are still alive and by societal development and the principles of the Unitary State of the Republic of Indonesia regulated in the law.[9] Furthermore, the provisions of Article 5 paragraph (3) of Law no. 41 of 1999 concerning Forestry which states that; forest control by the State still pays attention to the rights of MHA, as long as in reality they still exist, and their existence is recognized, and does not conflict with national interests. Anthropologically, MHA activities around the forest can positively impact efforts to preserve the forest itself.[10] It is this provision that gives authority to MHA to manage forests, in this case, customary forests.

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[3] Wahyu Nugroho, "Constitutionality of the Rights of Indigenous Peoples in Managing Customary Forests: Empirical Facts on the Legality of Licensing", *Journal of the Constitution*, 11.1 (2016), p.109.https://doi.org/10.31078/jk1116.

[4] Adrian Sutedi, *Loc. cit.*

[5] Gamin, "Social Forestry in Indonesia in an Islamic Perspective", *Journal of Islamic Civilization Studies*, 2.1 (2019), p.27.https://doi.org/10.47076/jkpis.v2i1.4.

[6] Sarkawi, Law of Acquisition of Customary Land for the Development of Public Interests (Yogyakarta: Graha Ilmu, 2014), p.1.

[7] Albert Tanjung, "The Position of Indigenous Forests Above Community Land in Forest Utilization", *Populis Journal*, 4.1 (2019), p.142.http://dx.doi.org/10.47313/pjsh.v4i1.590.

[8] Iskandar AM, Theodorus Fied Herlando, Eddy Thamrin, "Study of the Role of Customary Law in the Management and Protection of Forests in the Dayak Uud Danum Indigenous People in Deme Village, Ambalau District", *Journal of Sustainable Forests*, 10.1 (2022), p.109.https://doi.org/10.26418/jhl.v10i1.46696.

[9] In addition, there are several laws and regulations governing customary law communities, namely Law Number 6 of 1960 concerning Basic Agrarian Regulations, Law Number 41 of 1999 concerning Forestry, Law Number 39 of 2014 concerning Plantations, Law Number 26 of 2007 concerning Spatial Planning, Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 23 of 2014 concerning Regional Government, and Law Number 6 of 2014 concerning Villages. The latest is regulated in Minister of Environment and Forestry No. 7 of 2020 concerning Indigenous Forests and Private Forests.

[10] Sofyan Zainal and Eduardus Edo, "Motivation and Community Activities in Preserving the Bukit Samabue Customary Forest, Sepahat Village, Menjalin District, Landak Regency" *Journal of Sustainable Forestry*, Vol.10, No. 1, June 2022, p 8.https://doi.org/10.26418/jhl.v10i1.51930.

Initially, the customary forest was classified as part of the state forest within the MHA area[11]; the consequence is the abandonment of forest tenure for MHA, and even MHA lose their rights to their traditional territories because other parties take them over on the pretext that the State has permitted them. This is what then causes much conflict both between MHA and the government and with legal entities in order to maintain forest areas as their traditional territory. Thus, according to Law No. 41 of 1999, the customary forest's status as a state forest creates injustice for MHA, so MHA is in poverty and even expelled from their traditional territories. The problem that often arises is claims over traditional territories, including, in this case, customary forests. The law has regulated that MHA is entitled to the customary territories they own, occupy, and manage for generations,

On the other hand, MHA and their rights have been guaranteed by the 1945 Constitution, which is the Constitution of the Republic of Indonesia. Therefore, customary law communities are constitutional in the Unitary State of the Republic of Indonesia. This is confirmed in Article 18B paragraph (2) of the 1945 Constitution: "The state recognizes and respects customary law community units along with their traditional rights as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the Law -Invite". Philosophically, recognition and respect for indigenous peoples also imply that the State must also recognize and respect the existence of indigenous peoples.[12] Although customary rights as part of customary law are recognized both by the 1945 Constitution and by Law no. 5 of 1960 concerning Basic Agrarian Regulations and Law no. 41 of 1999 concerning Forestry (Forestry Law), control over forests and Natural Resources (SDA) still denies customary land customary rights. Forests managed by indigenous peoples are included in the definition of state forest because of the right to control by the State as an organization of power for all the people at the highest level and the principles of the Unitary State of the Republic of Indonesia. By including customary forests in the sense of state forests, it does not negate the rights of indigenous peoples if they still exist. Their existence is recognized to carry out forest management activities.[13] However, in practice, it is difficult for customary law communities to manage their customary forests because they constantly clash with other parties, especially companies that the State grants rights to manage forests.

The birth of Constitutional Court Decision No.35/PUU-X/2012 makes customary forest no longer a state forest where the phrase "state" in Article 1 point 6 of Law No.41 of 1999 was deleted. The conditions changed to; the customary forest is the forest that is in the MHA area. Thus, customary forest is not a state forest. The customary forest is included in the category of a private forest so that the ownership status returns to MHA. According to Kurnia Warman,[14] forest for MHA, especially for the nagari, is one of the nagari's assets used and managed for the welfare of the nagari's children. Since ancient times, MHA in West Sumatra Province have managed forests in their traditional territories to fulfil their daily needs and maintain forest sustainability. Forest management is carried out by customary law known as adat Salangka Nagari. There are many potential forest resources, both wood and non-timber. Besides, other ecological potentials exist, such as clean water sources, hot springs, natural tourist objects and historical sites. Through these problems, two problems will be analyzed: first, indigenous

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[11] Article 1 point 6 of Law No. 41 of 1999 states that customary forest is a state forest that is in the territory of customary law communities. Furthermore, according to Article 5 of Law No. 41 of 1999, forests based on their status consist of state forests and private forests. State forest in question is a forest area that is not encumbered with land rights (not owned by a person or legal entity), customary forest is part of state forest.

[12] Safrin Salam, "Perlindungan Hukum Masyarakat Hukum Adat Atas Hutan Adat", *Jurnal Hukum Novelty*, 7.2 (2016), p.219. https://doi.org/10.26555/novelty.v7i2.a5468.

[13] Abdul Muis Yusuf, Forestry Law in Indonesia (Jakarta: Rineka Cipta, 2011), p. 247.

[14] Kurnia Warman, "Regulation of Agrarian Resources in the Decentralized Era of Government in West Sumatra (Interaction of Customary Law and State Law in the Perspective of Diversity in Legal Unity)," (Dissertation, Faculty of Law, Gadjah Mada University, 2009), p. 386.

peoples' position in the management of customary forests after the issuance of the Constitutional Court Decision No. 35/PUU-X/2012. They are second, optimizing the role of customary law communities in managing forests in West Sumatra Province.

RESEARCH METHOD

This type of research is normative juridical. Normative legal research or library research examines document studies, namely using various secondary data such as laws and regulations, court decisions, and legal theories, and can be in the form of opinions of scholars. The nature of this research is analytical descriptive, meaning it is expected to obtain a detailed and systematic description of the problem to be studied. The analysis is carried out based on the facts obtained and will be carried out carefully how to answer the problem in concluding a solution as an answer to the problem.[15] This study uses materials obtained from the results of library research, from library research secondary data is collected, which includes primary legal materials, these issues.[16] This study uses materials obtained from library research results, from library research secondary data is collected which includes primary legal materials, secondary legal materials and tertiary legal materials.[17] The data needed in this research is secondary data. The secondary data has an extensive scope, including personal letters, diaries, and official government documents. This study uses a normative juridical approach based on the primary legal materials related to this research.[18] The data analysis was carried out qualitatively by reviewing the recognition and designation of customary forests by indigenous peoples in West Sumatra Province.

