


# AN ANALYSIS OF INTERNATIONAL LAW, NATIONAL LEGISLATION, JUDGEMENTS, AND INSTITUTIONS AS THEY INTERRELATE WITH TERRITORIES AND AREAS CONSERVED BY INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

## REPORT of Indonesia



Prepared by:  
**Tim Riset Epistema institute**

Supported by:  
  
Federal Ministry  
for the Environment, Nature Conservation  
and Nuclear Safety  
  
based on a decision of the German Bundestag



**SGP** The GEF  
Small Grants  
Programme



**NATURAL  
JUSTICE**

The IDCA  
Consortium

**Epistema  
Institute**

## Table of Contents

<b>Section One INTRODUCTION</b>	<b>Page</b>
1. The Goal of Analysis	5
2. Methodology of Analysis	5
3. Conceptual Framework	5
4. Executives	6
5. Organization of report	6
 <b>Section Two Legal Analysis and ICCAs Practices in Indonesia</b>	
1. Indonesia, Local and Adat Communities	7
2. Human Rights and Local and Adat Communities	11
3. Land, Water and Marine Sectors	18
4. Natural Resources, Environment and Culture Sectors	25
5. Natural Resources Extraction, Large Infrastructure/Development and Agricultural Projects	36
6. Protected Areas, ICCAs and Sacred Sites	40
7. Non-Legal Recognition and Support	45
8. Judicial Institutions' Decisions	48
9. Practice of Implementing Legal Recognition of Adat Peoples in the Field	52
10. Resistance and Engagement	54
11. Reformation of Regulations and Policies	56
12. Case Studies	58
	73
 <b>Section Three CLOSING</b>	
References	
Attachments	



## Section One

### Introduction

In many places throughout the world, areas of important and high biodiversity are oftentimes located within indigenous and community conserved areas (ICCAs).<sup>1</sup> Traditional and contemporary management systems which are inherent within adat (indigenous) practices allow conservation, restoration and connection of certain ecosystems, habitats and species in harmony with the beliefs of adat and local communities. Although ICCAs have proven to be capable of maintaining the unity of ecosystems, culture and community wellbeing, ICCAs are actually under increasing threats of damage and extinction. These threats are intensified by the lack of countries/governments that recognize, protect and respect adat territories and natural resources owned by local and adat communities. Not to mention the important contributions that local and communities have given to the management and maintenance of their conserved areas.

In Indonesia, the regulatory frameworks related to the recognition and respect of ICCAs have evolved, although they still tend to be dominated by the government authority. In 1990, the government issued Law No. 5 of 1990 concerning Conservation of Natural Resources and Ecosystems. Currently, within the time span of 2014 – 2018, a number of the new regulations provide an opportunity to strengthen the recognition and protection of ICCAs in Indonesia. Today, a discussion is underway on the revision of Law 5/1990 which is being advocated by the Working Group on ICCAs Indonesia (WGII)<sup>2</sup>.

In general, the government is beginning to shift its views on the existence of ICCAs and the role of indigenous and local communities in conservation. The Directorate General of Natural Resources Conservation and Ecosystems at the Ministry of Environment and Forestry (MOEF) has confirmed a new approach in the management of conserved forest areas. One such approach is to place local and adat communities as one of the subjects of conserved area management. This can be seen from Minister of Environment and Forestry Regulation No. 83/2016 on Social Forestry and Director General of Natural Resources Conservation and Ecosystem Regulation No: P.6/KSDAE/SET/Kum.1/6/2018 concerning Technical Guidelines for Conservation Partnerships in Natural Reserve Areas and Natural Conservation Areas.

Adat peoples<sup>3</sup> as one of the legal subjects have been regarded as important actors in forest management. The decision of the Constitutional Court No. 35/2012 concerning the Testing of Forestry Law No. 41/1999 has

---

<sup>1</sup> In Indonesia the concept is called AKKMA.

<sup>2</sup> Information on WGII can be accessed on <http://iccas.or.id/tentang-wgii/>

<sup>3</sup> It is common in Indonesia to use of the terms *Masyarakat Adat* (Indigenous Peoples) and *Masyarakat Hukum Adat* (Adat Law Communities) for the same purpose. The term *Masyarakat Adat* is a translation of the Dutch term *rechtsgemeenschap*



confirmed the constitutional rights of adat peoples as the ones with the control and management rights of forests in their adat territories. Legal recognition of adat peoples has been done by local governments through regional (provincial and district/city) regulations. According to the Epistema Institute database, up to February 2018 there have been 225 local law products distributed throughout different provinces and districts/cities in Indonesia which recognize the existence of Adat Law Communities covering an area of adat territories around 213,541.01 hectares.

Nonetheless, legal recognition of adat law communities in reality is still limited to the recognition of their existence (as a subject). This recognition of adat law communities' existence is rarely accompanied by the legal recognition of their adat territories as their living space. The implication is that adat peoples who want to manage their adat territories still have to go through other legal processes, such as the mapping of their adat territories and their registration. This condition alone presents a challenge, and WGII is trying to advocate the solution to this challenge through the revision of Law No. 5/1999.

It is not difficult to find conservation practices carried out by local and adat communities in Indonesia. The following are some examples which are worth to mention: the sacred forest of the Kajang People in Bulukumba District, South Sulawesi Province; *Leuweung Tutupan* (protected forest), in the Kasepuhan Community in Lebak District, Banten. However, these local wisdom-based conservation practices have not been fully accommodated by the legislation at the national, provincial and district/city levels. Therefore, the conservation area "in the style of" Kajang People is still threatened by extractive forest industry practices. Meanwhile, the protected forest of Kasepuhan Community has little chance to be managed directly by the people since it is included in the forest area which has a conservation function.

By considering the legal frameworks on conservation and conservation practices of local and adat communities in Indonesia, this analysis will observe, first of all, the conservation legal frameworks in Indonesia and ICCAs recognition and protection, as well as ICCAs practices of local and adat communities in several areas in Indonesia.

## 1. The Goal of Analysis

The main goal of this legal analysis is to describe the impact of legal regulations, policies, and institutions at the national, provincial, and district/city level on ICCAs, and to provide recommendations on how to strengthen the recognition and respect of ICCAs.

This legal analysis for Indonesia is a part of reports from several countries organized by Natural Justice and ICCAs Consortium which include:

- **Africa:** Benin, Kenya, Madagascar, Morocco, Namibia, Senegal, Tanzania, and Zambia.
- **Americas:** Argentina, Belize, Brazil, Colombia, Ecuador, Guatemala, Paraguay, Peru, and Suriname.
- **Asia:** Georgia, Indonesia, Iran, Jordan, Kyrgyzstan, Malaysia, Maldives, Philippines, and Viet Nam.

The global report will be completed by the Natural Justice dan ICCAs Consortium which will be elaborated by analysis at both regional and international levels.

