

Local Wisdom in Indonesia: Assessing its Legal Status and Role in Forest Protection

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Abstract

This study delves into an examination of the role played by local wisdom in the protection of forests. The recognition and acknowledgment of local wisdom, enshrined in customary law within the environments of indigenous peoples, encounters challenges, particularly when the legitimacy of customary law itself is in question, especially concerning forest protection. In addressing these concerns, a normative juridical approach was employed to scrutinize legal source materials. The findings of this research affirm that the recognition of indigenous peoples as legal entities, particularly under international law, necessitates collective consideration. Through this conceptual framework, indigenous peoples can assert their aspirations autonomously and even advocate for international policies aimed at safeguarding and upholding the rights of indigenous peoples globally, with predeter-

mined terms and conditions. The study underscores the contribution of local wisdom to forest protection, exemplified by the formulation of customary forest concepts applicable to indigenous communities. Local wisdom has demonstrated efficacy in averting and mitigating forest damage, particularly within customary forest areas, owing to the steadfast adherence of indigenous peoples to the principles encapsulated in their customary law. Moreover, the effectiveness of local wisdom in forest preservation is bolstered by the intrinsic characteristics of traditional indigenous communities, fostering wise and sustainable forest management practices. The study posits that the normative nature of customary law, as a living legal entity, may face ineffectiveness, potentially jeopardizing its own existence. Nonetheless, it contends that the state should formally recognize the exclusivity of customary law through constitutional and legal frameworks, thereby fortifying the application and viability of customary law within predetermined geographical areas and communities designated by the government.

Keywords: Local Wisdom; Forest, Indigenous People

A. Introduction

Local wisdom represents a venerable set of values that flourishes within the fabric of traditional community existence. Emerging from the distinctive characteristics of communities coexisting harmoniously with nature, it profoundly influences their lifestyle, actions, and thought patterns. This dynamic interplay between life and nature gives rise to what is commonly known as local wisdom—a collective heritage ingrained in the noble life of traditional communities, passed down through generations and enshrined as policies governing their way of life.¹ In Indonesia, these diverse local wisdoms coalesce within a comprehensive system referred to as “*adat*” in general terms, and more specifically, as customary law.

The life of the Indonesian people, which is very rich in local wisdom, certainly has very distinctive characteristics. Referring to Van Vollen Hoven’s view, which characterizes Indonesian local wisdom

1 Miss Roikhwaphut Mungmachon, “Knowledge and Local Wisdom: Community Treasure,” *International Journal of Humanities and Social Science* 2, no. 13 (2012): 174–81.

with a distinctive character, namely: orientalist, anti-development-minded, and romantic.² These characteristics are the main characteristics of Indonesian local wisdom in which the habit of living with eastern manners, ethics and manners becomes a separate strength for Indonesian local wisdom which upholds customs and then in general terms the community is known as indigenous peoples.

Local wisdom in indigenous peoples cannot be separated from how indigenous peoples come into contact with nature, one of which is the forest. The sustainability of forests is very important at this time in the midst of an increasingly worrying issue of global warming. The concept of forest protection sometimes seems to be inversely proportional to the number of forest exploration and exploitation by not paying attention to forest and environmental sustainability aspects. Especially if you look at the basis of the indigenous peoples themselves who have territorial areas, even though in practice the existence of these areas is clearly marked and in other cases it is also sometimes difficult to find³.

Indigenous peoples who live with nature and especially forests, of course, are very dependent on their lives with forests. Therefore, the indigenous people live side by side with the forest wisely and wisely. Various concepts and ways of indigenous peoples in protecting forests and the environment are important tools as protection against forest destruction which is not a little caused by investments and corporations. For example, the existence of the prohibition forest, the prohibition pit, and other concepts that become a means for indigenous peoples who consciously or unconsciously contribute to the protection of forests and the environment.

2 Franz von Benda-Beckmann and Keebet von Benda-Beckmann, "Myths and Stereotypes about Adat Law: A Reassessment of van Vollenhoven in the Light of Current Struggles over Adat Law in Indonesia," *Bijdragen Tot de Taal-, Land-En Volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia* 167, no. 2-3 (2011): 167-95.

