

PROTECTION OF INDIGENOUS COMMUNITIES: A CRITICAL STUDY OF THE DRAFT LAW ON INDIGENOUS COMMUNITIES

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Abstract

Recognition of indigenous legal communities in Indonesia has been constitutionally affirmed in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. However, regulations regarding the recognition and protection of indigenous legal communities are still limited, conditional, and not yet integrated into a comprehensive legal instrument. This article examines the pattern of protection of indigenous legal communities as formulated in the Draft Law on Indigenous Legal Communities and examines various weaknesses and challenges in its implementation. This research uses a normative legal method with a statutory regulatory approach and a case approach. Sources of legal materials include the Draft Law on Indigenous Legal Communities, related laws and regulations, as well as relevant legal literature and scientific articles. The results of the research indicate that this bill has a strategic role in regulating the recognition, protection, customary rights, and institutions of indigenous legal communities. However, the bill still faces several crucial issues, including the absence of a unified national institution to handle indigenous communities, the lack of a clear and equitable funding mechanism, and the potential for overlapping sectoral regulations with forestry, agrarian, and spatial planning laws. This situation has implications for legal uncertainty and the continuation of conflict and criminalization against indigenous communities. Therefore, the ratification of the Indigenous Communities Bill is needed, accompanied by institutional strengthening, a special funding scheme, and harmonization of cross-sectoral regulations to ensure the sustainable protection and empowerment of indigenous communities.

Keywords: *customary law communities, Customary Law Communities Bill, legal protection, customary rights, legal certainty.*

Abstrak

Pengakuan terhadap masyarakat hukum adat di Indonesia secara konstitusional telah ditegaskan dalam Pasal 18B ayat (2) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. Meskipun demikian, pengaturan mengenai pengakuan dan perlindungan masyarakat hukum adat hingga kini masih bersifat terbatas, kondisional, dan belum terintegrasi dalam satu instrumen undang-undang yang komprehensif. Artikel ini mengkaji pola perlindungan masyarakat hukum adat sebagaimana dirumuskan dalam Rancangan Undang-Undang Masyarakat Hukum Adat serta menelaah berbagai kelemahan dan tantangan dalam penerapannya. Penelitian ini menggunakan metode hukum normatif dengan pendekatan peraturan perundang-undangan dan pendekatan kasus. Sumber bahan hukum meliputi Rancangan Undang-Undang Masyarakat Hukum Adat, peraturan perundang-undangan terkait, serta literatur hukum dan artikel ilmiah yang relevan. Hasil penelitian menunjukkan bahwa RUU ini memiliki peran strategis dalam mengatur pengakuan, perlindungan, hak ulayat, dan kelembagaan masyarakat hukum adat. Namun demikian, RUU tersebut masih menghadapi sejumlah persoalan krusial, antara lain belum adanya lembaga nasional terpadu yang menangani masyarakat hukum adat, belum jelasnya mekanisme pendanaan yang berkeadilan, serta potensi tumpang tindih regulasi sektoral dengan undang-undang kehutanan, agraria, dan penataan ruang. Kondisi ini berimplikasi pada ketidakpastian hukum dan berlanjutnya konflik serta kriminalisasi terhadap masyarakat hukum adat. Oleh karena itu, diperlukan pengesahan RUU Masyarakat Hukum Adat yang disertai dengan penguatan kelembagaan, skema pendanaan khusus, serta harmonisasi regulasi lintas sektor guna menjamin perlindungan dan pemberdayaan masyarakat hukum adat secara berkelanjutan.

Kata kunci: *masyarakat hukum adat, RUU Masyarakat Hukum Adat, perlindungan hukum, hak ulayat, kepastian hukum.*



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INTRODUCTION

The existence of customary law communities in a country is an inseparable historical reality, considering that they have existed long before the formation of the state, even before a country was declared independent. Currently, the world has changed socially, economically, legally, and even in a political context, but until now customary law communities as traditional groups are increasingly marginalized. Basically, the existence of customary law communities has received recognition in the national legal system. This recognition is normatively stated in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which emphasizes that the state recognizes and respects customary law communities and their traditional rights, as long as their existence is still alive and developing and their implementation is in line with the principles of the Unitary State of the Republic of Indonesia.

Constitutionally, the state has a legitimate right to regulate the protection of indigenous legal communities. However, this recognition still requires conditions. Indigenous legal communities still require further verification before they can be declared as existing within a state. Therefore, it can be said that the state will recognize them with conditions attached to them. This conditional recognition makes it difficult to fully recognize indigenous legal communities.¹ It is also stated in Law Number 41 of 1999 in Article 67 paragraph (2) that "recognition of the existence and elimination of customary law communities as referred to in paragraph (1) is determined by regional regulations." This has a philosophical basis which illustrates that the state seriously validates the existence of customary law communities, but this has not been implemented in statutory regulations.² In addition, conflicts of interest often occur involving indigenous communities with the government and with private parties, particularly those related to the control and management of Natural Resources (SDA).³

Each country has its own unique terms, including Indonesia. However, these are merely terminological differences; the intended object remains the same. Indigenous peoples are internationally defined as ethnic minorities distinct from the native population. The United Nations (UN) defines Indigenous Peoples as "a broad spectrum of social groups (including Indigenous Ethnic

¹ Retno Kus Setyowati, "Pengakuan Negara Terhadap Masyarakat Hukum Adat," *Binamulia Hukum* 12, no. 1 (2023): 131–42, <https://doi.org/10.37893/jbh.v12i1.601>.