---

or *adatrechtsgameenschap* which was first introduced by C. van Vollenhoven. Ter Haar (student of van Vollenhoven) defined *Masyarakat Hukum Adat* as the units that have their own orderly and eternal arrangement and have their own management and wealth, both material and immaterial. On the other hand, the origin of the term *Masyarakat Adat* is quite difficult to trace. Some people say this term is a direct translation of the term Indigenous Peoples, but others disagree. The definition of *Masyarakat Adat* was formulated in 1993 by Jaringan Pembela Hak-Hak *Masyarakat Adat* (Japhama) or Indigenous Peoples Rights Defenders Network which was later adopted by the Aliansi Masyarakat Adat Nusantara (AMAN) or the Archipelago Indigenous Peoples Alliance in 1999, as community groups who have ancestral origins (for generations) in a certain geographical area, and have certain values, ideologies, economics, politics, cultures and territories (for further information, read *Pengakuan Hukum terhadap Masyarakat Adat di Indonesia*, by Rikardo Simarmata, 2006: 23-27). In this paper, the author will use both terms interchangeably with the same meaning.



## 2. Methodology of Analysis

The methods used in this analysis follow to the steps provided by the International Research Team organized by Natural Justice and the ICCAs Consortium that is through answering a series of key questions which are divided into 13 (thirteen) issues or fields.

The types of data used in this analysis are primary data and secondary data. Primary data are obtained through a workshop process/FGD in order to get experience in ICCAs practices as well as the application of legal laws and regulatory policies in the practices of natural resources conservation. The primary data is needed as a result of the empirical legal research approach and an attempt to get a real-life snapshot in the field. On the other hand, secondary data are used to explain the legal aspects of ICCAs which include (i) primary legal material in the form of laws and regulations concerning forestry, the environment, spatial planning, land, adat law communities; (ii) secondary legal materials in the form of books, research results, magazines and journals, and (iii) tertiary legal materials in the form of dictionaries.

Data collection of this analysis was conducted in two ways, namely by tracing documents and workshops/FGDs. Workshops/FGDs are held after the completion of legal analysis drafting. The workshop/FGD was held to obtain inputs from the participants about the results of the study.

## 3. Conceptual Framework

ICCAs are indigenous and community conserved areas meaning conservation areas that are managed by adat law communities under adat values, norms and traditions.

Conservation partnership is a cooperation between the heads of conservation area units or the permit holders in a conservation area and the local communities under the codes of mutual respect, mutual trust and mutual benefit.

Adat law communities are community groups who have traditionally settled in a certain geographical area due to the ties of their ancestral origin, strong relationship with their environment, and the existence of a value system that determines their economic, political, social and legal institutions.

Local Wisdom is the prevailing noble values that deal with the life of a community such as for the sustainable protection and management of the environment.

A local community is a social unit of The Republic of Indonesia citizens who live around (verified by their ID cards) or stay within a state forest area as verified by their membership in a social community with a history of forest area cultivation and their dependance on forests and the impact of their activities on forest ecosystems.

## 4. Executives

The analysis was done by a team of individuals as follows:

Person In Charge:  
Asep Yunan Firdaus

Researchers:  
Malik, Desi Martika Vitasari, Muki Trenggono Wicaksono, Yustina Ambarini Murdiningrum,  
Siti Chaakimah dan Yudha Prawira

## 5. Organization of report

The report of this study will be presented in the following organization:

**Section One** Introduction which presents the problems to be studied and the goals to be achieved through the study, including the methodological and conceptual frameworks.



**Section Two** Legal analysis and ICCAs practices in Indonesia.

**Section Three** Closing



## Section Two

### **Legal Analysis and ICCAs Practices in Indonesia**

The report in this section is the answers to the key questions on 13 issues or fields as presented in Appendix 1. The answers offered are the analysis result of collected data primarily in the form of regulations, policies and institutions concerning local and adat communities in ICCAs management in Indonesia, as presented in Appendix 2. The presentation of the report will be adapted to the order of the questions.

#### **1. Indonesia, Local and Adat Communities**

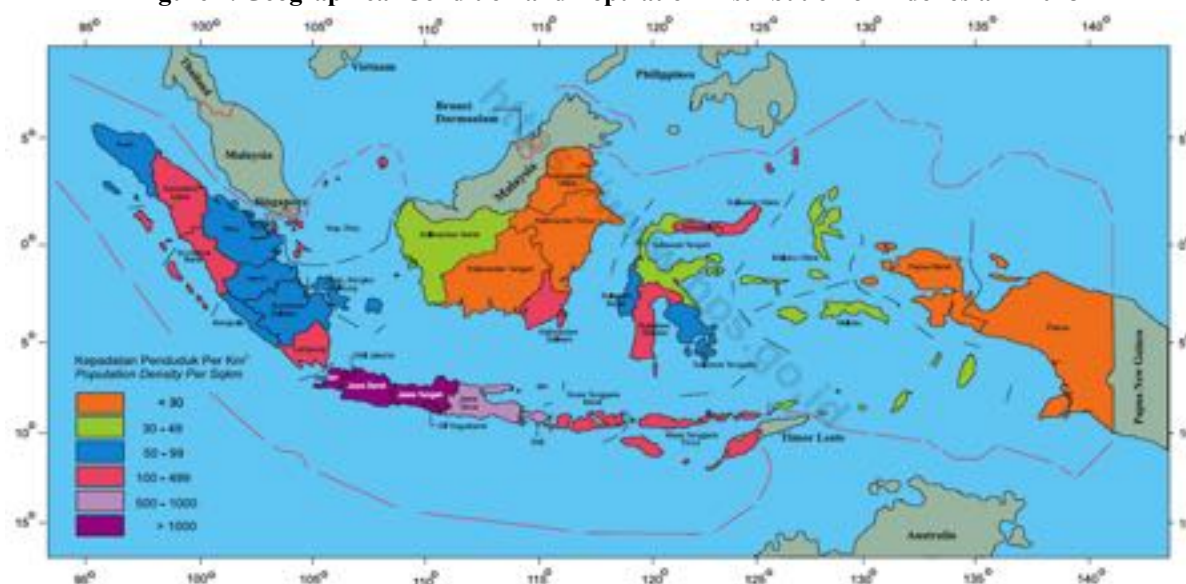


Indonesia is a country that overlaps with two continents (Asia and Australia) and two oceans (Indian and Pacific Oceans). Geographically, Indonesia has the following boundaries: North - Malaysia, Singapore, Vietnam, Philippines, Thailand, Palau and the South China Sea; South - Australia, Timor Leste and the Indian Ocean; West - Indian Ocean; East - Papua New Guinea, and the Pacific Ocean. These boundaries are located at 111 outermost islands as these islands are used to determine the baselines of Indonesia border with other countries.<sup>4</sup>

The coordinates of Indonesia's territory is from 6° N (North Latitude) to 11° S (South Latitude) and from 95° E (East Longitude) to 141° E (East Longitude). This equatorial location provides Indonesia with a tropical climate with high rate of rainfalls, extensive tropical rainforests, year-round sunshine and high humidity. The longitudinal expanse of Indonesia's territory causes it to have three different time zones, namely West Indonesia Time (WIB) UTC+7, Central Indonesia Time (WITA) UTC+8 and Eastern Indonesia Time (WIT) UTC+9.