3 Gunawan Widjaja, "The Role of Adat Forest and Adat Law Community in Environmental Protection in Indonesia," *Xinan Jiaotong Daxue Xuebao/ Journal of Southwest Jiaotong University* 57, no. 3 (2022): 71-77, <https://doi.org/10.35741/issn.0258-2724.57.3.6>.

According to Bagir Manan, Customary law communities are legal communities (*rechtsgemeenschap*) based on customary law or customs such as *villages, clans, nagari, gampong, meusanah, huta, negorij*, and others. Furthermore, according to Bagir Manan, the legal community is a community unit that is territorial in nature or also known as genealogical where the community has its own wealth, has its own citizens where in this case its citizens can be distinguished from other legal community members in the sense that the community has uniqueness and in this case the community can also act internally and externally as a legal entity that is independent and has the ability to govern themselves ⁴.

Indonesia as a state of law lays down the law as the basis of all state administration, as well as in terms of protecting forests and the environment which cannot be separated from the legal aspects that protect them. These devices can be in the form of laws and regulations or policy products issued by state officials. But on the other hand, there are also non-legal instruments that affect forest and environmental protection.

However, within the framework of the rule of law, of course, legal instruments should be the main guard in protecting forests and the environment. But on the other hand, the question is the extent to which local wisdom is seen as a law, given the importance of it in order to find the position and existence of local wisdom in the Indonesian legal state system.

B. Indigenous Peoples as Legal Entities and Subjects

There are many kinds of terms and terms for people who live side by side with customary law. Call it UNDRIP as an international legal umbrella related to indigenous peoples which gives the mention of indigenous people, to Indonesian national law which gives the term indigenous peoples, and indigenous peoples. Etymologically, the word *adat* itself comes from Arabic which means habit, the hab-

4 Bagir Manan, *Menyongsong Fajar Otonomi Daerah* (Yogyakarta: Pusat Studi Hukum Fakultas Hukum UII, 2014).

it referred to here is something that is carried out repeatedly in a community and passed down from one generation to another in a community which is something that must be followed and obeyed.⁵ Meanwhile, in terms of the community itself, Imam Kabul in his dissertation quoting from Soerjono Soekanto formulates that the requirements for a community/association to be called a community must meet the following elements:

1. Each member of the group must be aware that he is part of the group concerned.
2. There is a reciprocal relationship between one member and another, within the group;
3. There is a factor shared by the members of the group so that the relationship between them is getting closer. These factors can be the same fate, the same interests, the same goals, the same political ideology and so on.
4. Structured, rules and has a pattern of behavior ⁶.

Constitutionally, the meaning of customary law community is formulated in terms of customary law community unit as stipulated in Article 18 B of the Constitution of the Republic of Indonesia with limitations as long as it is recognized and still alive. In this view, constitutionally, the customary law community unit is interpreted as a unit of indigenous Indonesians whose existence depends on the extent to which there is recognition of the existence and life of indigenous peoples and their customary law itself ⁷.

However, it is clear from these terms that a common thread can be drawn that indigenous peoples are a collection of individuals who are united in a unit bound by common ancestry and customs where in their lives are bound by a law that is born, and develops from generation to generation.

The existence of indigenous peoples in international law has

5 Manan.

6 Lalu Sabardi, "Konstruksi Makna Yuridis Masyarakat Hukum Adat Dalam Pasal 18B Uudn Ri Tahun 1945 Untuk Identifikasi Adanya Masyarakat Hukum Adat," *Jurnal Hukum & Pembangunan* 44, no. 2 (2014): 170, <https://doi.org/10.21143/jhp.vol44.no2.19>.

7 Sabardi.

received a special place, especially with the enactment of UNDRIP where international law makes indigenous peoples as a subject in its regulation. The birth of UNDRIP has become an international momentum that places the rights of indigenous peoples to be free from all discrimination that arises against the existence of indigenous peoples themselves and all aspects related to them.

UNDRIP confirms the obligation of states to treat indigenous peoples equally. However, UNDRIP also recognizes and protects the uniqueness of indigenous peoples themselves with the concept of the right to be different, to be seen as something different, or to be respected for these differences. This is of course reasonable considering the peculiarities of indigenous peoples often have special differences that often get discriminatory treatment under the pretext of modernizing the system, both cultural, legal, social, cultural, and the community itself.