RESULTS AND DISCUSSION

Position of Indigenous Peoples in Customary Forest Management After the issuance of the Constitutional Court Decision No. 35/PUU-X/2012

The The existence of MHA has long been marginalized under state rule. Indonesian MHA units have experienced more bitter realities or discrimination since they were under the New Order regime (1966-1998) until the reform period (1998 to the present). This is the concern and mission of the Alliance of Indigenous Peoples of the Archipelago (AMAN) to give voice to the victims of the confiscation of their traditional territories.[19] For 55 years (1945-2000), Indonesian MHA, whose existence was presented at the scientific level and government level by Dutch legal experts (before the Second World War), in the national state that they participated in fighting for, their position remained on the periphery. This is due to the following:

1) Not many law students are interested in specializing in customary law, but it is more exciting and profitable to study business law;
2) The central government and regional governments, as well as plantation, mining or water company entrepreneurs, only have concern for natural resources (SDA) that are in MHA's customary land areas;
3) The application of the meaning controlled by the state (Article 33 paragraph (3) of the 1945 Constitution is prioritized while the following clause for the greatest prosperity of the people is often ignored and
4) When dealing with the power of the state and the power of prominent businessmen, MHA are in a weak bargaining position, both economically (the opportunity to do business and

[15] Burhan Ashshofa, *Legal research methods* (Jakarta: Rineka Cipta, 2007), p. 35.
[16] *Ibid.*
[17] Amiruddin and Zainal Asikin, *Introduction to legal research methods* (Jakarta: Kencana, 2016), p. 55.
[18] Soerjono Soekanto and Sri Mamudji, *Normative Legal Research* (Jakarta: Rajawali Press, 2001), p.19.
[19] Rachman, N. Correction of agrarian forestry policies by the Terjal Road Court for Agrarian Reform in the Forestry Sector (Bogor: Center for Research and Development on Climate Change and Policy, 2013). p. 65.

improve their welfare is limited), socio-cultural (abandonment of existence and cultural identity), especially politically (loss of power and authority over land).[20]

Therefore, protection of the existence and traditional rights of MHA is a necessity because MHA is included in the vulnerable groups in Indonesian society. The facts show that MHA are in a fragile position, both economically, politically, and legally, when dealing with groups that are more established and better able to protect and fulfil their human rights.[21]

The international world has guaranteed that indigenous and tribal peoples have rights over natural resources. This right is included in the category of positive rights. As an implication of this division, the United Nations has established a permanent forum dealing with issues concerning indigenous peoples under the Council of Economic, Social and Culture (Council of Economic, Social and Culture). The United Nations authorized the forum in 1982 by taking the name of the Working Group on Indigenous Populations (Working Group on Indigenous Populations).[22] As part of the positive rights, the state must protect it through regulatory arrangements in favour of it (by commission). At the national level, there is Law Number 11 of 2005 concerning the Ratification of the Covenant on Economic, Social and Cultural Rights. Therefore, State Parties must respect, protect, and fulfil the abovementioned rights.

The Republic of Indonesia has recognized and protected MHA and its traditional rights. Various Indigenous Peoples Units scattered throughout Indonesia have their respective or familiar territories. State recognition of the existence of MHA is strictly regulated in laws and regulations.[23] The 1945 Constitution of the Unitary State of the Republic of Indonesia, from now on referred to as the 1945 Constitution of the Republic of Indonesia, as the highest constitution of Indonesia, with Article 18 B paragraph (2) of the 2nd amendment of the 1945 Constitution of the Republic of Indonesia "The state recognizes and respects customary law community units and their traditional rights insofar as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law".

The form of state recognition of the existence of MHA, apart from being stated in statutory provisions, this recognition is also manifested in government activities. The government has the authority to carry out activities for utilizing and managing natural resources. Government activities related to utilization and management are intended to guarantee the prosperity of the Indonesian people without exception. As regulated in Article 33 paragraph (3), it reads, "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". The article implies that the management of natural resources carried out by the government must guarantee the welfare of the people.

MHA, as part of Indonesian society with a smaller scope, their welfare should also be guaranteed. With its natural wealth, one of which is forest, Indonesia is a place for MHA to depend on for their needs. The rights of indigenous peoples over natural resources (forests) are

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[20] Bahar, S, Human rights perspective on the four juridical requirements for the existence of Indigenous Peoples Workshop on "Inventory and Protection of the Rights of Indigenous Peoples (Jakarta: National Human Rights Commission, Constitutional Court, and Ministry of Home Affairs, 2005), p. 14-15.

[21] Susilo, KS, *Foreword by the Chairman of the National Commission on Human Rights* (pp. 5-10). Workshop "Inventory and Protection of Indigenous People's Rights, 14-15 June 2005, (Jakarta: National Human Rights Commission, Constitutional Court, and Ministry of Home Affairs)

[22] John Henriksen, "*International Human Rights Mechanism*," Training Paper on the Rights of Indigenous Peoples for Human Rights Lecturers in Indonesia," organized by the UII Center for Human Rights Studies in collaboration with NCHR University of Oslo Norway, in Yogyakarta 21-24 August 2007, p. 4.

[23] Sahrul Gunawan, Baso Madiong, Zulkifli Makkawaru, "Legal Analysis of the Rights of the Ammatoa Customary Law Community Against Customary Forests in Bulukumba District", *Indonesian Journal of Legality of Law*, 5.1 (2022), p.70.https://doi.org/10.35965/ijlf.v5i1.1911.

a crucial issue to be discussed. The following are types of laws and regulations related to day-to-day forest management.

Table 1. Type of regulations related to customary forest management.

No.	Type of regulations	References	Regulation content
1	UU no. 5 of 1967	Forestry Basic Provisions	Clan forests that are controlled by customary law communities (MHA) are included in state forests by not negating the rights of the MHA concerned and their members to benefit from the forest as long as those rights according to their activities still exist (Article 2)
2	UU no. 5 of 1960	Fundamentals of Agrarian Principles	Customary rights covering land, water and air are recognized as long as they do not conflict with national interests (Article 5)
3	UU no. 41 of 1999	Forestry	- Customary forest is determined as long as in reality the relevant MHA still exists and its existence is recognized (Article 5). - Providing opportunities for customary law communities, educational institutions, research institutions and social and religious institutions in forest management with specific purposes (Article 34) - The establishment and existence of indigenous peoples is stipulated by regional regulations, but the determination of customary forests is the authority of the minister (Article 67)
4	UU no. 22 of 2001	oil and gas	Oil and gas business activities cannot be carried out at cemeteries, places that are considered sacred, places, public facilities and infrastructure, nature reserves, cultural reserves and land belonging to indigenous peoples (Article 33)
5	UU no. 27 of 2003	Geothermal	Geothermal business activities cannot be carried out at cemeteries, places that are considered sacred, places, public facilities and infrastructure, nature reserves, cultural reserves and land belonging to indigenous peoples (Article 16)
6	UU no. 27 of 2007	Management of Coastal Zone and Small Islands	- Indigenous peoples are groups of coastal communities who have lived in certain geographic areas for generations due to ancestral ties, strong relationships with coastal resources and small islands, and a value system that determines economic, political, social institutions and law (Article 1, number 35) - Local communities are groups of people who carry out a life system based on customs that have been accepted as generally accepted values but are not entirely dependent on certain coastal and small island resources (Article 1,number 35) - Traditional communities are traditional fishing communities whose traditional rights are still recognized in carrying out fishing activities or other legal activities in certain areas within archipelagic waters in accordance with the rules of the law of the sea (Article 1, number 35) - MHA may hold or can be granted coastal waters control rights (HP3) (Article 18)
7	UU no. 7 of 2004	Water resources	Control of water resources is carried out by the government and/or local government while still recognizing the existence of customary rights of local MHA and similar