² M. Hatta Roma Tampubolon, "Konsepsi Masyarakat Adat Dan Problematika Pengakuan Dan Perlindungannya (Indigenous Peoples Conception and The Problematic of Admission and Protection)," *isalahHukum Fakultas Hukum Unmul* 6, no. 2 (2010): 71–82.

³ Dina Rahmita et al., "Analisis Komparatif Sistem Hukum Adat Dan Hukum Positif Dalam Harmonisasi Kebijakan Publik Di Indonesia," *Presidensial: Jurnal Hukum, Administrasi Negara Dan Kebijakan Publik* 2, no. 1 (2025): 107–20.

Minorities, Tribal Groups, and Scheduled Tribes) that possess a distinct social and cultural identity distinct from that of the dominant society, which renders them disadvantaged in the development process."⁴Meanwhile, customary law communities are communities that occupy a customary area and are independent with an independent life system.⁵

To date, there has been no specific law that comprehensively regulates the existence and protection of indigenous legal communities. As a result, regulations regarding indigenous legal communities are still scattered across various sectoral laws and regulations, which in practice creates legal uncertainty. This condition is particularly evident in regulations regarding the recognition of the existence, customary rights, and forms of legal protection for indigenous legal communities. Although Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia has normatively affirmed the state's recognition of indigenous legal communities, the mechanism for such recognition and protection still depends on further regulations, one of which is through Regulation of the Minister of Home Affairs Number 52 of 2014 concerning Guidelines for the Recognition and Protection of the Rights of Indigenous Legal Communities.⁶

In addition, there are more complicated procedures with the existence of regional autonomy regulations which state that all provisions regarding land in question are customary rights, all determinations and stipulations are implemented and the authority is handed over to the regional government (PEMDA).

"Involving the customary law communities inhabiting the area, customary law experts, Non-Governmental Organizations (NGOs), and other related institutions."⁷

With these provisions, establishing customary rights can be difficult for indigenous communities. Local governments, with their own interests, can determine rights only if validated by other institutions. They ignore the fact that indigenous communities have long inhabited the area.

Following the issuance of Presidential Regulation of the Republic of Indonesia (PERPRES) No. 92 of 2020, the intended meaning is Article 15. This article purports to alter or eliminate the role of the Directorate General of Natural Resources and Ecosystem Conservation. This potentially weakens the protection of indigenous communities and leads to conflict between them and forest management permit holders. This regulation will increase unilateral claims over their land or forests. This is due to the lack of specific regulations governing the interests of indigenous communities, such

⁴ Bappenas, *Masyarakat Adat Di Indonesia : Menuju Perlindungan Sosial Yang Inklusif*, in *Kementrian PPN/Bappenas* (2013).

⁵ Zainul Akmal, "Eksistensi Masyarakat Adat Dalam Undang-Undang Terkait Lingkungan Hidup," *JIP (Jurnal Industri Dan Perkotaan)* 17, no. 1 (2021): 27, <https://doi.org/10.31258/jip.17.1.27-35>.

⁶ Jasardi Gunawan, "Implementasi Permendagri N0 52 Tahun 2014 Tentang Pedoman Pengakuan Dan Perlindungan Masyarakat Hukum Adat," *Jurnal IUS Kajian Hukum Dan Keadilan* 6, no. 1 (2018): 156, <https://doi.org/10.29303/ius.v6i1.536>.

⁷ Jabarudin Jabarudin and Karmila Karmila, "Kewenangan Pemerintah Daerah Untuk Penetapan Tanah Ulayat Dalam Peraturan Daerah," *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 1, no. 3 (2022): 185–202, <https://doi.org/10.54443/sibatik.v1i3.25>.

as inadequate recognition and legal protection. Current regulations still appear overlapping and sectoral. Likewise, coordination between various government agencies is suboptimal. Therefore, it is hoped that the government will have adequate and effective regulations for indigenous communities.⁸In their writing, Khairun and Aulia argue that it is important to integrate living law so that it is in harmony with the culture of society.⁹

This article generally focuses on discussing the Indigenous Law Communities Bill (RUU) as a regulation that will protect indigenous communities in the future. Based on the background above, the question arises: how will indigenous communities be protected in the Indigenous Law Communities Bill? This article will also attempt to provide recommendations for ideas that could be included in the Indigenous Law Communities Bill.