Impacta is a historical fact that is used as an important consideration for UNDRIP that indigenous peoples often experience suffering that manifests itself in a form of injustice caused by colonization and dispossession of their lands, territories and resources, thereby preventing them from exercising, in particular, their right to development in accordance with their needs and interests. dealing with the state in terms of maintaining and implementing what they guard as noble values and habits or referred to in a more specific sense, namely their own customary law.

The existence of these indigenous peoples in the world is scattered in many countries in various parts of the world, for example the Karen tribe who inhabit the Baan Tong Luang area along with seven other tribes in northern Thailand including those who inhabit the Pet Pan area, Myanmar. There are also Tamil tribes in India, Kalinga tribes in the Philippines and other tribes who inhabit certain areas with a distinctive culture and of course including customary law attached to these tribes. Of course, with the existence of this phenomenon of the existence of indigenous peoples becoming a global fact, it is natural for international law to pay special attention to and regulate this matter.

However, the extent to which international law recognizes customary law community entities as subjects of international law. Of course, before discussing this further, it is necessary to discuss the logical academic reasons why indigenous peoples need to be made as subjects of international law. The first reason, of course, is to strengthen the recognition of the existence of indigenous peoples themselves, their existence as subjects will certainly place indigenous peoples on a caste that is parallel to other international law subjects, which are no longer limited to being protected objects, but furthermore as recognized subjects. independently.

Second, of course, by placing customary communities as subjects of international law, legally everything attached to them becomes a part that has its own sovereignty, so that indigenous peoples can act directly internationally and get the highest recognition of the existence of the community and the values that live around them.

Therefore, international law should consider making indigenous peoples as subjects of international law as an effort to strengthen the existence of indigenous peoples within the framework of international law. However, it must be admitted of course that special considerations and mechanisms need to be carefully considered. However, what should be noted is that this effort is basically in addition to strengthening the existence of indigenous peoples as well as to maintain the sustainability of indigenous peoples themselves so that they do not always become objects that seem to always be in a weak position.

The discussion of indigenous peoples as subjects of international law certainly cannot be separated from the basic principle, namely the rights of indigenous peoples. The existence of the self-determination theory becomes the basic point to see how important it is for indigenous peoples to be designated as subjects of international law. Self-determination means the extent to which the rights of a legal subject are able to freely express their aspirations into real life and receive fair humanitarian treatment ⁸.

⁸ Katja Göcke, *Indigenous Peoples in International Law, Adat and Indigeneity in Indonesia* (New York: Oxford University Press, 2017), <https://doi.org/>

The existence of this is certainly very important in terms of how indigenous peoples are able to present their aspirations and fight for their rights independently to the public. But the problem is, of course, it's not easy. Especially when looking at the reality that the recognition of the existence of indigenous peoples still depends on how their existence is recognized by national law. The problem that might arise is that there will be a legal conflict that occurs where the accommodation of the existence of the indigenous peoples clashes with the accommodation of existence by national law. Not to mention politically, it is possible that the conflict of interest will arise between the indigenous peoples and the state itself. This is very likely to happen considering that if indigenous peoples are stipulated as subjects of international law, of course, politically in the eyes of the international community, indigenous peoples will be present in the middle of international forums regardless of the frills of the state. So it is possible that conflicts of interest may arise, especially when the international aspirations of indigenous peoples are not in line with what is considered by the country where the indigenous peoples live.

In Indonesian national law, indigenous peoples when referring to the constitution are described as a special legal subject even though the concept of their existence as a special legal subject is classified in the perspective of public law subjects or private law subjects. This is certainly very important to strengthen the existence of indigenous peoples in national law. This legal recognition is very important so that indigenous peoples can have the authority to regulate and manage their communities and communities independently, considering that indigenous peoples in principle already have customary government before the state forms a government ⁹.

Hence, in this context, there is a pressing need for a concerted global initiative facilitated through international forums. This initiative aims to promote the formation of a universal consortium rep-

org/10.4000/books.gup.163.