			rights as long as they do not conflict with national interests and applicable laws and regulations (Article 6 Paragraph 2) - Recognition of MHA is accompanied by the following conditions: 1) as long as exists and if it does not exist, then MHA's customary rights cannot be revived; 2) its existence must be confirmed by the local government through a regional regulation; 3) does not conflict with national interests; 4) does not conflict with the applicable laws and regulations (Article 6, Paragraph 3)
8	UU no. 32 of 2009	Protection and management of the environment	MHA are groups of people who have lived in certain geographic areas for generations because of ties to ancestral origins, a strong relationship with the environment, and a value system that determines economic, political, social and legal institutions (Article 1)

Source: Researcher Analysis.

The results of identifying laws and regulations related to customary forest management show that some are in the form of laws (UU) and government regulations (PP). However, the discussion is examined concerning the presence of laws as listed in Table 1. The fundamental difference between MHA arrangements in UUPK No. 5/1967 and UUPA customary rights of indigenous peoples are limited to using and using forest products. However, the Agrarian Law states that customary rights, including land, water, and air, are recognized as long as they do not conflict with national interests.

Forests with various kinds of essential benefits and functions must be maintained and preserved, so a forestry regulation is established. The regulation is Law Number 41 of 1999 concerning Forestry from now on referred to as the Forestry Law). The Forestry Law divides forests into two groups based on their status, namely forests with status state forests and private forests. The normative consequence of the existence of provisions in Law Number 5 of 1960 concerning Basic Agrarian Regulations, from now on referred to as UUPA, which only mentions ulayat rights, the customary forest is included in the state forest area.[24] The status of customary forest can be determined by the government on condition that if the existence of the MHA in question still exists and receives recognition. Customary forests located within the MHA area will be returned to state control if the MHA are not present or live around the forest.

However, the Forestry Law, which some people consider problematic, shows that the spirit of protecting customary rights is repressive. At the same time, the decisions of the Constitutional Court (MK) are progressive.[25] On March 19, 2012, the Alliance of Indigenous Peoples of the Archipelago, together with the Kuntu Kenegerian MHA Unit and the Kasepuhan Cisitu MHA Unit, filed a request for a judicial review of several provisions of the articles in the Forestry Law. Before the MK 35/2012 decision was issued, based on the Forestry Law, forests were within the scope of state forests, making the status of customary forests uncertain. The status of the customary forest included in the state forest status makes MHA depend on using forest products to fulfil their subsistence needs to be threatened. Customary forests are indeed still recognized if the MHA in question exists, but this is felt to be insufficient to protect the rights of MHA over their customary forests, whereas as emphasized by AMAN, the territory, land and natural resources, which include customary forests, are the full rights of MHA. Recognition of the rights of MHA is also part of fulfilling the human rights granted by

[24] Muthia Septarina, "Customary Forest Management After the Constitutional Court Decision No. 35/PUUX/2012," *Al-Adl: Journal of Law* 5.10 (2012): p.1. http://dx.doi.org/10.31602/al-adl.v5i10.190.

[25] Faiq Tobroni, "Strengthening the Rights of Indigenous Peoples over Indigenous Forests (Study of MK Decision Number 35/PUU-X/2012", *Journal of the Constitution* 3, No.3 (2013): p. 470.

the constitution to MHA. The following is the Constitutional Court's decision regarding changes to the Forestry Law.

Table 2. Impacts of constitutional justice (CJ) decree on the changing of forestry law.

No	Original text in law No. 41/1999	Points of CJ decree No. 35/PUU-X/2012	Revision of law No. 41/1999
1	Article 1 (6) customary forest is a state forest that is in the MHA area	The word country in Article 1 point 6 of Law no. 41 of 1999 concerning Forestry contradicts the 1945 Constitution of the Republic of Indonesia (1.1)	Article 1 point 6 of Law no. 41/1999 does not have binding legal force so that Article 1 (6) customary forest is forest that is within the MHA area
2	Article 1 (6) customary forest is a state forest that is in the MHA area	The word country in Article 1 point 6 of Law no. 41/1999 does not have binding legal force, so that Article 1 point 6 of Law no. 41/1999 referred to as customary forest is a forest that is in the territory of customary law communities (1.2)	Article 1 (6) customary forest is forest that is in the MHA area
3	Article 4 paragraph (3) is interpreted as forest control by the state while still paying attention to the rights of customary law communities, as long as they are still alive and in accordance with developments.	Article 4 paragraph (3) of Law no. 41/1999 is contrary to the 1945 Constitution of the Republic of Indonesia as long as it is not interpreted as forest control by the state while still paying attention to the rights of customary law communities, as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia (NKRI) regulated in law (1.3)	Article 4 paragraph (3) is interpreted as forest control by the state while still paying attention to the rights of customary law communities, as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia regulated by law
4	Article 4 paragraph (3) is interpreted as forest control by the state while still paying attention to the rights of customary law communities, as long as they are still alive and in accordance with developments.	Article 4 paragraph (3) of Law no. 41/1999 does not have binding legal force as long as it is not interpreted as forest control by the state while still paying attention to the rights of customary law communities, as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia regulated in law (1.4)	Amendment to Article 4 paragraph (3) is the same as point 3 above
5	Article 5 Paragraph (1), namely: forest based on its status consists of: a. State Forest, and b. Private Forest	Article 5 paragraph (1) Law no. 41/1999 is contrary to the 1945 Constitution if it does not mean State Forest as referred to in paragraph (1) letter a, does not include customary forest (1.5)	Article 5 Paragraph (1), namely: forest based on its status consists of: a. State Forest, b. Private Forest, and c. Indigenous Forest
6	Article 5 Paragraph (1), namely: forest based on its	Article 5 paragraph (1) Law no. 41/1999 does not have binding	Article 5 Paragraph (2) is lost in accordance with the

	status consists of: a. State Forest, and b. Private forest	legal force as long as it does not mean State forest as referred to in paragraph (1) letter a, does not include customary forest (1.6) Explanation of Article 5 paragraph (1) Law No. 41/1999 contrary to the 1945 Constitution (1.7) Elucidation of Article 5 paragraph (1) of Law no. 41/1999 was lost in accordance with the Constitutional Court's decision Elucidation of Article 5 paragraph (1) of Law no. 41/1999 does not have binding legal force (1.8)	Constitutional Court's decision
7	Article 5 Paragraph (2) namely: The state forest as referred to in paragraph (1) letter a can be in the form of customary forest	Article 5 paragraph (2) of Law no. 41/1999 contradicts the 1945 Constitution (1.9)	Article 5 Paragraph (2) is lost in accordance with the Constitutional Court's decision
8	Article 5 Paragraph (2) namely: The state forest as referred to in paragraph (1) letter a can be in the form of existing forest	Article 5 paragraph (2) of Law no. 41/1999 does not have binding legal force (1.10)	Article 5 Paragraph (2) is lost in accordance with the Constitutional Court's decision
9	Article 5 Paragraph (3), namely: The government determines the status of forests as referred to in paragraphs (1) and paragraphs (2) and customary forests are determined as long as in reality the customary law communities concerned still exist and their existence is recognized	Phrase and paragraph (2) in Article 5 paragraph (3) of Law no. 41/1999 contrary to the 1945 Constitution of the Republic of Indonesia (1.11)	Article 5 Paragraph (3) in accordance with the Constitutional Court's decision
10	Article 5 Paragraph (3), namely: The government determines the status of forests as referred to in paragraphs (1) and paragraphs (2) and customary forests are determined as long as in reality the customary law communities concerned still exist and their existence is recognized	Phrase and paragraph (2) in Article 5 paragraph (3) of Law no. 41/1999 does not have binding legal force, so that Article 5 paragraph (3) of Law no. 41/1999 meant to be the Government stipulating the status of the forest as meant in paragraph (1); and customary forests are determined insofar as in reality the customary law communities concerned still exist and their existence is recognized (1.12)	Article 5 Paragraph (3) in accordance with the Constitutional Court's decision