RESEARCH METHODS

The method presented in this study uses normative legal research. By using a statute approach and a case approach, it is hoped that a comprehensive and in-depth study will be presented. This qualitative method utilizes two sources: primary sources, including the Draft Law on Indigenous Communities and related laws. Secondary sources include legal books and journals. All analysis results from these sources will be presented in writing, using legal reasoning based on relevant theories, doctrines, principles, and legal regulations.

RESULTS AND DISCUSSION

Substance of the Indigenous Legal Communities Bill

The current situation for most indigenous communities remains unclear. The Indigenous Peoples Bill, repeatedly included in the National Legislation Program (PROLEGNAS), has yet to be ratified. The process involves too much legal politics, leading to unresolved issues concerning recognition, protection, customary rights, and so on. Despite existing regulations below the legislative level, specific legislation to address various issues concerning indigenous communities remains incomplete.¹⁰This can be seen from the fact that there is still a lot of violence and criminalization that occurs against indigenous legal communities.

Several areas have become the scene of conflict and criminal activity against indigenous communities. For example, the Poco Leok indigenous community has repeatedly protested against

⁸ Muhammad Fadli, “Pengakuan Dan Perlindungan Negara Terhadap Hukum Adat Dalam Mendorong Kepatuhan Hukum Berbasis Nilai-Nilai Budaya Lokal Di Indonesia (State Recognition and Protection of Customary Law In Promoting Legal Compliance Based on Local Cultural Values In Indones,” *Majalah Hukum Nasional* 54, no. 2 (2024): 283–314.

⁹ M. Khairu Mamnun and Aulia Iqlima Viutari, *Dalam Politik Hukum Nasional (Integrasi Untuk Penguatan Pluralisme Hukum)*, 9, no. 2 (2025): 197–219.

¹⁰ Olsen Peranto, “Problematisasi Pengaturan Mengenai Masyarakat Hukum Adat,” *Rechtsvinding Online*, no. November (2020): 1–5.

geothermal development. However, authorities, using the government's name and strategic project interests, have consistently driven the community away, resulting in dozens of injuries, including children and women, who have fallen victim to violence.¹¹ This case proves that the state has not implemented the constitution optimally, because the state denies the existence of customary law communities.

Similarly, the Amungme people's conflict with PT Freeport, which began in 1967, stemmed from greedy individuals seeking to deprive the Amungme people of their livelihood. They resorted to various methods, including human rights violations, environmental destruction, and other forms of oppression.¹² Since PT Freeport's operations began, Mount Nemangkawi in Timika has been designated a mining site. The Amungme people who inhabit the area have frequently experienced ongoing violence, stemming from their resistance to the destruction of their environment. Their customary rights, including the surrounding mountains, which they consider sacred, have been exploited without their permission.¹³ This problem will never be resolved if the state fails to address it as a serious issue. Indigenous communities should be granted the right to restore and protect their environment, and the state must also establish programs to ensure that indigenous communities are protected without discrimination while safeguarding their rights.¹⁴

The weak position of indigenous legal communities, when viewed from various causes, can be divided into several categories, such as "superiority versus inferiority," "power versus powerless group," and "modern versus traditional." These conditions are easily fostered by dominant groups, such as national governments and other interest groups. They create a situation where both sides experience constant conflict of interest, thus suppressing the situation of indigenous legal communities, leading to a deteriorating position.¹⁵ Therefore, the Indigenous Peoples Bill must accommodate and resolve all of these important issues. Several articles already exist to address these important issues in the Indigenous Peoples Bill.

Recognition of customary law communities.	1. The definition of recognition is contained in Article 1 paragraph (2). 2. The principle of recognition is contained in Article 2. 3. The purpose of recognition is contained in Article 3.
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¹¹ Masyarakat Adat and Nusantara Di, *Catatan Akhir Tahun 2023 Aliansi Masyarakat Adat Nusantara I*, 2023, 1–32.

¹² Muridan S. Widjaja, "Peran Militer Dalam Konflik Freeport versus Amungme: Dwifungsi Militer Orde Baru Di Papua," *Antropologi Indonesia*, no. 6 (2000): 452–61.

¹³ Verlia Kristiani, "Hukum Yang Berkeadilan Bagi Hak Ulayat Masyarakat Hukum Adat (Kajian Dan Implementasi)," *ADIL: Jurnal Hukum* 11, no. 1 (2020), <https://doi.org/10.33476/ajl.v11i1.1449>.

¹⁴ Ahmad Syofyan, "Perlindungan Hak-Hak Masyarakat Adat Menurut Hukum Internasional," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 6, no. 2 (2015): 1–19, <https://doi.org/10.25041/fiatjustisia.v6no2.326>.

¹⁵ John Baba, "Realitas Masyarakat Adat Di Indonesia: Sebuah Refleksi," *Jurnal Masyarakat & Budaya* 12, no. 2 (2010).