9 Ernawati and Erwan Baharudin, "Dinamika Masyarakat Hukum Adat Dalam Sistem Ketatanegaraan Di Indonesia," *Hukum Dan Keadilan* 6, no. 2 (2019): 53–67.

representing indigenous peoples worldwide, convened under the auspices of a dedicated platform termed the World Indigenous Peoples Forum. However, a critical inquiry arises as to how this proposed concept distinguishes itself from existing international organizations that have already assumed the status of subjects of international law.

Referring to the opinion of A Leroy Bennett, international organizations have the following characteristics:

1. The organization remains to carry out continuous functions.
2. Voluntary membership of eligible participants.
3. The basic instrument that states the objectives, structure and operational methods.
4. Extensive consultative representative meeting body.
5. The Secretariat remains to continue its administrative, research and information functions on an ongoing basis ¹⁰.

In this proposed concept, indigenous peoples in this concept have the following characteristics:

1. Membership comes from indigenous peoples that have been recognized and determined by the submitting countries simultaneously;
2. The nature of membership is flexible, where the membership referred to is proposed by a country that has indigenous peoples;
3. Indigenous peoples referred to in this case are not representations of indigenous peoples personally, but are the embodiment of indigenous peoples in a country.

The hope of the formation of indigenous peoples as subjects of international law is where indigenous peoples can voice their aspirations independently and even establish policies internationally for the protection and fulfillment of the rights of indigenous peoples globally considering the multi-dimensional intersection of indigenous peoples that can come into contact with all aspects of implementation. society, country, and the world globally.

¹⁰ Yulianingsih dan Sholihin, *Hukum Organisasi Internasional* (Yogyakarta: Penerbit Andi, 2014).

C. Contribution of Local Wisdom to Forest Protection

Contribution in KBBI means donation. Donations in this sense can be interpreted as what can be given in real terms, generally to the nation and state. In this capacity, the contribution will be to the extent to which customary law can support or support forest protection through the conception of local wisdom that lives in the environment of indigenous peoples.

Meanwhile, on the other hand, the existence of an interpretation of local wisdom itself is normatively regulated specifically in laws and regulations. The definition in the formal juridical aspect refers to the provisions of Article 1 paragraph (30) of Law Number 32 of 2009 concerning Environmental Protection and Management which in this case defines local wisdom as “noble values that apply in the life of the community for, among other things, protect and manage the environment in a sustainable manner”.

These noble values bind into a rule of law that is dominantly unwritten which in the life of indigenous peoples is referred to as customary law. Customary law is a law that lives in the community from generation to generation. The form is generally unwritten. However, the legal search is generally carried out through speech between generations. So, in this case, of course, it can be seen how the existence and existence of customary law is dominant depending on the extent to which the indigenous people recognize and respect the law itself.

It must be acknowledged that the intersection of indigenous peoples with the forest has always had a close relationship. As a traditional society, it certainly has implications for the traditional pattern of community life. In the sense that indigenous peoples live side by side and depend on the surrounding nature. Indigenous peoples tend to depend on natural products, one of which is forests. This dependence includes non-consumption needs as well as public consumption needs.

Each indigenous community manages the forest with their own local wisdom. In the sense that each indigenous people have their own characteristics in forest protection efforts. However, it should be

acknowledged that in principle they have the same goal, namely the realization of forest protection and sustainability while still paying attention to the socio-economic aspects of the community, which basically depends on the forest and forest products themselves.

One of them is the concept of customary forest which is a pattern of local wisdom in protecting the forest and its sustainability. For example, one of the customary forests in Jambi Province which is located in the Pelpat area, Muaro Bungo Regency. This white Datuk Sinaro customary forest still survives in the midst of the onslaught of investment and illegal gold mining (PETI) that is spreading in the area. The indigenous people of Datuk Sinaro Putih have been established through Bungo Regency Regional Regulation Number 3 of 2006 concerning the Indigenous People of Datuk Sinaro Putih. With this stipulation, the existence and institutions of indigenous peoples become stronger. Even though in practice the customary forest has been surrounded by investment and PETI, the community's awareness and commitment to protecting the customary forest has almost made the only one that survives. It can be seen clearly that the community's awareness to jointly maintain commitment to the protection of customary forests through Forest Management Groups (KPH).