Source: MK Decision No. 35 of 2012.

Decision Number 35/PUU-X/2012 wants to change the perspective of customary forests, which were initially state-centric, to become adat centric. As a decision, if the Constitutional Court's jurisprudence is examined in depth, it is building a theorizing of the development of human rights law in the context of protecting indigenous peoples' rights to customary forests. After looking and paying further attention, the author can find that Decision Number 35/PUU-X/2012 has a progressive perspective with the following dimensions: pro-people ideology,

functions as liberation for customary rights, and aims as empowerment for indigenous peoples and provides social justice for indigenous peoples.

Decision Number 35/PUU-X/2012 has changed customary forests' status. Customary forest, initially included as a state forest, is now defined as a forest within the MHA area. The change in the status of the customary forest as a private forest and interpreted as a forest within the scope of the MHA has strengthened the status of existing forests and the rights of indigenous peoples over their customary forests. The Constitutional Court's decision has significantly influenced the status of customary forests to private forests, not state forests. Changing the status of customary forests should have good implications for MHA in the management system and utilization of their customary forests. The Constitutional Court's decision is a correction to the mistakes in the Forestry Law as well as an effort to restore the status of MHA.[26]

The issuance of the Constitutional Court decision Number 35/2012 should have had positive implications for MHA's rights to their customary forests. Strengthening the rights of MHA over customary forests must also be clarified so that problems do not occur in the future by making regulations that protect them. Dr Saafroedin Bahar as an expert on the petitioner in the petition for case 35/2012, expressed his opinion that in his opinion the content of the case in the application submitted by AMAN directly related to the problem of the relationship between customary forest and state forest, but indirectly the discussion in the application would be related to the existence of MHA and its constitutional rights.

One of the provisions in the Constitutional Court Decision states that regional regulations that regulate indigenous peoples are needed to recognize the rights of MHA units over their customary forests. The preparation of regional regulations as a follow-up to the Constitutional Court's decision No. 35/2012 was also carried out as an effort to fill the legal vacuum because the Bill on the Recognition and Protection of Indigenous Peoples' Rights from now on referred to as the PPMHA Bill) had not been passed.[27] The status of the customary forest, which is very dependent on the status of the MHA itself, can cause problems if there is a possibility of recognition of an MHA when in reality, it does not exist or conversely the MHA is not recognized even though it still exists.

Customary forests whose status is no longer state forest make MHA have an important position in managing customary forests.[28] The efforts made after the issuance of the Constitutional Court decision No. 35/2012 were to clarify the existence of customary forests, to carry out an inventory or re-measurement of the area of customary forest areas. Customary forests whose functions belong to forests (protection, conservation, production) have not previously been recorded, creating uncertainty over customary forest boundaries. Based on data for 2011 contained in the Constitutional Court decision 35/2012, a state forest area of 14.24 hectares was determined, and 126.44 hectares of forest had not yet been determined. In 2019 through the Decree of the Minister of Environment and Forestry Number SK. 312/MENLHK/SETJEN/PSKL.1/4/2019 concerning Map of Indigenous Forests and Indigenous Forest Indicative Areas, the area of customary forests has been determined to be 19. 150 Ha and the area cannot be allocated for anything other than customary forest.

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[26] Rachman Noer Fauzi, "Customary Law Communities Are Not Rightsholders, Not Legal Subjects, and Not Owners of Their Customary Territories," *Discourse: Journal of Transformative Social Sciences* 33, no. 16 (2014): p. 30.

[27] Selamat Yusuf, "Post-Constitutional Court Decision Analysis No. 35/PUU-X/2012 Against the Drafting of Regional Regulations Based on Article 67 paragraph (2) of Law No. 41 of 1999 concerning Forestry". 2015, p. 7.

[28] Sari Daisyta Mega and Akhyaroni Fu'adah, "The Role of Local Government in Protecting Indigenous Forests After the Constitutional Court Decision Number 35/PUU-X/2012", *Journal of Legal Research* 1.1 (2014): 53-61.

Areas that are indicated as customary forest areas can be further processed if regional legal products have been determined that recognize the MHA concerned. The issuance of Constitutional Court decision No. 35/2012 will trigger the birth of legal products on a national and regional scale. The Constitutional Court thinks that statutory regulation is needed as an elaboration of Article 18B paragraph (2) of the 1945 Constitution and provisions regarding how to confirm an MHA or the loss of an MHA, which are regulated through regional regulations. The issuance of the Constitutional Court decision No. 35/2012 will trigger the birth of legal products both on a national and regional scale. The Constitutional Court thinks that statutory regulation is needed as an elaboration of Article 18B paragraph (2) of the 1945 Constitution and provisions regarding how to confirm an MHA or the loss of an MHA regulated through regional regulations. The issuance of Constitutional Court decision No. 35/2012 will trigger the birth of legal products on a national and regional scale. The Constitutional Court thinks that statutory regulation is needed as an elaboration of Article 18B paragraph (2) of the 1945 Constitution and provisions regarding how to confirm an MHA or the loss of an MHA, which are regulated through regional regulations.[29]

Optimizing the Role of Indigenous Peoples in Managing Forests in the Province of West Sumatra

Istilah The term "indigenous peoples" is usually used to refer to individuals and groups who are descended from indigenous peoples living in a country. The term indigenous peoples began to go global after, in the 1950s, the United Nations (UN) popularized the issue of "*indigenous peoples"* or indigenous peoples.[30] The English term "indigenous" comes from the Latin "indigenae", which is used to distinguish between people who are born in a specific place and those who come from another place (advance).[31] The term indigenous peoples can also be interpreted as an existing community unit that is autonomous where they regulate their life system (law, politics, economy and so on) and besides that is autonomous, namely a unit of indigenous peoples born or formed by the community itself, and not formed by other forces, for example, the village unit with the Village Community Resilience Institute (LKMD).[32]

In Indonesia, there are various terms regarding indigenous peoples. In general, indigenous peoples are often referred to as legal alliances (Ter Haar), isolated communities (Koentjaraningrat), isolated ethnic groups (Ministry of Social Affairs), primitive communities, isolated tribes, vulnerable population groups (Kusumaatmadja), traditional communities, underdeveloped communities, legal communities. Adat, indigenous people, shifting cultivators, forest encroachers, illegal cultivators and sometimes as obstacles to development.[33] Ter Haar gives the term indigenous peoples the term legal alliance (rechtsgemeenschap), namely "organized environments that are eternal, which have their power and their wealth, both physical and spiritual. The term indigenous peoples began to be socialized in Indonesia in 1993 after a group of people calling themselves the Network for the Defense of Indigenous Peoples' Rights (JAPHAMA), consisting of traditional leaders, academics, and NGO activists, agreed to use the term as a general term to replace the very diverse term.[34]

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[29] Yance Arizona, Hermawati Siti Rakhma Mary and Cahyadi Erasmus, Return of Indigenous Forests to Indigenous Peoples: Annotation of the Constitutional Court Decision Case No. 35/PUU-X/2012 concerning Review of the Forestry Law (Jakarta: Indonesian HUMA Association, 2014), p. 68.