Indonesia is divided into a number of provinces and districts/cities. There are 34 provinces and 514 districts/cities which are located on five major islands and four archipelagos (minor islands), namely: Sumatra Island (Aceh, North Sumatra, West Sumatra, Riau, Jambi, South Sumatra, Bengkulu, and Lampung); Riau Islands (Riau Islands); Bangka Belitung Islands (Bangka Belitung Islands); Java Island (DKI Jakarta, West Java, Banten, Central Java, DI Yogyakarta, and East Java); The Nusa Tenggara Archipelago (Bali, West Nusa Tenggara and East Nusa Tenggara); Kalimantan Island (West Kalimantan, Central Kalimantan, South Kalimantan, East Kalimantan, and North Kalimantan); Sulawesi Island (North Sulawesi, Gorontalo, Central Sulawesi, South Sulawesi, West Sulawesi, and Southeast Sulawesi); the Moluccas (Maluku and North Maluku); Papua Island (Papua and West Papua). As an archipelago, Indonesia has thousands of islands and is connected by a lot of straits and seas. There are 16,056 islands whose coordinates have been recorded and registered at the United Nations (2017). The total area of Indonesia itself is 1,916. 862.20 km<sup>2</sup> with a population of 261.9 million people.<sup>5</sup>

**Figure 1. Geographical Condition and Population Distribution of Indonesia in 2018**



Source: BPS, Statistics of Indonesia 2018

Indonesia's maritime boundaries abide by the 1982 Law of the Sea Convention which has become effective since December 16, 1994. Indonesia ratified the Law on December 31, 1985 through Law Number 17 of 1985 concerning Indonesian Ratification of the United Nations Convention on the Law of the Sea (UNCLOS) 1982. With this ratification of the 1982 Law of the Sea Convention, the territory of Indonesia has a 200-mile Exclusive Economic Zone (EEZ). Thus, the territorial waters of Indonesia were expanded to a total of 6,166,165. km<sup>2</sup>. These territorial waters consist of 0.3 million km<sup>2</sup> of territorial sea, 2.8 million km<sup>2</sup> of archipelagic waters, and 2.7 million km<sup>2</sup> of EEZ.<sup>6</sup>

<sup>4</sup> Presidential Decision Number 6 of 2017 concerning the Determination of Outermost Small Islands.

<sup>5</sup> Indonesian Central Bureau of Statistics, 2018, Statistics of Indonesia 2018, Jakarta: BPS-Statistics Indonesia.

<sup>6</sup> Mustafa Abdullah, Aspek Hukum Penerapan KUHAP DI Perairan Indonesia dan Zona Ekonomi Eksklusif, BPHN, Jakarta, 1998.



Indonesia's economic growth has increased from year to year for the past few years. Indonesia underwent an economic growth of 5.2% in 2017, while in 2018 it was 5.3%<sup>7</sup>. The Indonesian economy in 2017 measured through Gross Domestic Product (GDP) at current prices reached Rp13,588.8 trillion. With a population of 261.8 million PDB per kapita Indonesia, Indonesia's GDP per capita reached Rp51.89 million or equivalent to US\$ 3,876.8<sup>8</sup>. There are ten main potential export commodities and potential export destinations for Indonesia, namely: the textile and textile products, rubber and rubber products, palm oil, forest products, footwear, automotive products, shrimp, cocoa and coffee.<sup>9</sup>

**Tabel 1. Number and Percentage of Population according to Tribe Group**

Indonesia has diverse ethnic groups which preexisted before the formation of the Indonesian State. Although Indonesia went through an era of colonization, the diverse ethnic groups still survive. The colonization era of Indonesia is divided into several periods, namely Portuguese period (15th century), Spanish period (15th century), VOC-Dutch period (16-19 century) and Japanese period (19th Century). Meanwhile, the structure and composition of Indonesia population based on ethnic groups are presented in detail in Table 2. In this table, we can see that the Javanese people from Java are the largest ethnic group with a population of 95.2 million or around 40.2 percent of the whole population of Indonesia.

In regard to recognition of indigenous peoples, Indonesia in essence recognizes their existence through the constitution and the decrees of the People's Consultative Assembly (*MPR*), namely:

**a) State Constitution of 1945**

- Article 18B paragraph (2): The State recognizes and respects adat law community units along with their traditional rights insofar as they still exist and in accordance with the development of the society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the regulations.
- Article 28I paragraph (3): The cultural identities and rights of traditional communities are respected in accordance with the development of the times and civilizations.

Kelompok Suku Bangsa	Jumlah	Persen	Ranking
(1)	(2)	(3)	(4)
Suku asal Aceh	4 091 451	1,73	14
Batak	8 466 969	3,58	3
Nias	1 041 925	0,44	30
Melayu	5 365 399	2,27	10
Minangkabau	6 462 713	2,73	7
Suku asal Jambi	1 415 547	0,6	25
Suku asal Sumatera Selatan	5 119 581	2,16	10
Suku asal Lampung	1 381 660	0,58	26
Suku asal Sumatera Lainnya	2 204 472	0,93	21
Betawi	6 807 968	2,88	6
Suku asal Banten	4 657 784	1,97	11
Sunda	36 701 670	15,5	2
Jawa	95 217 022	40,22	1
Cirebon	1 877 514	0,79	24
Madura	7 179 356	3,03	5
Bali	3 946 416	1,67	15
Sasak	3 173 127	1,34	16
Suku Nusa Tenggara Barat lainnya	1 280 094	0,54	27
Suku asal Nusa Tenggara Timur	4 184 923	1,77	12
Dayak	3 009 494	1,27	17
Banjar	4 127 124	1,74	13
Suku asal Kalimantan lainnya	1 968 620	0,83	22
Makassar	2 672 590	1,13	20
Bugis	6 359 700	2,69	8
Minahasa	1 237 177	0,52	29
Gorontalo	1 251 494	0,53	28
Suku asal Sulawesi lainnya	7 634 262	3,22	4
Suku asal Maluku	2 203 415	0,93	22
Suku asal Papua	2 693 630	1,14	19
Cina	2 832 510	1,2	18
Asing/Luar Negeri	162 772	0,07	31
<b>Total</b>	<b>236 728 379</b>	<b>100</b>	

<sup>7</sup> LPEM UI. Indonesia Economic Outlook 2018.