Another comparison can be seen from how the Sakai Tribe in Riau Province protects forests through regulations aimed at ensuring the sustainability and destruction of forests and rivers. The concept of protection is to do a strict division of land zones. In this case, the Sakai people divide their customary forest into several zones, namely: customary forest, forbidden forest and cultivated forest.

In customary forest areas, it is stipulated that in customary forest areas only certain commodities may be taken, namely rattan, resin and bee honey, but the main trees may not be cut down. Philosophically this can mean that forest products are indeed a gift from God Almighty which is intended for human life, but with a note in terms of utilizing forest products without the need to destroy the forest let alone cut down trees. In a sense, this regulation implies that the community should only take forest products according to their needs.

On the other hand, for areas designated as prohibited forest areas located in riverbank areas. This area is very vital considering the existence of the river here has many functions in supporting the lives of the surrounding community. The river in this case functions as a water channel for agriculture and plantations, in addition to good river flow will prevent flooding and especially as a source of water for public consumption. This area is absolutely not allowed to be logged, and can't even be managed with or anything like that Click or tap here to enter text.

In addition, in terms of the balance between forest protection and the socio-economic status of the community, cultivation forests are also determined. In this cultivation forest area, the community is allowed to manage this area, including by cutting trees as long as their function is intended for productive cultivation of the community. In the management of this area, the application of the rotation system is also emphasized.

Another example can also be seen as what is done by the community in Rumbio Village, Kampar District, Riau Province. In this community, a series of sanctions are also set by referring to local wisdom as sanctions for violations or actions that violate customary provisions related to forest protection. Preventive measures are carried out by means of the community establishing a forest area which is referred to as a customary prohibition forest. In this area it is agreed that there is a shared responsibility in which the community is prohibited from logging in the prohibited forest area. Violators will be faced with customary sanctions in the form of fines such as 100 kg of rice or in the form of money as much as Rp. 6 million.

In connection with this matter, numerous instances abound, given the wealth of local wisdom prevalent in Indonesia. Renowned for its cultural opulence, traditions, and diverse populace, Indonesia inherently harbors unique concepts and distinctive attributes. However, a discernible fact emerges—local wisdom embedded in customary law within communities has empirically proven its effectiveness as a formidable instrument for the protection of forests. This assertion aligns logically with substantiated considerations.

First, local wisdom is free from the influence of power pressure. This is because indigenous peoples stand independently with the concept of law and government that is deeply rooted in the community. The influence of external intervention is certainly not easy to enter the middle of the system that has been built by the community. The concept is that even though laws and institutions are formed unwritten, these laws and institutions are psychologically attached to society. The feeling of belonging to customary law and high adherence to customary government institutions make people have obedience based on awareness, not fear of the law and so on.

Second, the traditional nature of indigenous peoples carries the concept of proportional use of nature. People do not have an excessive desire to explore nature which leads to excessive exploitation. People use nature wisely by taking natural products from the forest according to their needs. So that the preservation of nature and forests is maintained considering that forests and their products are not explored excessively.

Thirdly, indigenous perspectives underscore the pivotal role of forest preservation in securing the sustainability of their lives. Indigenous communities hold the conviction that the degradation of the forest poses a direct threat to their own survival and that of their progeny. Consequently, these communities are fervently committed to preserving the surrounding forests, recognizing that such conservation efforts ensure a safeguard for the well-being of future generations.

Fourth, the customary law that is passed down by speech is also interspersed with myths that have developed and lived in the community for generations. Sanctions on the mythology make people very obedient to the existing laws. This educatively constructed mythology brings a sense of community responsibility towards the forest, moreover the violation or denial of the teachings of the ancestors is seen not only as the responsibility of the individual, but the community in a communal way and even to the offspring.