[30] Hadri, "Fulfilling the Rights of Indigenous Peoples in Controlling Customary Forests in West Lampung District", *Istinbath Journal of Law*, 15.2 (2018), p.205.https://doi.org/10.32332/istinbath.v15i2.1210.

[31] Rafael Edi Bosko, *Rights of Indigenous Peoples in the Context of Natural Resource Management*, (Jakarta: Elsam, 2006), p.52.

[32] Saleh, Mohammed. 2017. "The Existence of Customary Law Communities in Forest Management Perspective of Law Number 41 of 1999". *Jatiswara* 26 (2):55-70.http://jatiswara.unram.ac.id/index.php/js/article/view/12.

[33] *Ibid*, p. 11

[34] *Ibid*, p.12

Long before the arrival of colonialists in Indonesia, the Indonesian archipelago was inhabited by various legal associations (rechtsgemenschap) which had regular citizens, had self-government (heads of legal associations and their assistants), and had material and immaterial assets.[35] This legal alliance is called a legal community, namely, a group of people who are regular and permanent, have a government/leadership, and have their wealth in the form of visible (material) and invisible (immaterial) objects.[36] Understanding the meaning of indigenous peoples can be understood and internalized based on two factors, namely territorial and genealogical which are the basis for the formation and continuity of life of indigenous peoples. Examples of customary law communities that are territorially bound are villages in Java, and customary law communities that are both genealogically and territorially bound are Nagari in Minangkabau.

The formulation of provisions regarding customary law communities refers to the provisions of Article 18B paragraph (2) of the 1945 Constitution, which states: "The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and by community development and the principles of the Unitary State of the Republic of Indonesia, which is regulated by law". There must also be a clear distinction between customary law community units and the customary law community itself. Society is a collection of individuals who live in a social environment together as a community or society. In contrast, the unity of society refers to the notion of organic society, which is structured within the framework of organizational life by binding themselves to each other to achieve common goals. In other words, the customary law community unit as an organizational unit of the customary law community must be distinguished from the customary law community itself as the content of that organizational unit. For example, in West Sumatra, what is meant by a customary law community unit is the unit of the Nagari administration, not the day-to-day customary law activities outside the context of the law community organizational unit.[37]

Indigenous peoples need to be fully autonomous after encountering the state. The reduction of indigenous and tribal peoples is stated as a condition of a "semi-autonomous social field", which refers to Moore's theory from the perspective of law and social change. Indigenous peoples as legal subjects are legal entities that are "Gemeenchaap" in nature, namely legal alliances that are formed naturally due to social, economic, and political developments, not "verenigingen", which are formed intentionally for the economic interests of its members. As legal entities, customary law communities have public rights (authorities).[38] The legal recognition of customary law communities as public legal entities is related to Article 18 of the 1945 Constitution. In this article (before amendment), the original composition of customary law communities in the form of desa, Nagari or other names has public authority based on special origin rights, including authority over the territory and the natural resources contained therein.

The distinctive nature of the relationship between indigenous peoples and their lands is revealed in the Draft Declaration on the Rights of Indigenous Peoples, both in the opening paragraph of the da nisi. Specifically, Article 25 of the Draft states:[39]

> Indigenous peoples have the right to maintain and strengthen their spiritual and material connection with the lands, territories, waters, beaches, and other resources they have

[35] Soekanto, Towards Indonesian Customary Law, *An Introduction to Studying Customary Law*, rearranged by Sorjono Soekanto, (Jakarta: PT. Raja Grafindo Persada, 1981), p.67.

[36] Iman Soetiknjo in Helmy Panuh¸*Op.Cit*, p.87.

[37] Taufik Siregar and Fitri Yanni Dewi Siregar, Existence of Dispute Resolution of Indigenous Peoples in Preventing the Destruction of Forest Areas, *Scientific Journal of Law Enforcement*, 9.2 (2022), http://dx.doi.org/10.31289/jiph.v9i2.7342.

[38] NurulFirmansyah, et al, 2007, *Nagari Forest Dynamics in the Middle of State Law Nets*, Huma-Qbar, Jakarta.

[39] Rafael Edi Bosko, *Op.Cit*, p.70.

traditionally owned and inhabited or used and to uphold their responsibilities for future generations.

In her preliminary working paper, Erica-Irene Daes, a special rapporteur for "Studies on Indigenous Peoples and Their Relations with Land", concluded some elements that are unique to Indigenous Peoples in their relationship with the land, namely:[40]

1. There is a close relationship between indigenous peoples and their lands, territories, and resources;
2. That this relationship has various social, cultural, spiritual, economic, and political dimensions and responsibilities;
3. The collective dimension of this relationship is significant, and the intergenerational aspect of such a relationship is also crucial for indigenous peoples' identity, survival, and culture.

Provisions of Article 3 of Law No.41 of 1999,[41] open space for how forestry administration can realize people's prosperity by developing capacity and community empowerment to improve the economy of communities around forests. This can be realized by providing access for the community to manage forests while maintaining and preserving forests. Included in this is the MHA. Based on Article 9 of Minister of Environment and Forestry No. 9 of 2021, MHA, as long as in reality they still exist and their existence is recognized, they have the right to:

a. area utilization;
b. utilization of environmental services;
c. utilization or collection of timber forest products;
d. utilization or collection of non-timber forest products;
e. forest management activities based on applicable customary law and not contrary to the provisions of laws and regulations; And
f. get empowerment to improve their welfare.

However, to have a customary forest in legal form, MHA must meet several requirements; therefore, the Government issued laws and regulations regarding the procedures and conditions for determining customary forest status for MHA.

Based on the general explanation of Law No. 41 of 1999, customary forests are also called communal forests, clan forests or other names. With the stipulation that a customary forest is a forest within the MHA area, it means that a customary forest is a forest located on land with the status of customary land.[42] Thus, the status of forests within the MHA unitary

[40] Ibid.

[41] According to this article, the administration of forestry aims to maximize the just and sustainable prosperity of the people by a. ensuring the existence of forests with sufficient area and proportional distribution; b. optimizing the various functions of the forest, which include the function of conservation, protection function, and production function to achieve balanced and sustainable environmental, social, cultural and economic benefits; c. increasing the carrying capacity of watersheds; d. increasing the ability to develop the capacity and empowerment of the community in a participatory, just and environmentally sound manner to create social and economic resilience as well as resistance to the effects of external changes; and e. ensure a fair and sustainable distribution of benefits.

[42] Customary Forest is a forest managed by the MHA concerned's local wisdom. As stated in Article 62 of Permen LHK No.9 of 2021 concerning the Management of Social Forestry, MHA manages customary forests.

area is determined in detail based on local customary law. Within the traditional territory,[43] customary land status can be grouped into 2:[44]

a. Land rights belong to community members, individually and in groups (customary land), so the forest on this land can be said to be private.
b. Communal land is public land (ulayat land), then. The forest on this land can be referred to as a communal forest, not a private forest.