<sup>8</sup> <https://databoks.katadata.co.id/datapublish/2018/07/25/berapa-pdb-perkapita-indonesia>. Accessed on October 21, 2018 at 18:00 WIB.

<sup>9</sup> <http://www.kemendag.go.id/id/economic-profile/10-main-and-potential-commodities/10-main-commodities>. Accessed on October 21, 2018 at 18:00 WIB.



**b) MPR Decree No. IX/MPR/2001**

Article 4: Agrarian reform and natural resource management must be done in accordance with the principles of the recognition, respect and protection of the rights of adat law communities and the nation's cultural diversity over agrarian resources/natural resources.

Additionally, there are several regulations that deal with the mandate for local governments, such as Law No. 23 of 2014 concerning Regional Government and Law No. 6 of 2014. In both regulations, the role of local governments becomes increasingly significant because they can determine areas to become villages, adat villages, or *kelurahan* (administrative village). Moreover, there is the Decision of the Constitutional Court (MK) No. 35/PUU-X/2012. This Constitutional Court's decision recognizes the existence of adat forests. In order to carry out these regulations and this Constitutional Court Decision, several operational regulations such as local legal products in the form of local regulations as well as local head decrees are required. Several of these operational regulations include: Minister of Home Affairs Regulation No. 52 of 2014 concerning Guidelines for Recognition and Protection of Adat Law Communities; Minister of Environment and Forestry Regulation No. P. 32/Menlhk-Setjen/2015 concerning Private Forests; Ministry of Land and Spatial Planning/ National Land Agency Regulation No. 10 of 2016 concerning Procedures for Determining Communal Land Rights of Adat Law Communities and Communities Located in Certain Areas.

Since the Decision of Constitutional Court No. 35/PUU-X/2012, so far there have been 69 local legal products issued since May 2013 up to December 2016. These legal products recognize the existence of indigenous peoples, adat territories, adat forests, adat institutions and courts, and adat villages. These legal products resulted in the recognition of 538 indigenous peoples, 133 adat villages, expansion of adat territories and forests, as well as the recognition of adat forests by the Central Government.<sup>10</sup> There are nine adat forests recognized by the government. The locations of these adat forests are as follow:

1. Tigo Luhah Kemantan Adat Forest, Kerinci District, Jambi, with an area of 452 hectares.
2. Bukit Sembahyang and Padun Gelanggang Adat Forests, Kerinci District, Jambi, with a total area of 39 hectares.
3. Bukit Tinggai Adat Forest, Kerinci District, Jambi, with an area of 41 hectare.
4. Tigo Luhah Permenti Yang Berenam Adat Forest, Kerinci District, Jambi, with an area of 252 hectares.
5. Ammatoa Kajang Adat Forest, Bulukumba District, South Sulawesi with an area of 313.99 hectares.
6. Marga Serampas Adat Forest, Merangin District, with an area of 130 hectares.
7. Wana Posangke Adat Forest, North Morowali District, with an area of 6,212 hectares.
8. Kasepuhan Karang Adat Forest, Lebak District, Banten, with an area of 486 hectares.
9. Tombak Haminjon Adat Forest, Humabang Hasudutan District, North Sumatera, with an area of 5,172 hectares.<sup>11</sup>

## **2. Human Rights and Local and Adat Communities**

### **2.1. Regulations and Policies on Human Rights and Local and Adat Communities**

The Constitution of the Republic of Indonesia, the 1945 Constitution (UUD 1945), which has been amended four times<sup>12</sup>, mandates the protection of human rights in a separate chapter, CHAPTER X A concerning Human Rights (from Article 28A to Article 28J) and also in a few articles outside CHAPTER X A. The 1945 Constitution mostly regulate civil and political rights, as well as economic, social and cultural rights. The human rights stipulated in the 1945 Constitution are as follow:

<sup>10</sup> Yance Arizona, Malik, Irena Luci Ishimora, 2017. Pengakuan Hukum terhadap Masyarakat Adat: Tren Produk Hukum Daerah dan Nasional Pasca Putusan MK 35/PUU-X/2012, Outlook Epistema 2017, Jakarta: Epistema Institute.

<sup>11</sup> Ibid.

<sup>12</sup> The first amendment of the 1945 Constitution was ratified on October 19, 1999; the second amendment of the 1945 Constitution was ratified on August 18, 2000; the third amendment of the 1945 Constitution was ratified on November 10, 2001; and the fourth amendment of the 1945 Constitution was ratified on August 10, 2002.



<b>Civil and political rights</b>	<b>Concerning</b>	<b>Article</b>
	Right to live	28A and 28I paragraph (1)
	Right to recognition, guarantee, protection and certainty before a just law, and equal treatment before the law	28D paragraph 1
	Right to equal opportunities in government	28D paragraph (3)
	Right to citizenship status and right to switch citizenship	28D paragraph (4) and 28E paragraph (1)
	Right to religious freedom	28E paragraph (1) and 28I paragraph (1)
	Right to freedom of belief, express thoughts and views, in accordance with his/her conscience	28E paragraph (2) and 28I paragraph (1)
	Right to freedom of association, assembly and expressing opinions	28E paragraph (3)
	Right to communication and acquiring information	28F
	Right to feel secure and be protected against threats	28G paragraph (1)
	Right to be free of torture	28G paragraph (2) and 28I paragraph (1)
	Right to obtain political asylum	28G paragraph (2)
	Right to be free from enslavement	28I paragraph (1)
	Right to be recognized as an individual before the law	28I paragraph (1)
	Right not to be prosecuted on the basis of retroactive legislation	28I paragraph (1)
	Right to be free from acts of discrimination	28I paragraph (2)
	Freedom of association, assembly, expressing thoughts either verbally or in writing	28
	Right to practice religion and faith	29 paragraph (2)
<b>Economic, Social, and Cultural Rights</b>	Right to procreate	28B paragraph (1)
	Rights of children	28B paragraph (2)
	Right to fulfillment of basic needs and education	28C paragraph (1)
	Right to collective self-improvement	28C paragraph (2)
	Right to work and receive fair and proper compensation and treatment in labor relations.	28D paragraph (2)
	Right to choose education and teaching	28E paragraph (1)
	Right to choose employment	28E paragraph (1)
	Right to a life of physical and spiritual prosperity, to a have a place to live, to enjoy a good and healthy environment	28H paragraph (1)
	Right to medical care	28H paragraph (1)
	Right to receive facilitation and special treatment to get the same opportunities and advantages	28H paragraph (2)
	Right to social security	28H paragraph (3)
	Right to protection of private property	28H paragraph (4)
	Right to cultural identities and rights of traditional communities	28I paragraph (3)
	Recognition of adat law communities and their traditional rights	18B paragraph (2)
	Right to employment and a decent livelihood	27 paragraph (2)
	Right to education	31
	Freedom of communities in maintaining and developing cultural values	32 paragraph (1)
	Right to access natural resources for the welfare of the people	33 paragraph (3)
	Right to care for the poor and children	34 paragraph (1)
	Right to social security	34 paragraph (2)
	Right to medical care	34 paragraph (3)



Human rights regulations within the resolutions of the People's Consultative Assembly (MPR) provisions can be found in MPR Resolution Number XVII of 1998 concerning the Implementation and Indonesian View of Human Rights and the National Human Rights Charter.