	4. The mechanisms and stages of recognition are contained in Articles 5 and 6. 5. The authority to determine recognition is contained in Articles 8, 9, 33, 35, 44, 45.
Protection of indigenous legal communities.	1. The definition of protection is contained in Article 1 paragraph (3). 2. The principle of protection is contained in Article 2. 3. The purpose of protection is contained in Article 3. 4. The guarantee of protection is contained in article 18. 5. The scope of protection in Article 19. 6. Protection authority in Articles 33, 35, 36, 44, 45.
Granting customary rights to customary law communities	The granting of customary rights includes protection, determination, management, utilization and resolution of disputes that occur in customary areas as contained in articles 19, 20, 21, 23, 25, 29, 33, 41, 42, 45 and 46.
Customary legal community institutions	Indigenous community institutions include the purpose of establishment, function of establishment, and duties or authorities contained in articles 5, 37, 38, 39, 40, and 42.

Considering the four key issues above, the need for ratification of the Indigenous Peoples Bill is clear. This is because numerous conflicts and criminalizations still affect Indigenous peoples. Furthermore, conflicts such as overlapping regulations, unilateral claims to customary rights, and inconsistent mapping are a third dimension that exacerbates the uncertainty surrounding Indigenous peoples' situation. In fact, sometimes the government even develops spatial planning without the involvement and participation of local Indigenous peoples.¹⁶

To address existing problems, customary law communities require binding recognition. One way to do this is by enacting specific laws that address all the needs of customary law communities. This not only accommodates the recognition and protection of their traditional rights, but also includes recognition of their state rights. The government must have the political will to prepare a progressive plan to address the needs of customary law communities. Without this political will, this recognition and protection will remain merely a hope for customary law communities in general.

¹⁶ Muhammad Mujab Nabil et al., "Analisis Ketiadaan Kepastian Hukum Bagi Masyarakat Adat dalam Proyek Strategis Nasional Guna Mendorong Revisi Kebijakan Pembangunan Nasional Berdasarkan Prinsip Pluralisme Hukum," *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia* 2, no. 3 (2025): 194–205.

Therefore, a law comprehensively addressing the recognition, protection, and empowerment of customary law communities is urgently needed.¹⁷ With a national legal system and the principle of legal certainty, it is hoped that all groups will be able to know their rights and obligations.¹⁸

The state's concrete manifestation of respect for the cultural diversity and traditions of its people is by integrating customary law into national law. Indonesia already possesses strong local traditions, which must be aligned with national legal principles to prevent further harm to indigenous communities.¹⁹ Because currently the gap within it is very visible, because there is no awareness and understanding of the importance of the values that have developed into national development.²⁰

Weaknesses and Challenges in Implementing the Indigenous Law Communities Bill

Although the Indigenous Peoples Law Bill is essential, significant weaknesses and challenges remain in its implementation. First, there are no explicit provisions regarding the establishment of a unified national institution. Generally, a national institution specifically managing indigenous peoples is essential for the life of indigenous peoples. However, despite the explanation of several articles concerning indigenous peoples' institutions, the bill fails to address the importance of establishing a national institution specifically for indigenous peoples. This is crucial for strengthening inter-institutional coordination.

Village governments and traditional institutions are currently working to empower, preserve and develop culture to support national development.²¹ Indigenous legal communities are also required to have customary institutions before receiving state recognition. The Indigenous Legal Communities Bill explains that the duties of customary institutions include:

Article 38

"Customary institutions are tasked with channeling the aspirations of indigenous communities to village and regional governments, resolving disputes both within and between indigenous communities, and playing an active role in empowering and preserving traditional customs. Furthermore, customary institutions are tasked with encouraging the participation of indigenous communities in developing cultural values

¹⁷ Dewan Perwakilan Rakyat and Republik Indonesia, *Rancangan Undang-Undang Tentang Masyarakat Hukum Adat*, n.d., 5.

¹⁸ Ikhsan Lubis et al., "Integrasi Hukum Adat Dalam Sistem Hukum Agraria Nasional: Tantangan Dan Solusi Dalam Pengakuan Hak Ulayat," *Tunas Agraria* 8, no. 2 (2025): 143–58, <https://doi.org/10.31292/jta.v8i2.401>.

¹⁹ Veisa Najwa Tionika et al., "Integrasi Konsep Hukum Adat Dalam Kerangka Pembangunan Hukum Nasional Indonesia," *Causa: Jurnal Hukum Dan Kewarganegaraan* 1, no. 9 (2023): 21–30.

²⁰ Abraham Gunawan et al., "Integrasi Hukum Adat Dan Hukum Negara Di Indonesia : Perspektif Mazhab Sejarah Hukum Dalam Konteks Sosial Legal Pada Pembangunan Ibu Kota Nusantara IKN," *UNES Law Review* 6, no. 4 (2024): 11268–77.