D. Existence and Recognition of Local Wisdom in Forest Protection

The role and contribution of local wisdom enshrined in customary law to forest protection represent a tangible legal recourse and alternative in conservation endeavors. However, the critical inquiry pertains to the extent of the acknowledgment and recognition of these legal principles, as well as the significance of their normalization. Bahder Johan Nasution contends that the normalization of local wisdom, recognized as a living law within Indonesian society, constitutes a social reality that has endured over a substantial period. Conversely, an alternative perspective posits that customary law should be regarded as a legal system wherein no formal processes or endeavors are requisite to confer official legal status, essentially establishing the local wisdom inherent in customary law.

According to him, if customary law is normalized in the form of written law, it has the potential to be counterproductive. In addition, the norm has the potential to reduce public awareness of compliance and obedience to the customary law. On the other hand, there is also a paradigm that customary law and its values embodied in local wisdom are necessary and important for formalization in writing at all levels, whether in this case at the provincial government level as well as in this case. by the district and/or city governments. The reason is because from the aspect of the condition of customary law which in this case is contained in local wisdom, which in the current condition is basically a position and its existence tends to be in a marginalized condition. This is because with the formation of a series of regulations in the form of written law where the written legal regulations tend to confront or clash with the traditional rights attached to customary law communities.

But on the other hand, it may be that the normalization of local wisdom that is collected in customary law has challenges from many sides, but the existence of recognition of customary law as law deserves to be questioned. This of course becomes the basis for special considerations on how, where, and what is the position of customary

law in issues, especially forest protection. This is because of course by several reasons and arguments that strengthen it. In the sense that it is necessary to determine the position of the existence of local wisdom as a source of law.

Referring to the provisions of Article 18 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) it is regulated that “The State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of The Unitary State of the Republic of Indonesia”. From the article, several things can be understood, firstly there is state recognition of indigenous peoples and their traditional rights. In the sense that the existence of indigenous peoples is recognized by including their traditional rights, one of which is the rights to the law that applies in the community. Second, it should be noted, that the acknowledgment is carried out by the state as long as the customary community unit is still alive and does not contradict developments with the principles of the Unitary State of the Republic of Indonesia. So in this case, if it is associated with local wisdom, in principle the state recognizes the existence of local wisdom, it just needs a juridical strengthening formulation.

From these descriptions, it can be concluded that the normalization through positive law on local wisdom does not have a beneficial impact on local wisdom itself, with several considerations, the first one is feared that it will narrow local wisdom as a living and ever-evolving law. In addition, concerns about the norming of local wisdom by the state will also form a hierarchical position in laws and regulations, in the sense that customary law has consequences in a certain order in the legislation. For example, if it is formed by a regional head regulation, of course, customary law hierarchically will automatically occupy a certain hierarchy in the order of laws and regulations.

The solution is for the state to establish exclusivity to local wisdom which is contained in the recognition of the existence of its law, starting from the constitution which should firmly recognize cus-

tomary law as a source of law, and followed by legislation under the 1945 Constitution, which regulates the phrase that customary law is a source of law that applies and is recognized as an official and binding law in certain areas and in certain indigenous peoples. Especially regarding the forest, of course, the local wisdom collected in the customary law is recognized for its existence and validity as long as it is interpreted within the designated forest area and within the established customary community environment. So it is necessary to determine the area first validity and the object of its validity. So that with this indigenous peoples can protect customary forests freely and there is a strong acknowledgment of the rules and sanctions applied to violators.

E. Concluding Remarks

1. The existence of indigenous peoples as legal subjects, especially in this case international law, should be a joint consideration. With this concept Indigenous peoples can be able to voice their aspirations independently and even establish policies internationally for the protection and fulfillment of the rights of indigenous peoples globally with terms and conditions that have been determined in advance.
2. The contribution of local wisdom to forest protection is manifested by the conception of customary forests that applies to indigenous peoples. Local wisdom has proven to be effective in preventing and preventing forest damage, especially in customary forest areas. This is due to the high adherence of indigenous peoples to local wisdom collected in customary law. In addition, local wisdom effectively protects forests and is supported by the characteristics of traditional indigenous peoples so that they manage and utilize forests wisely and wisely.
3. The normalization of customary law as living law is ineffective and will threaten the existence of customary law itself. However, the state needs to recognize the exclusivity of the customary law through the constitution and laws to strengthen the applicability

and existence of the customary law in certain areas and communities which are pre-determined by the Government.

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