Several legislations that also regulate Human Rights are as follow:

1. Law Number 5 of 1998 concerning the Ratification of the Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment.
2. Law Number 9 of 1998 concerning Freedom to Express Opinions.
3. Law Number 11 of 1998 concerning Amendments to Law Number 25 of 1997 concerning Labor Relations.
4. Law Number 8 of 1999 concerning Consumer Protection.
5. Law Number 19 of 1999 concerning Ratification of ILO Convention Number 105 concerning Abolition of Forced Labor.
6. Law Number 20 of 1999 concerning Ratification of ILO Convention Number 138 concerning Minimum Age of Employment.
7. Law Number 21 of 1999 concerning Ratification of ILO Convention Number 111 concerning Discrimination in Employment.
8. Law Number 26 of 1999 concerning Revocation of Law Number 11 of 1963 concerning Subversion Crimes.
9. Law Number 29 of 1999 concerning Ratification of the Convention concerning Elimination of All Forms of Discrimination.
10. Law Number 39 of 1999 concerning Human Rights.
11. Law Number 40 of 1999 concerning the Press.
12. Law Number 26 of 2000 concerning Human Rights Court.
13. Law Number 9 of 2004 concerning State Administrative Courts.

Moreover, human rights legislations within Government Regulations and Presidential Decrees, are as follow:

- Government Regulation in lieu of Law (Perpu) Number 1 of 1999 concerning the Human Rights Court.
- Presidential Decree (Kepres) Number 181 of 1998 concerning the Establishment of the National Commission for the Elimination of Violence Against Women.
- Presidential Decree No. 129 of 1998 concerning the National Action Plan for Human Rights of 1998-2003 containing plans for ratifications of various United Nations human rights instruments and their follow-up.
- Presidential Decree Number 31 of 2001 concerning the Establishment of the Human Rights Courts at Central Jakarta District Court, Surabaya District Court, and Makassar District Court.
- Presidential Decree Number 5 of 2001 concerning the Establishment of an Ad Hoc Human Rights Court at the Central Jakarta District Court, which was amended by the Presidential Decree Number 96 of 2001.
- Presidential Decree Number 181 of 1998 concerning the National Commission on Violence Against Women.
- Presidential Decree Number 50 of 1993 concerning the National Human Rights Commission.

Specifically regarding the protection of human rights of adat law communities, as mentioned above, Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "The State shall recognize and respect adat law communities and their traditional rights as long as they remain in existence and are in agreement with societal development and the principle of the Unitary State of the Republic of Indonesia,



which is regulated by law". Furthermore, it is affirmed in Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia that "The cultural identities and rights of traditional communities are to be respected in accordance with the progress of times and civilization." Article 41 of TAP MPR No. XVIII/MPR/1998 concerning Human Rights II. The Human Rights Charter also states, "The cultural identities of traditional communities, including rights to communal land is protected, in accordance with the progress of times."

Within the Law No. 5 of 1960 concerning the Basic Agrarian Law (UUPA), the recognition of adat law communities and communal rights remains in so far as they still exist and are in accordance with national interests and in line with the legislations above it.

Within Law Number 39 of 1999 concerning Human Rights in Article 6 paragraph (1), it states that to support human rights, differences and needs in adat law communities must be considered and protected by law, society and government." Whereas in Article 6 paragraph (2), it states, "The cultural identity of adat law communities, including the rights to communal land is protected in line with the progress of times".

Law No. 11 of 2005 concerning the Ratification of the International Covenant on Economic, Social and Cultural Rights which ratifies this International Covenant on Economic, Social and Cultural Rights, among others, recognizes the rights held by adat law communities generally, namely the right to not to be discriminated as stipulated in Article 2 paragraph (2), Article 2 paragraph (3) and Article 3. The right to culture is one of the rights held by adat law community units in Indonesia. The right to culture and the right to participate are regulated in Article 15, and the right to a healthy environment is regulated in Article 12.

Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights which ratifies this International Covenant on Civil and Political Rights expressly recognizes the right not to be discriminated for everyone as stipulated in Article 2 paragraph (1) and Article 3. This is the right to enjoy all rights such as the right to land and natural resources regulated in Article 26, the right to enjoy a distinctive way of life related to the use of land and natural resources regulated in Article 27, as well as the right to participate regulated in Article 25.

Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination in principle recognizes that every citizen has the right to receive equal treatment to obtain civil, political, economic, social and cultural rights in line with the provisions of legislations, without discrimination of race and ethnicity (Article 9). Therefore, based on this law, all forms of rights regulated within the Indonesian legislations must be given, including a series of rights given to adat law communities.

Law Number 24 of 2003 concerning the Constitutional Court in Article 51 paragraph (1) states that one of the categories of appellants is "adat law community units as long as they still live and are in line with societal progress and the principles of the Unitary State of the Republic of Indonesia regulated in the law". Furthermore, Law Number 23 of 2004 concerning the Constitutional Court in article 51, inter alia, stipulates that "adat law community units" can be the appellants if their constitutional rights are violated or impaired by the enactment of a law, however they must fulfill a certain predetermined legal standing.

The authority of the local governments in the recognition and protection of the existence and rights of adat law communities was first regulated in the Minister of Land/Head of the National Land Agency Regulation No. 5 of 1999 concerning Guidelines for Dispute Settlement of Adat Law Communities Communal Rights, although the recognition of adat peoples existence and rights has been done through local legal products prior to the ratification of this Minister of Land Regulation.

After the enactment of the Minister of Land/Head of the National Land Agency Regulation No. 5 of 1999, the need for Local Regulations that stipulate the recognition of the existence and rights of adat law communities is also regulated within various regulations, such as Law No. 41 of 1999 concerning Forestry, Law No. 6 of 2006 concerning Villages, and Law No. 23 of 2014 concerning Local Government.

Since the enactment of the Constitutional Court Decision No. 35/PUU-X/2012 (MK 35) which declared that adat forests are no longer state forests, legal reforms took place at the national level regarding the recognition of the existence and rights of adat law communities in the form of operational regulations to implement MK 35, such as the Minister of Home Affairs Regulation No. 52 of 2014 concerning Guidelines for Recognition and



Protection of Adat Law Communities; Minister of Environment and Forestry Regulation No. 32/Menlhk-Setjen/2015 Concerning Private Forests; and Minister of Land and Spatial Planning/Head of National Land Agency Regulation No. 10 of 2016 concerning Procedures for Determining Communal Rights on Lands of Adat Law Communities and Communities that Are in Certain Areas which revise the Minister of Land and Spatial Planning/Head of National Land Agency Regulation No. 9 of 2015.