²¹ Sigit Sapto Nugroho and Sarjiyati Sarjiyati, "Masyarakat Hukum Adat (MHA): Studi Penguatan Kapasitas Lembaga Adat Desa Melalui Pembentukan Peraturan Desa," *Fundamental: Jurnal Ilmiah Hukum* 10, no. 2 (2021): 108–30, <https://doi.org/10.34304/jf.v10i2.50>.

and maintaining harmonious relations between indigenous communities and the government at the village and regional levels."²²

This demonstrates the importance of customary institutions within a customary law community. Besides acting as a bridge between the community and the government, they are also expected to act as mediators when conflicts arise between customary law communities and the government, or between members of the customary law community itself.

Furthermore, according to Article 39, the authority of customary institutions also includes improving the welfare of customary law communities by using and managing their finances, being able to be representatives in all matters relating to local customary law communities with external parties, and being a party capable of resolving conflicts or problems within the community.

Each region also has its own distinct customary institutions, and these institutions can even be categorized based on geographic location. For example, in Aceh, there are approximately 12 customary institutions, structured as follows.

- 1) *Imeum mukimis* the leader of the mukim government institution (a form of government at the sub-district level).
- 2) *Imeum meseujidis* the head of a religious institution.
- 3) *God of Eightis* a mukim deliberation institution.
- 4) *Geusyiekis* the leader of the village government institution (a form of government at the village/sub-district level).
- 5) *Imeum meunasahis* the leader of a religious institution in the village
- 6) *God of the worldis* a village deliberation forum.
- 7) *Kejruen blangis* a traditional rice field institution.
- 8) *Commander of Laoetis* the leader of the traditional Laot institution.
- 9) *Peutua sineboekis* the leader of the plantation customary institution.
- 10) *CommanderUteun* or *pawang glee* is the leader of the forest customary institution.
- 11) *Syahbandais* the leader of the traditional maritime traffic institution.
- 12) *Hariapeukanis* the leader of a traditional trading institution.²³

Currently, the draft bill only accommodates one institution: the Indigenous Law Community Committee. Because indigenous communities lack a dedicated national institution to manage them, several government agencies are frequently involved in indigenous law community affairs, including the Ministry of Home Affairs, the Ministry of Law and Human Rights, the Ministry of Culture and Tourism, the Ministry of Forestry, the Ministry of Agriculture, the Ministry of Social Affairs, the

²² UUD Republik Indonesia, *Rancangan Undang Undang Masyarakat Adat*, 105, no. 3 (1945): 129–33.

²³ Kurniawan, "Eksistensi Masyarakat Hukum Adat Dan Lembaga-Lembaga Adat Di Aceh Dalam Penyelenggaraan Keistimewaan Dan Otonomi Khusus Di Aceh," *Yustisia* 1, no. 3 (2012).

KKR, and the Ministry of Public Works and Housing.²⁴ Judging from the current inter-institutional coordination mechanisms, they remain extremely complex, leading to unresolved conflicts among indigenous communities.

When using the theory of access to justice, the state focuses on efforts to provide effective access to indigenous legal communities to obtain protection for their rights and justice under the law.²⁵ Maka dari itu pembentukan lembaga nasional terpadu khusus untuk masyarakat hukum adat ini menjadi sangat penting.

Atas keresahan itu, Aliansi Masyarakat Adat (AMAN) sudah memberikan saran terhadap permasalahan kelembagaan ini. Kelembagaan negara yang diusulkan oleh AMAN bernama Komisi Masyarakat Adat.

“Kelembagaan ini memiliki beberapa tingkatan, seperti pada tingkat nasional disebut dengan Komisi Nasional Masyarakat Adat. Pada tingkat Provinsi disebut dengan Komisi Masyarakat Adat tingkat Provinsi, dan pada tingkat kabupaten disebut dengan Komisi Masyarakat Adat di tingkat kabupaten”.²⁶

Artinya setiap ruang lingkup wilayah dalam ketatanegaraan di Indonesia, memiliki lembaga adatnya. Kemudian terkait usulan ini AMAN juga memberikan lengkap dengan wewenang yang akan melekat pada Komisi Masyarakat Adat.

Permasalahan kedua adalah mekanisme pendanaan yang masih belum jelas. Walaupun dalam RUU tersebut disebutkan bahwa pemerintah wajib mengadakan anggaran untuk segala kebutuhan masyarakat hukum adat. Tetapi belum disebutkan adanya Dana Alokasi Khusus (DAK) yang membantu persoalan keuangan masyarakat hukum adat. Karena saat ini desa dijadikan tumpuan pembangunan nasional. Pembangunan desa menggunakan dana yang bersumber APBN, biasanya APBN ini dalam bentuk Dana Alokasi Umum ataupun dalam bentuk Dana Alokasi Khusus dan juga dana desa.²⁷

Perihal peraturan desa sendiri sudah diatur dalam UU Nomor 3 tahun 2024 tentang Perubahan Kedua Atas UU Nomor 6 Tahun 2014 Tentang Desa, UU ini bertujuan untuk mengatur segala hal tentang desa, begitu juga dengan definisi di dalamnya.²⁸ Pada dasarnya di nyatakan bahwa desa dan

²⁴ Aman.or.id, “Mengapa Indonesia Memerlukan UU Pengakuan Dan Perlindungan Hak Masyarakat Adat?,” *Artikel Publikasi Online AMAN*, 2017, 3.