Thus, customary forest is not the same as private forest. According to Maria SW Soemardjono,[45] it would be inappropriate if customary forests were included in private forest groups because the authority of each subject was different. State Forest is the subject of the state. The authority is public; the subject rights forest is an individual/legal entity. The authority is civil; customary forest is subject to MHA, public and civil authority. However, the Constitutional Court's decision is an extraordinary achievement in protecting the rights of indigenous peoples, especially customary rights and customary forests as part of customary rights.

For the determination of Indigenous Forests, based on Article 5 paragraph (3) of Law No. 41 of 1999, the determination is made by the Government if the MHA is still alive. This requires the Government's commitment, in this case, the Ministry of Environment and Forestry (KLHK). However, look at the provisions of Article 67 paragraph (2) of Law No. 41 of 1999. In that case, customary forests can be determined only if indigenous peoples have been recognized by local regulations.[46] This is, of course, based on the local Government's willingness to issue a regional regulation recognizing MHA. Thus, the determination of customary forest takes a long and winding road because it has to go through the Regional Government and the Ministry of Environment and Forestry. This pattern of recognition has proven to be ineffective in protecting customary forests. This provision is also regulated in Article 63 of the Minister of Environment and Forestry Regulation No. 9 of 2021 concerning the Management of Social Forestry. The social forestry program itself is a national program in the forestry sector which aims to open access to management for communities that depend on the sustainability of forests with their biodiversity.[47] The Social Forestry Program itself is considered successful if the community or community group that manages the program can

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[43] Article 1 number 70 PP No.23 of 2021 concerning Forestry Administration states that Customary Territory is customary land in the form of land, water and waters along with the natural resources on it within certain limits, owned, utilized and preserved from generation to generation and in a sustainable manner to meet the needs of the community through inheritance from their ancestors or ownership claims in the form of communal land or customary forests.

[44] Article 6 paragraph (2) of Law No. 39 of 1999 concerning Human Rights recognizes customary rights where it is stated that the cultural identity of indigenous peoples, including rights to customary land, is protected, in line with the times.

[45] Maria SW Soemardjono in Sukirno, "Legal Politics of Recognition of Ulayat Rights", (Jakarta: Prenamedia Group, 2018), p.185.

[46] Article 66 Permen LHK No.9 of 2021 states; Requirements must accompany an application for determination of customary forest; the identity of MHA, map of traditional territories signed by the head of MHA, regional regulations, and governor/regent/mayor decisions regarding the inauguration of MHA, and a statement letter signed by the head of MHA. The statement letter contains confirmation that the proposed area is within the applicant's Customary Territory and approval for determining the function of the proposed Customary Forest in accordance with statutory provisions. For determination of customary forest status, based on Article 65 of Permen LHK No.9 of 2021, as follows: a. is in the Customary territory; b. is a forested area with clear boundaries and managed according to the local wisdom of the MHA concerned; c. originating from the state forest area or outside the state forest area; and c.

[47] Enik Ekowati and Muama "Gender Responsive Social Forestry Policy: A Case Study of Social Forestry Legislation and the Granting of Forestry Permits", *Women's Journal*, 27.1 (2022), p.44.https://doi.org/10.34309/jp.v27i1.657.

meet various criteria set during an evaluation by the central Government.[48] However, MHA must first meet the following criteria:

a. If the MHA is in a state forest area, it is determined by a Regional Regulation. This Regional Regulation contains the substance of regulating procedures for the recognition of MHA or stipulating the confirmation, recognition, and protection of MHA.
b. If the MHA is outside the state forest area, it is determined by regional regulation or the decision of the governor and regent/mayor of their authority.

Based on the provisions above, there are requirements for confirming MHA through Regional Regulations. As also stated in the Constitutional Court Decision No.35/PUU-X/2012, which strengthens the recognition of MHA through Regional Regulations. Forming this Regional Regulation will undoubtedly take a long time and require costs, so the recognition of MHA will take time to implement. The impact that arises is the non-fulfilment of the rights of MHA over their customary forest.

West Sumatra already has regional regulations recognising MHA, such as Regional Regulation No. 7 of 2018 concerning Nagari. Of course, the application for the designation of an Indigenous Forest has not been considered as fulfilling the formality requirements because Article 67 paragraph (2) of Law No. 41 of 1999 states that MHA is regulated "by Perda" not "in Perda". If this method is maintained, customary forests, which are also expected to be able to support climate change mitigation and adaptation, will be useless. So far, the facts show that forests "in the hands" of the state (not under the hands of MHA) have been destroyed because they have become targets for various corporate concessions.

Nagari Forest Management Pattern Based on Social Forestry Scheme by Customary Law Communities in West Sumatra

In West Sumatra, the Nagari has long managed forests in their traditional territories based on local wisdom to fulfil their daily needs and for forest conservation. The management pattern of the Nagari forest by MHA will undoubtedly be different in each village where management is carried out by the customary law that applies in Minangkabau, in this case, the adat of each village. According to Article 1 number 11 of Regional Regulation No. 7 of 2018, Salangka Nagari adat is a custom that applies in a Nagari by generally accepted customary principles or Sebantang Panjang customs and is inherited from generation to generation in Minangkabau. This rule indicates that the Nagari is a customary autonomous government which is given the power to regulate itself.

This has resulted in different regulations between the Nagari. These rules are also only limited to traditional customs and customs.[49] Therefore, the Nagari has its uniqueness in running its government, including managing its customary land, one of which is managing the Nagari forest. However, the management pattern of the Nagari forest involves elements of MHA as administrators of the LPHN as well as beneficiaries of the Nagari forest. Even though Permen No. 9 of 2021 has been issued, which legitimizes the existence of Nagari forests, the pattern of managing Nagari forests will be different in each Nagari. The following will describe 2 (two) Nagari in West Sumatra that manage Nagari forests.

1. Nagari Pasia Laweh

The potential for forest products in *Nagari Pasia Laweh* is wood and non-timber products, namely Madang wood used to build houses and public facilities, such as mosques and others. Non-timber forest products, namely *manau rattan*, rattan, palm fibre, tabu-

[48] Brigida Yuliana, "The Impact of the Social Forestry Program on Village Development Indicators", Syntax Literate: *Indonesian Scientific Journal*, 7.2 (2022), p.2803.https://doi.org/10.36418/syntax-literate.v7i2.6364.

[49] Yulisma, "Baundi in the rules of Salingka Nagari Pandai Sikek", Journal of Research and Culture, 4.1 (2018), p. 1051.https://dx.doi.org/10.36424/jpsb.v4i1.101

taboo, bamboo, pine resin and others. In addition to the potential of forest plants, Nagari Pasia Laweh has ecological potential, such as clean water sources for *pamsimas*, *sarasah* (waterfalls), forbidden fish, hot springs to be developed into natural tourist objects, and historical sites to be developed into tourist objects—culture tour. The village forest management pattern in Pasia Laweh is carried out by the LPHN, which contains implementing units, namely the Community-based Forest Farmer Group (KTHK).