The enactment of MK 35 also encouraged the emergence of 69 new local legal products concerning indigenous peoples, ranging from the recognition of the existence of adat peoples, adat territories, adat forests, adat institutions and courts, as well as adat villages. At the national level, MK 35 also encouraged more concrete legal recognition through a decree of the Minister of Environment and Forestry which recognizes nine (9) adat forests on December 30, 2016.<sup>13</sup>

## **2.2. Government Institutions that Hold the Mandate and Authority to Implement Regulations and Policies related to Local and Adat Communities**

Article 28J Paragraph (1) stipulates that every person has the obligation to respect the human rights of others in the orderly life of the community, nation and state. Article 28J Paragraph (2) further stipulates that in exercising their rights and freedoms, each person has the duty to accept the restrictions determined by law for the sole purpose of guaranteeing the recognition and respect for the rights and freedom of other people and of satisfying just demands based on considerations of morality, religious values, security, and public order in a democratic society.

Within Law Number 39 of 1999 concerning Human Rights in Article 6 paragraph (1), it states that in order to support human rights, differences and needs in adat law communities must be considered and protected by law, society and government." Whereas in Article 28I paragraph (4) of 1945 Constitution, it states that the protection, advancement, upholding and fulfilment of human rights are the responsibility of the state, especially the government. The government in this case includes all central and local state institutions from legislative, executive or judicial.

In addition to the State Administrative Court (PTUN) and the Supreme Court, the protection of constitutional rights can be granted by the Constitutional Court (MK) which has the authority to try at the first and last level and has the final say in examining the law against the Constitution (Article 24 paragraph (1) and (2) of the 1945 Constitution). The authority of the Constitutional Court is very important in balancing the state powers between legislative and executive branches. Political battles in legislations, certain legislative package orders, or perhaps the weakness of human resources in parliament during the forming of a legal product which can happen at any time, can be 'corrected' or 'canceled' through a challenge of law examination against the 1945 Constitution in the Constitutional Court. Nevertheless, the protection of constitutional rights may not really be guaranteed through this mechanism since it is very dependent on the authority of majority interpretation through the decision of nine judges.<sup>14</sup>

## **2.3. Effectiveness of Protection Implementation and Law Enforcement and the Institutional Framework Related to Local and Adat Communities**

Following the reform era in 1998, the 1945 Constitution after the amendments has adopted broader and more comprehensive human rights protection than the 1945 Constitution before the amendments. More and more laws and regulations under the Constitution also deal with the protection of human rights. In addition to that, more judicial reform programs are supported by more groups; many repressive laws have been revoked and replaced with a number of laws that are more transparent during drafting; freedom of expression is now also relatively open

<sup>13</sup> Yance Arizona, Malik, dan Irena Lucy Ishimora, *Pengakuan Hukum Terhadap Masyarakat Adat: Tren Produk Hukum Daerah dan Nasional pasca Putusan MK 35/PUU-X/2012*, Outlook Epistema, Jakarta, 2017

<sup>14</sup> R. Herlambang Perdana Wiratraman, *Hak-Hak Konstitusional Warga Negara Setelah Amandemen UUD 1945: Konsep, Pengaturan dan Dinamika Implementasi*, Panta Rei Law Journal, Vol. 1, No. December 1, 2007, Jakarta: Consorsium of National Law Reform



quite broad. State violence seems to have been reduced compared to state violence in the New Order era. However, human rights violations still occur in the field, including perpetuation of impunities. After the amendments of the 1945 Constitution, human rights violations still occur in several cases, such as the shootings by police officers and soldiers which killed a number of indigenous peoples and farmers in the Bulukumba (South Sulawesi) case, the Manggarai case (East Nusa Tenggara), and the Alas Tlogo case (East Java); violence against the press (Tomy Winata vs. Tempo case, etc.); and the murder case of human rights defender, Munir.<sup>15</sup>

Regarding the recognition of adat law communities and their traditional rights, while at the beginning of Indonesia's independence through the constitution (the 1945 Constitution) the state recognized the existence of indigenous peoples with the concept of genuine recognition, in its later development this concept of pure recognition changed into conditional layered recognition requiring the fulfillment of the following elements : (1) they still exist; (2) it does not conflict with national interests; (3) it does not conflict with higher laws and regulations; and (4) it is promulgated through local regulations. This conditional recognition is reflected in legal products concerning Adat Law Communities and their traditional rights and territories. This is contrary to the recognition of Adat Law Communities in international regulations where every human being is considered to have basic rights that cannot be disturbed and taken away by any power, such as the right to self-determination, the right to property, the right to life and other rights.<sup>16</sup>

Until the Indonesian government adopts the current prevailing reasoning of the international world today, we can say that the government still adheres to the reasoning of colonialism as practiced by the Dutch East Indies Government through the enactment of *Agrarische Wet* 1870 with its *Domeinverklaring* principle to justify the violation of adat law communities communal rights and the enactment of articles 1181 'and 1281' *Indische S/aa/sregeling* (IS) (Stbld 1925 No.447) where the recognition in this regulation is a recognition that is strictly limited in nature.<sup>17</sup>

MK 35/PUU-X/2012 decision has encouraged legal reform at the national and local levels in the recognition and protection of the existence and rights of adat law communities. In its implementation, the procedure for recognizing and protecting the existence and rights of adat law communities is still complicated. In addition to that, most local governments are not ready to implement it due to lack of budget, lack of awareness on ongoing legal changes, as well as political reasons.

### Analysis for Improvement (Reform): Regulations and Policies that need to be revised

The articles concerning human rights within the 1945 Constitution after the amendments have explicitly regulated the responsibilities of all parties in respecting, protecting and fulfilling human rights. However, the human rights articles within the 1945 Constitution after the amendments emphasize more on the obligations of citizens as opposed to the main responsibilities of the state, in this case the government. It is necessary to fix the articles in the 1945 Constitution concerning human rights by rearranging the formulations of the articles more explicitly and removing articles that overlap or are repetitive in nature.

Meanwhile, regarding the responsibility for respect, protection and fulfillment of human rights, the 1945 Constitution needs to regulate explicitly and progressively the main responsibility of the state, in this case the government, to respect, protect and fulfill human rights, for example by adding articles which specifically regulate state responsibility in respecting, protecting and fulfilling human rights. Including for example the incorporation of the clause "proven to have committed human rights violations" in article 7A of the 1945 Constitution as one of the reasons for the termination of the President and Vice President terms of office the by the People's Consultative Assembly at the suggestion of the People's Representative Council. Moreover, under certain political momentum, it is worth it to take into consideration a total change to the 1945 Constitution (not amendments), namely by placing recognition and protection of human rights in the opening or early articles in the structure of the

<sup>15</sup> *Ibid.*

<sup>16</sup> Daniel Taneo, *Penguatan Hukum Adat, HAM dan Pluralisme*, <<http://www.ireyogya.org/!adat/>>, accessed on November 1, 2006.