²⁵ Dessy Artina et al., “Overlapping Regulation : Kepastian Hak Ulayat Atas Tanah Masyarakat Hukum Adat Muara Sakal Pelalawan Riau,” *Masalah-Masalah Hukum* 53, no. 1 (2024): 23–34, <https://doi.org/10.14710/mmh.53.1.2024.23-34>.

²⁶ Aman.or.id, “Mengapa Indonesia Memerlukan UU Pengakuan Dan Perlindungan Hak Masyarakat Adat?”

²⁷ Agus Pribadiono, “Lembaga Desa Adat Dalam Pembangunan Desa Menurut UU No. 6 Tahun 2014: Antara Kemandirian Dan Subordinasi Pengaturan,” *Lex Jurnalica* 13, no. 1 (2016): 10–22.

²⁸ Lahmuddin Zuhri et al., “Desa Rasa Desa Adat : Peran Nilai Lokal Penyusunan Peraturan Desa Di Kabupaten Sumbawa (Studi Di ‘ Desa Atas Awan ’ Desa Tepal) Fakultas Hukum Universitas Samawa

desa adat memiliki pengertian yang sama, hal itu tertuang pada UU No. 6 tahun 2014 pasal 6 ayat (1). Atas pemahaman UU tersebut, desa merupakan batas wilayah yang di dalamnya terdapat kesatuan masyarakat yang berwenang untuk menjalankan pemerintahan, mengurus kepentingan masyarakat, berdasarkan hak asal-usul dan adat istiadat yang diakui dan dihormati pemerintahan NKRI.

Dalam implementasinya, regulasi yang mengatur pemerintahan desa tetap membedakan antara desa dan desa adat dengan mendasarkan pada tingkat keberlakuan dan pengaruh nilai-nilai adat dalam kehidupan masyarakat. Perbedaan tersebut bersifat fundamental, terutama berkaitan dengan asas pengaturan, kewenangan yang dimiliki, serta bentuk dan struktur pemerintahan yang dijalankan. Meskipun demikian, terdapat beberapa aspek yang dapat dijadikan dasar untuk mengidentifikasi persamaan sekaligus perbedaan antara desa dan desa adat dalam kerangka pengaturan hukum yang berlaku:

- 1) Desa adat merupakan satuan wilayah yang masih berada di bawah pengaruh kuat norma, nilai, serta praktik adat yang hidup dan dijalankan secara aktif oleh masyarakatnya. Sebaliknya, pada desa, keberlakuan adat cenderung tidak lagi dominan dalam mengatur kehidupan sosial maupun pemerintahan.
- 2) From the aspect of regulatory principles, traditional villages are organized based on the principles of customs that live and develop in traditional legal communities, while villages in general are based on the principles of administrative governance as regulated in national laws and regulations.
- 3) The administration of government in traditional villages tends to prioritize recognition and respect, while the administration of government in villages prioritizes the authority given by the state to the village itself.
- 4) The structure of traditional village government is organized based on institutional arrangements that originate from local origins and traditions, while village government uses a modern institutional structure as generally applied in the village government system.
- 5) In terms of decision-making, traditional villages place customary deliberation mechanisms as the main instrument in determining policies, while villages carry out decision-making processes through formal and administrative village government mechanisms.²⁹

Regulations regarding village income sources have been regulated in detail in legislation. However, these provisions do not yet provide clear and specific regulations regarding the sources of income for traditional villages. Following the enactment of Law Number 3 of 2024 concerning the Second Amendment to Law Number 6 of 2014 concerning Villages, provisions regarding village

Sumbawa Fakultas Hukum Universitas Islam Batik Surakarta,” *Journal of Rural and Development* 12, no. 1 (2024): 31–41.

²⁹ dkk. at all Muhammad Yasin, *Anotasi Undang-Undang No. 6 Tahun 2014 Tentang Desa*, no. 6 (2015): 1–542.

income sources are explained in Article 72 paragraph (1), which regulates the various sources of income that can be received by villages.

Article 72

“Village income comes from various sources, including original village income which includes business results and utilization of village assets, community participation and self-help, budget support from the central government, part of district/city taxes and levies, village fund allocations sourced from and balanced, financial assistance from provincial and district/city governments, grants or donations from third parties that are not binding, as well as other legitimate sources of income in accordance with statutory regulations.”³⁰

From the provisions above, it can be understood that there are several sources of village income, ensuring proper village governance. Therefore, traditional villages also need a funding mechanism to ensure optimal village governance.