Currently, there are 65 KTHK that manage management areas in communal forests or other use areas (APL). KTHK manages customary forests by the customary rights of each community. The area of the customary forest in Nagari Pasia Laweh is ± 2,345 ha, and there is also a customary forest consisting of several different stretches of *jorong* but still within the same Nagari. The involvement of the people in the KTHK was based on the ninik mamak's concerns about the status of their customary forest, which resulted in the issuance of regulations against forestry activities. In addition, the community is afraid that if their customary forest changes status to become a forest area, they will automatically lose their customary rights over the forest. The role of the *Wali Nagari Pasia Laweh* continues to be massive in explaining to the community and *ninik mamak* that the protected forest status assigned by the state to customary forests does not mean eliminating customary rights. This change will provide an advantage because the state will help the community manage and care for forests so that they remain sustainable and provide benefits for the community.

Throughout the LPHN and KTHK, conflicts were still found in the management of Nagari forests, especially between KTHK. This conflict is often caused by the determination of the customs territory of the clans and the distribution of Nagari forest management by the KTHK. Resolution of this conflict can be directly resolved through deliberation conducted by the ninik mamak. The role of the ninik mamak is influential because of the homogeneous character of the Pasia Laweh people, which causes the community to still obey and submit to customary law and the *ninik mamak*. The nagari government always maintains a good relationship with the ninik mamak, and every policy will certainly involve and empower the *ninik mamak*. This method is very effective in maintaining harmony between clans and is likely to reduce conflict in the management of Nagari forests.

2. Nagari Sungai Buluah Timur

The potential of forest resources used as an economical source for the community in Nagari Sungai Buluah is very diverse, including rattan, manau, rubber, pandanus, medicinal plants, ornamental plants, bamboo, honey, palm sugar and so on. In addition to the potential of plants, the natural conditions contained in the forest area also have the potential to be developed into a Natural Tourism Object where there are 10 Bathing Pool Locations within the area. The pattern of forest management by Nagari Sungai Buluah Timur is carried out by LPHN while still involving the tribes and peoples who live in Nagari Sungai Buluah Timur. The pattern applied in managing this ethnic-based Nagari forest, where five tribes are allowed to manage the Nagari forest, namely the *Tanjuang, Panyalai, Jambak, Koto,* and *Guci* tribes.

Even though tribal-based management has been distributed, the plots cultivated need to be regulated in detail, making it difficult to determine the plots cultivated by the community. The conflict that arose as a result of the expansion of the Nagari Sungai Buluah area and also the internal conflict after the election of the Wali Nagari Sungai Buluah resulted in the management of the Nagari forest running independently without the involvement of the LPHN. The existence of a prolonged conflict will certainly make activities in managing Nagari forests run without control. The presence of LPHN is significant in controlling forest management so that forests remain sustainable and continue

to benefit the community. This conflict resolution must be resolved immediately so that the LPHN can run again.

By paying attention to the pattern of forest management in the two Nagari mentioned above, there are indeed different patterns. However, one similarity is the involvement of traditional elements and MHA in managing the Nagari forest. Currently, if we look at the Nagari in West Sumatra, what can be used as an example of managing Nagari forests is the management of Nagari forests carried out by Nagari Pasia Laweh. The pattern implemented by Nagari Pasia Laweh in managing customary forests can be a reference for the villages in West Sumatra to manage their Nagari forests in a structured manner and minimize conflicts between MHA. The pattern implemented by Pasia Laweh can be adapted, but of course, it must adjust to the characteristics and conditions of the Nagari.

It will be a question whether a Nagari that is no longer in the territory of the Nagari can no longer be managed by a Nagari that has been divided because, based on the provisions of Article 10 of Permen LHK No.9 of 2021 that the Nagari Forest Management Approval is given to the Nagari Institution, then if the Nagari is already If they are divided from the main Nagari (where the approval for the management of the Nagari forest is given to the Nagari Institution) they will naturally be jealous. For this reason, regulations in the regions, especially West Sumatra, must be able to regulate the management of Nagari forests if the Nagari is divided.

Besides that, in the management of Nagari Forest, it is necessary to have the following:

1. Increasing the role of Nagari institutions in supporting forest management.
2. Society as the leading actor. If there is an investor, the investor is only a companion.
3. The need to strengthen management institutions (each Nagari has different names of managing institutions, such as; LPHN, LKHT and KAN).
4. There is a need to increase the role of assisting agencies, which can take the form of a working group (POKJA) that will assist with initial approval to post-approval. This includes distribution and marketing.
5. There are institutions and conflict resolution mechanisms. Based on KLHK data in 2017, the most tenurial conflicts occurred in the Sumatra region.
6. Community oversight of forests in the context of forest sustainability and community participation in forest rehabilitation and protection.
7. The existence of basic infrastructure such as health, education and forest protection supports the implementation of village forest management.

Nonetheless, the success of managing the Nagari forest can be seen from the improving condition and the assurance of the welfare of the people living around the forest, especially the Customary Law Community.

CONCLUSION

Referring to Article 16, paragraph (1) of the UUPA, ulayat rights do not include land rights. Therefore, forests on ulayat land (customary land) are referred to as ulayat forests (customary forest). Forests on customary land have been recognized as customary forests because the BAL recognizes customary land. As with customary land, customary forests should not be based on a stipulation or gift from the state because customary forests already exist according to customary law and not a gift from the state. According to the UUPA, registration of customary land is not a requirement for land rights but only to increase legal certainty. Even without registration, customary land rights remain the object and control of MHA.

Suppose it consistently refers to the determination of land status according to the UUPA (as stated in Law No. 41 of 1999, that the determination of forest status refers to the status of land regulated by the UUPA). In that case, recognizing customary forest should not require a government determination if MHA do not want to register their customary land. The

requirement for recognition of MHA also does not need a regional regulation because the law already recognizes its existence. The requirement for a regional regulation has held hostage the customary forest establishment. For this reason, there is a need for harmonization between the UUPA and the Natural Resources Law, especially in the forestry sector.

However, at least there is a breakthrough by the Government with the passing of regulations on Social Forestry by the Ministry of Environment and Forestry. MHA can legally manage and utilize forests which aims to give more comprehensive rights to MHA or communities around the forest to legally manage forests (access legal for MHA to manage the forest). This government program is also a solution to tenure and justice problems for communities around forests by utilizing forests for welfare and preservation through the principles of justice, sustainability, legal certainty, participation, and accountability. The determination of customary forest and re-ownership to MHA is very appropriate because the forest will be more effectively cared for and guarded by MHA.

REFRENCES

Abdul Muis Yusuf, *Forestry Law in Indonesia* (Jakarta: Rineka Cipta, 2011).

Adrian Sutedi, *Mining Law*, (Jakarta: Sinar Graphic, 2012).

Albert Tanjung, "The Position of Indigenous Forests Above Ulayat Land in Forest Utilization", Populist *Journal*, 4.1 (2019). http://dx.doi.org/10.47313/pjsh.v4i1.590.

Amir N. Licht, Chanan Goldschmidt, and Shalom H. Schwartz, 'Culture Rules: The Foundations of the Rule of Law and Other Norms of Governance', *Journal of Comparative Economics*, 35.4 (2007). https://doi.org/10.1016/j.jce.2007.09.001

Amiruddin and Zainal Asikin, *Introduction to legal research methods* (Jakarta: Kencana, 2016).

Anu Lähteenmäki-Uutela and others, 'Legal Rights of Private Property Owners vs. Sustainability Transitions?',*Journal of Cleaner Production*, 3.23 (2021). https://doi.org/10.1016/j.jclepro.2021.129179

Bahar, S, *The human rights perspective on the four juridical requirements for the existence of the Customary Law community workshop "Inventory and Protection of the Rights of Indigenous Peoples* (Jakarta: National Human Rights Commission, Constitutional Court, and Ministry of Home Affairs, 2005).