<sup>17</sup> Teddy Anggoro, *Kajian Hukum Masyarakat Hukum Adat Dan HAM Dalam Lingkup Negara Kesatuan Republik Indonesia*, Jurnal Hukum dan Pembangunan, Volume 36/4, 2017, p. 487-498.



constitution before regulation of state power and institutions and their exercise of power. The constitutional claim rights of the citizens need to be regulated within the 1945 Constitution to provide stronger protection of citizens' constitutional rights since 1945 Constitution after the amendments has not provided a guarantee of constitutional complaint.<sup>18</sup>

Regarding the complexity of the procedures for recognizing the existence and rights of adat law communities, several steps can be taken, such as: 1) To encourage the making of laws that specifically regulate the recognition and protection of the rights of adat law communities. The People's Representative Council of the Republic of Indonesia (DPR RI) has included a Bill on Recognition and Protection of the Rights of Adat Law Communities in the 2017 National Legislation Program, however, to this day (October 2018) the bill has not yet been ratified; 2) It is imperative to exchange the experiences of different regions in order to increase the number of local legal products concerning adat law communities; 3) The procedures for recognizing adat forests need to be simplified by encouraging the productivity of government agencies in serving the basic rights of adat law communities on their land and natural resources; 4) There needs to be an incentive to support the improvement of adat forest management from the government in the form of a development program as required by the Minister of Environment and Forestry Regulation No. P. 32/Menlhk-setjen/2015 concerning Private Forests; 5) Consolidation at the community level to guard the birth and implementation of local legal products concerning the recognition of the existence and rights of adat law communities.<sup>19</sup>

### 3. Land, Water and Marine Sectors

#### 3.1. Legislations Concerning Indigenous Peoples and Their Adat Territories

Since the reform era in Indonesia in 1998, there have been fundamental changes within the Indonesian 1945 Constitution. These changes not only involve political and governmental systems, but also involve human rights. In the articles concerning Human Rights, it is explicitly stated that the cultural identities and rights of traditional communities are respected in line with the progress of times.<sup>20</sup> Moreover, the existence of adat law communities are recognized in the constitution of Indonesian Republic in Article 18B as follows:

*Paragraph (1):*

*The State shall recognize and respect local governmental administration units that possess a specificity or a distinctiveness that are to be regulated by law.*

*Paragraph (2):*

*The State shall recognize and respect, adat law community units along with their traditional rights for as long as they remain in existence and are in line with societal development and with the principles of the Unitary State of the Republic of Indonesia, and they are to be regulated by law.*

The following are a number of sectoral laws which also govern the existence and rights of indigenous peoples:

NAME OF THE LAW	CONTENTS OF GOVERNANCE
Law No. 41 of 1999 concerning Forestry	<ul style="list-style-type: none"> <li>Governs the recognition of adat law communities' existence.</li> <li>Governs the rights of adat law communities in forest management such as:               <ol style="list-style-type: none"> <li>the right to gather forest products to fulfill the daily needs of the related adat people;</li> <li>the right to perform forest management activities based on the applicable</li> </ol> </li> </ul>

<sup>18</sup> R. Herlambang Perdana Wiratraman, *Politik Hukum Amandemen Kelima UUD 1945*, Position Paper during the Constitutional Law Experts Meeting with the topic of: "Memperkuat Kewenangan Dewan Perwakilan Daerah Melalui Perubahan Kelima UUD Negara Republik Indonesia 1945", conducted at Constitution Study Center (PusKon) 45 University Makassar with Regional Representative Council (DPD), Makassar June 29-July 1, 2007.

<sup>19</sup> Yance Arizona, Malik, and Irena Lucy Ishimora, Op. Cit., 11-12.

<sup>20</sup> Undang-Undang Dasar 1945, Pasal 28I ayat (3)



	<p>adat law that does not conflict with the state laws; and</p> <p>c. the right to receive empowerment in order to improve their their welfare.<sup>21</sup></p> <ul style="list-style-type: none"> <li>Governs that adat forests are the forests located within the adat territories.<sup>22</sup> In line with the decision of Constitutional Court Number 35/2012.</li> </ul>
Law No. 5 of 1960 concerning basic agrarian law.	<ul style="list-style-type: none"> <li>Governs the enforcement of customary rights of land and other similar rights of adat law communities, as long as they still remain active, so that they are in line with the interests of the nation and state, which are based on national unity and they may not conflict with laws and other higher regulations.<sup>23</sup></li> </ul>
Law No. 32 of 2009 concerning the Protection and Management of the Environment	<ul style="list-style-type: none"> <li>Governs the authority of the central and local governments regarding the recognition of adat law communities' existence, local wisdom, and the rights of adat law communities related to protection and environmental management.<sup>24</sup></li> </ul>
Law Number 23 of 2014 concerning Local Governments	<ul style="list-style-type: none"> <li>Governs the authority of the central and local governments in recognizing the adat law communities' existence, establishing and empowering adat institutions.</li> <li>Governs the designation of adat law communities' customary lands.</li> </ul>
Law No. 4 of 2009 concerning Mineral and Coal Mining	<ul style="list-style-type: none"> <li>Governs the authority of the central and local governments in empowering communities around the Mining Business Permit Area and settling community conflicts.<sup>25</sup></li> <li>Adat law communities are not specifically governed.</li> </ul>
Law No. 39 of 2014 concerning Plantations	<ul style="list-style-type: none"> <li>Governs the protection of adat law communities' customary rights of lands needed for plantation areas. Business entities are required to consult with adat law communities to reach an agreement on land transfers and their compensation.</li> <li>Governs the prohibiting of government officials to issue plantation business licenses on untransferred customary lands of adat law communities.</li> <li>Governs the ban on working on, using, occupying and/or controlling community lands or customary lands of adat law communities for plantation business purposes.</li> <li>Governs the criminal sanctions for government officials who issue business licenses on customary lands of adat law communities. The sanctions include a maximum of 5 (five years) imprisonment and a maximum fine of 5,000,000,000 (five billion) rupiahs.</li> </ul>
Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands	<ul style="list-style-type: none"> <li>Governs the rights of the people and adat law communities in managing coastal and small islands according to their adat laws.</li> <li>Governs the concession rights of coastal waters (HP3). However, this article was abrogated by the Republic of Indonesia Constitutional Court Resolution Number 3/2010.</li> </ul>
Law No. 6 of 2014 concerning Villages	<ul style="list-style-type: none"> <li>Governs adat villages and the authority of adat villages.</li> </ul>
Law No. 21 of 2001 concerning Special Autonomy for the Papua Province	<ul style="list-style-type: none"> <li>Governs the protection and recognition of indigenous Papuans, adat law communities and their rights in managing and using land and natural resources in Papua.</li> </ul>
Law No. 11 of 2006 concerning Aceh Government	<ul style="list-style-type: none"> <li>Governs adat institutions of the Acehnese people and recognition of indigenous peoples' rights to land, sea, water, forests</li> </ul>