When the Indigenous Peoples Bill was drafted, it did not yet include adequate funding to ensure that indigenous peoples receive benefits on an ongoing and sustainable basis. It also required regulating the funding allocation mechanism using a jurisdiction-based public finance approach. Furthermore, the funding needs of indigenous peoples can vary widely, driven by factors such as population size, geographic area, and the availability of natural resources in the area they inhabit. This is the case for the Ciptagelar indigenous people.

“Ciptagelar Kasepuhan does not receive village funds directly from the APBN in accordance with Village Law No. 6 of 2014, this condition is because Kasepuhan Ciptagelar is administratively part of Sirnaresmi Village, Cisolok District, Sukabumi Regency which has its own village government with a definitive village head. Therefore, the provision of village funds given to Kasepuhan Ciptagelar is very dependent on the development plan activities determined by Sirnaresmi Village. The customary law community of Kasepuhan Ciptagelar receives 10% obtained from Ciptagelar residents called tatali or zakat”.³¹

Due to its territorial scope, Kasepuhan Ciptagelar does not receive direct funding from the state budget. If this bill establishes a sound mechanism for funding customary villages, they will no longer need to rely on local villages for funding. Dedicated funds reaching customary villages will facilitate local customary law communities' empowerment of their communities and their environment.

³⁰ BPK, “Undang-Undang Republik Indonesia Nomor 3 Tahun 2024 Tentang Perubahan Kedua Atas Undang-Undang Nomor 6 Tahun 2014 Tentang Desa,” *Peraturan .Bpk.Go.Id*, 2024, 31.

³¹ Afaf Septi Haryanti, “Analisis Pengelolaan Dana Desa Adat Pada Masyarakat Adat Suku Baduy Dan Ciptagelar,” *Jurnal Indonesia Berdaya* 4, no. September (2024): 1223–28.

Moreover, the village fund allocation mechanism involves several institutions, but the final authority to determine the total budget and its distribution by sector and region rests with the Minister of Finance after consultation with the House of Representatives (DPR). Other institutions serve only as facilitators. For example, technical departments merely provide technical data for each region according to their respective scope of duties.³²

The third problem is that the Indigenous Peoples Bill has the potential to create overlapping sectoral regulations. For example, there are differences in the definitions of "territory," "rights," and "control" within each sector. Following Constitutional Court Decision No. 35/PUU-X/2012, forest classification was reconstructed by clearly distinguishing between state forests, rights forests, and customary forests. Although forestry regulations recognize customary forests as part of the territories of indigenous peoples that still have management institutions, this recognition remains conditional and dependent on state legitimacy. This situation indicates that the recognition of customary forests does not fully establish them as autonomous entities on a par with rights forests.

Article 64 of the Minister of Environment and Forestry's Regulation on Social Forestry stipulates that customary communities that can manage customary forests must be organized in the form of associations and possess customary institutions, along with applicable laws and regulations. This provision indicates that recognition of customary forest management rights is still limited by administrative and institutional requirements set by the state.³³ The fundamental difference between the Forestry Law and Constitutional Court Decision No. 35/PUU-X/2012 lies in determining the status of customary forests. The Forestry Law places customary forests as part of state forests, while the Constitutional Court Decision explicitly defines customary forests as a separate category from state forests. This difference indicates a paradigm shift in the recognition of customary communities' rights to forest areas. Therefore, the protection stipulated in the Forestry Law is firm, while Decision No. 35/PUU-X/2012 is progressive.³⁴

The 1960 Basic Agrarian Law recognizes customary rights as part of the rights of indigenous peoples, but its implementation still requires confirmation by regional regulations. Meanwhile, Law Number 26 of 2007 concerning Spatial Planning regulates spatial structures and patterns in a binding manner without specifically regulating customary territories. However, when this bill on indigenous peoples is passed, it will regulate customary territories with specific boundaries, closely overlapping with state forest areas under the Forestry Law, state land under the Basic Agrarian Law, and spatial planning under the Spatial Planning Law. Improving this legal political governance requires

³² Syaikh Usman et al., *Mekanisme Dana Alokasi Khusus*, in *Lembaga Penelitian SMERU* (2008).

³³ Sri Nurhayati Qodriyatun, "Pengakuan Hutan Adat Dalam Skema Perhutanan Sosial," *Komisi IV Pertanian, Kehutanan, Dan Kelautan XVII*, no. 19 (2025): 1–5.

³⁴ Mutiara I.Kadir and Janwar Hippy, "Hutan Adat Pasca Putusan Mahkamah Konstitusi Nomor 35/PUU-X-2012 : Konsekuensi Hukum Dan Otoritas Pemanfaatan Oleh Masyarakat," *Arus Jurnal Sosial Dan Humaniora* 5, no. 1 (2025): 828–37, <https://doi.org/10.57250/ajsh.v5i1.1141>.

systematic efforts to create strong and sustainable cross-sectoral harmony, particularly in the development of regulations and policies that are no longer oriented solely to sectoral interests.³⁵ A similar situation is experienced by the Moronene Hukaea Laea indigenous community in the Rawa Aopa Watumohai National Park area in Bombana Regency, Southeast Sulawesi Province. Despite receiving legal recognition at the regional level through Bombana Regency Regulation No. 4 of 2015, the establishment of customary territories has not yet been fully implemented. This delay is due to the centralization of authority for determining these territories, which still rests with the central government. This situation reflects the weak synchronization between normative recognition at the regional level and implementation mechanisms at the national level, which ultimately hinders the effective protection of indigenous peoples' rights.³⁶ Therefore, this situation can be said to be merely administrative recognition, not substantive. Because the Moronene Hukaea Laea customary law community has not been able to fully exercise its customary rights.