Brigida Yuliana, "The Impact of the Social Forestry Program on Village Development Indicators",*Syntax Literate: Indonesian Scientific Journal*, 7.2 (2022). https://doi.org/10.36418/syntax-literate.v7i2.6364.

Burhan Ashofa, *Legal research methods* (Jakarta: Rineka Cipta, 2007).

Enik Ekowati and Muama "Gender Responsive Social Forestry Policies: A Case Study of Legislation in the Sector of Social Forestry and Granting of Forestry Permits",*Women's Journal*, 27.1 (2022). https://doi.org/10.34309/jp.v27i1.657.

Faiq Tobroni, "Strengthening the Rights of Indigenous Peoples over Indigenous Forests (Study of the Constitutional Court Decision Number 35/PUU-X/2012",*Constitutional Journal* 3.3 (2013).

Gamin, "Social Forestry in Indonesia in an Islamic Perspective",*Journal of Islamic Civilization Studies*, 2.1 (2019). https://doi.org/10.47076/jkpis.v2i1.4.

Hadri, "Fulfillment of the Rights of Indigenous Peoples in Controlling Customary Forests in West Lampung District" *Istinbath Law Journal*, 15.2 (2018). https://doi.org/10.32332/istinbath.v15i2.1210.

Intan Nevia Cahyana, "Legal Protection of the Existence and Participation of Indigenous Peoples in Forest Management in Customary Forest Areas", Jurnal *Prioris*, 6.2 (2017), https://doi.org/10.25105/prio.v6i2.2440.

Iskandar AM, Theodorus Fied Herlando, Eddy Thamrin, "Study of the Role of Customary Law in the Management and Protection of Forests in the Dayak Uud Danum Indigenous People in Deme Village, Ambalau District", Journal *of Sustainable Forests*, 10.1 (2022). https://doi.org/10.26418/jhl.v10i1.46696.

John Henriksen, *"International Human Rights Mechanism," Training Paper on the Rights of Indigenous Peoples for Human Rights Lecturers in Indonesia,"* organized by the UII Center for Human Rights Studies in collaboration with NCHR University of Oslo Norway, in Yogyakarta 21-24 August 2007.

Kurnia Warman, "Regulation of Agrarian Resources in the Era of Government Decentralization in West Sumatra (Interaction of Customary Law and State Law in the Perspective of Diversity in Legal Unity)," (Dissertation, Faculty of Law, Gadjah Mada University, 2009).

Maria SW Soemardjono in Sukirno, *Legal Politics of Recognition of Ulayat Rights* (Jakarta: Prenamedia Group, 2018).

Mariam Abdulkareem and others, 'Life Cycle Assessment of a Low-Height Noise Barrier for Railway Traffic Noise', *Journal of Cleaner Production*, 323 (2021). https://doi.org/10.1016/j.jclepro.2021.129169

Muthia Septarina, "Customary Forest Management After the Constitutional Court Decision No. 35/PUUX/2012," *Al-Adl: Journal of Law* 5, no. 10 (2012). http://dx.doi.org/10.31602/al-adl.v5i10.190.

Nurul Firmansyah, et al, 2007, *Nagari Forest Dynamics Amidst State Law Nets*, Huma-Tombs, Jakarta.

Regulation of the Minister of Environment and Forestry Number 7 of 2020 concerning Customary Forests and Private Forests.

Rachman Noer Fauzi, "Customary law communities are not rights holders, are not legal subjects, and are not owners of their customary territories,"*Discourse: Journal of Transformative Social Sciences 33.16* (2014).

Rahman, N, *Correction of agrarian forestry policies by the Court of Steep Roads for Agrarian Reform in the Forestry Sector* (Bogor: Center for Research and Development on Climate Change and Policy, 2013).

Rafael Edi Bosco, *Indigenous Peoples' Rights in the Context of Natural Resource Management*, (Jakarta: Elsam, 2006).

Safrin Salam, "Legal Protection of Indigenous Peoples Over Indigenous Forests", Novelty *Law Journal*, 7.2 (2016). https://doi.org/10.26555/novelty.v7i2.a5468.

Sahrul Gunawan, Baso Madiong, Zulkifli Makkawaru, "Legal Analysis of the Rights of the Ammatoa Customary Law Community Against Customary Forests in Bulukumba District", Indonesian *Journal of Legality of Law*, 5.1 (2022). https://doi.org/10.35965/ijlf.v5i1.1911.

Saleh, Muhammad, "The Existence of Customary Law Communities in Forest Management Perspective of Law No. 41 of 1999". Jatiswara 26.2 (2017). http://jatiswara.unram.ac.id/index.php/js/article/view/12.

Sari Daisyta Mega and Akhyaroni Fu'adah, "The Role of Local Government in Protecting Indigenous Forests After the Constitutional Court Decision Number 35/PUU-X/2012", *Journal of Legal Research 1.1* (2014).

Sarkawi, *Law on Land Acquisition of Customary Property Rights for the Development of Public Interests* (Yogyakarta: Graha Ilmu, 2014).

Selamat Yusuf, "Post Constitutional Court Verdict Analysis No. 35/PUU-X/2012 Against the Drafting of Regional Regulations Based on Article 67 paragraph (2) Law No. 41 of 1999 Concerning Forestry", (2015).

Soekanto, *Towards Indonesian Customary Law, An Introduction To Studying Customary Law*, rearranged by Sorjono Soekanto, (Jakarta: PT. Raja Grafindo Persada, 1981).

Soerjono Soekanto and Sri Mamudji, *Normative Legal Research* (Jakarta: Rajawali Press, 2001).

Sofyan Zainal and Eduardus Edo, "Motivation and Community Activities in Preserving the Bukit Samabue Customary Forest, Sepahat Village, Menjalin District, Landak Regency"*Journal of Sustainable Forests*, 10.1 (2022). https://doi.org/10.26418/jhl.v10i1.51930.

Susilo, K.S. 2005. Foreword by the Chairman of Komnas HAM (pp. 5-10). Workshop on "Inventory and Protection of Indigenous People's Rights, 14-15 June 2005, (Jakarta: National Human Rights Commission, Constitutional Court, and Ministry of Home Affairs).

Taufik Siregar and Fitri Yanni Dewi Siregar, The Existence of Customary Community Dispute Resolution in Preventing Destruction of Forest Areas, *Law Enforcement Scientific Journal*, 9.2 (2022), http://dx.doi.org/10.31289/jiph.v9i2.7342

Wahyu Nugroho, "Constitutionality of Rights of Indigenous Peoples in Managing Customary Forests: Empirical Facts of Licensing Legality", *Constitutional Journal*, 11.1 (2016). https://doi.org/10.31078/jk1116.

Yance Arizona, Hermawati Siti Rakhma Mary and Cahyadi Erasmus, Returning Indigenous Forests to Indigenous Peoples: Annotation of the Constitutional Court Decision Case No. 35/PUU-X/2012 regarding Review of the Forestry Law (Jakarta: Perkumpulan HUMA Indonesia, 2014).

Yulisma, "Baundi in the rules of Salingka Nagari Pandai Sikek", *Journal of Research and Culture*, 4.1 (2018). https://dx.doi.org/10.36424/jpsb.v4i1.101