This conflict of legal norms has demonstrated the lack of legal certainty in their implementation. Referring to the explanation of Article 21 of Law Number 41 of 1999, it states that:

"Forests are a trust from God Almighty. Therefore, forest management must be based on noble morals for the greatest prosperity of the people. Therefore, the implementation of each component of forest management must take into account the cultural values, aspirations, and perceptions of the community, as well as the rights of the people. Therefore, it must involve the local community."³⁷

This means that the state, as the sovereign authority, is expected to be able to present and involve local communities in forest management. The goal of such management must also be based on the common good of both the community and the state itself.

This policy further strengthens the urgency of establishing a law on customary law communities as a legal instrument capable of providing certainty, recognition and protection of customary rights.

Moreover, Law Number 11 of 2020 concerning Job Creation stipulates,

³⁵ Farrel Salma Fadhilah, "Politik Hukum Pertanahan Di Indonesia: Kritik Atas Tumpang Tindih Kewenangan," *Causa: Jurnal Hukum Dan Kewarganegaraan* 15, no. 10 (2025): 1–10, <https://doi.org/https://doi.org/10.6679/gh8hxa87>.

³⁶ Sahrina Safiuddin, "Hak Ulayat Masyarakat Hukum Adat Dan Hak Menguasai Negara Di Taman Nasional Rawa Aopa Watumohai," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 30, no. 1 (2018): 63, <https://doi.org/10.22146/jmh.16681>.

³⁷ Marulak Togatorop et al., "Kepastian Hukum Hak Atas Tanah Masyarakat Hukum Adat Yang Masuk Dalam Kawasan Hutan," *ADIL: Jurnal Hukum* 12, no. 2 (2022), <https://doi.org/10.33476/ajl.v12i2.2116>.

"This new policy has the potential to threaten the existence of customary rights. This policy actually strengthens the state's control of land for development and investment purposes."³⁸

This situation further emphasizes the urgency of establishing a special law regarding indigenous legal communities as a legal instrument capable of guaranteeing certainty, recognition, and protection of customary rights. However, policies that eliminate the character of decisions as State Administrative Decisions have implications for the public's access to legal remedies. This situation contradicts the principle of due process of law, as indigenous legal communities lose their right to a fair, transparent, and accountable review mechanism when their legal interests are harmed by government actions.³⁹

Before the Indigenous Peoples Law Bill is passed, it is necessary to first consider the interests of indigenous peoples proportionally. Several ideal ideas could be implemented to ensure the Indigenous Peoples Law Bill is progressive and optimal.

- 1) The establishment of a national institution or special body that can handle customary law communities in an integrated manner.
- 2) Strengthening the funding scheme through special mechanisms such as the Customary Special Allocation Fund (DAK), so that the empowerment of customary law communities also receives adequate financial support.
- 3) Integration of data and mapping of customary areas across ministries/institutions to avoid overlapping and unclear status of customary areas.

Indigenous communities have been part of the Republic of Indonesia for a long time. It is crucial to recognize and protect their rights so that their empowerment can also contribute to national economic development. Regulations to protect indigenous communities prevent actions that could worsen their situation.

CONCLUSION

Recognition and protection of indigenous peoples remains weak due to overlapping regulations, suboptimal inter-institutional coordination, and the lack of certainty through the ratification of the Indigenous Peoples Bill despite repeated inclusion in the National Legislation Program (PROLEGNAS). The Indigenous Peoples Bill still faces various problems such as the absence of an integrated national institution, unclear funding mechanisms including the absence of a Customary Special Allocation Fund (DAK) scheme, and potential overlap with other sectoral

³⁸ Lubis et al., "Integrasi Hukum Adat Dalam Sistem Hukum Agraria Nasional: Tantangan Dan Solusi Dalam Pengakuan Hak Ulayat."

³⁹ Ria Maya Sari, "Potensi Perampasan Wilayah Masyarakat Hukum Adat Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Mulawarman Law Review* 6, no. 1 (2021): 1–14.

regulations. This study recommends a number of ideal steps that can be included in the Indigenous Peoples Bill before it is passed, including the establishment of a special national institution for indigenous peoples affairs, strengthening funding through special schemes such as the Customary DAK, and integrating data and mapping of indigenous territories across ministries/institutions so that the recognition, protection, and empowerment of indigenous peoples can be carried out more effectively and progressively.

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