Within a number of executive regulations from the various sectoral laws mentioned above, the forms of tenure rights for adat law communities or local communities include the following:

Sector	Name of Tenurial Right	Subjects of Right
Forestry	• Adat Forest	Adat law communities
	• Community Forest	Farmers Groups, Cooperatives
	• Village Forest	Village Forest Management Institutions
	• Community Plantation Forest	Farmers Groups, Cooperatives
	• Partnership	Farmers Groups
Land	• Communal Rights	Adat Law Communities Farmers Groups

<sup>21</sup> Law No.41 of 1999, Article 67

<sup>22</sup> Law No.41 of 1999, Article 1 letter f.

<sup>23</sup> Law No.5 of 1960, Article 3

<sup>24</sup> Law No.32 of 2009, Article 63 paragraph (1), (2), (3)

<sup>25</sup> Law No.4 of 2009, Article 6



Sector	Name of Tenurial Right	Subjects of Right
	• Customary Rights of Land	Adat Law Communities
	• Adat land / private property converted from adat land	Individuals

The forms of tenure rights aforementioned are governed in a number of regulations, such as:

- i) Minister of Environment and Forestry Regulation No.32 of 2015 concerning Private Forests
- ii) Minister of Environment and Forestry Regulation No. 83 of 2016 concerning Social Forestry
- iii) Minister of Land and Spatial Planning Regulation No. 10 of 2016 concerning Communal Rights
- iv) Minister of Home Affairs Regulation No. 52 of 2014 concerning Guidelines for Recognition and Protection of Adat Law Communities

### 3.2 The governance of Indigenous Peoples' Recognition and Protection

The Indonesian Constitution governs the recognition and respect for the existence of adat law communities as follows:

*“The State recognizes and respects adat law community units along with their traditional rights insofar as they still exist and in line with societal development and the principles of the Unitary State of the Republic of Indonesia, which are governed in the regulations.”*<sup>26</sup>

The underlined phrases above are the limitations imposed by the state.

This governance contained in Indonesian Constitution is then referred to by a number of laws and regulations under, such as Law No. 41 of 1999 concerning Forestry<sup>27</sup>, and Law No. 39 of 2014<sup>28</sup> concerning Plantation.

Therefore, although in reality a number of adat law communities can still be found in some districts/cities in Indonesia, only a few of them have received legal recognition. This is because the legal recognition of the adat law communities must be done with local regulations both at the provincial and district/city levels.

Legal recognition of adat law communities through local regulations is increasingly strengthened after the passing of the Republic of Indonesia Constitutional Court Decision No. 35 of 2012 regarding the judicial review of Law No.41 of 1999 concerning Forestry. The Constitutional Court ruled that the recognition of the adat law communities is to be done through local regulations in order to fill the legal vacuum because the bill which specifically governs adat law communities has not been ratified.<sup>29</sup>

Therefore, the organization that protects indigenous peoples in Indonesia, AMAN (The Archipelago Alliance of Indigenous Peoples) proposed a judicial review for Law No. 41 of 1999 concerning Forestry, because up to the proposal of the judicial review to the Constitutional Court (2012) there has been only two local regulations that confirm the existence and traditional rights of adat law communities, namely the Baduy community unit in Banten Province and the Pasir indigenous community unit in East Kalimantan Province.<sup>30</sup>

Since the passing of the decision of the Constitutional Court Decision Number 35 of 2012 (on May 16, 2013) up to 2017, Epistema have recorded 69 local legal products passed by local governments related to adat law communities. These local legal products govern the existence of adat law communities, adat territories, adat forests, adat institutions and courts as well as adat villages.<sup>31</sup>

<sup>26</sup> The 1945 Constitution, Article 18B paragraph (2).

<sup>27</sup> Especially in Article 67 paragraph (2)

<sup>28</sup> Especially in Article 13

<sup>29</sup> Indonesian Republic Constitutional Court Decision No.35 of 2012 page 184

<sup>30</sup> Indonesian Republic Constitutional Court Decision No.35 of 2012 page 60

<sup>31</sup> Epistema Institute, 2017, Pengakuan Hukum Terhadap Masyarakat Adat: Tren Produk Hukum Daerah dan Nasional Paska Putusan MK 35/PUU-X/2012.





Study of local legal products (Epistema 2017)

### 3.3. The Governing of Indigenous Peoples' Rights in the Management and Utilization of Natural Resources

In general, the governing of natural resources either below the ground, within the ground, or above the ground is controlled by the state, as stipulated in the Indonesian Constitution Article 33 Paragraph (3) which reads:

*“The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people.”*

Therefore, within the sectoral laws, the governing of natural resources under the ground such as mining, gas, petroleum, minerals, coal and so on should be under the control of the state. Adat law communities do not necessarily have the right to use these resources. For example, adat law communities that want to use mineral mines must obtain a permit in advance, i.e. the People's Mining Permit (IPR), as governed in Law No. 4 of 2009 concerning Mineral and Coal Mining.

### 3.4. Government Institutions that Have the Mandate to Enforce the Natural Resources Sector Regulations

Law No. 23 of 2014 concerning Local Government governs the authority of the central and local governments regarding land, water and seas/coasts. The sectoral governance is then carried out through sectoral laws. The following is the division:

Sector	Division of Authority		
	National	Provincial	District/City
Land	The mandate is held by the Ministry of Land and Spatial Planning, with the authority on: location permits, land acquisition, arable land disputes, land compensation for development, designation of TORA (Area for Land Reform Object) and absentee land compensation and land use.	The mandate is held by the National Land Agency (BPN), with the authority on: location permits, land acquisition, arable land disputes, land compensation for development, designation of TORA (Area for Land Reform Object) and absentee land compensation, customary land designation, settlement of vacant land disputes and land use.	The mandate is held by the head of district/mayor, with the authority on: location permits, land acquisition, arable land disputes, land compensation for development, designation of TORA (Area for Land Reform Object) and absentee land compensation, customary land designation, settlement of vacant land disputes, permit to open arable land and land use.
Plantation <sup>32</sup>	The mandate is held by the	The mandate is held by the	The mandate is held by the head

<sup>32</sup> Based on Law No.39 of 2014 concerning Plantation.



Sector	Division of Authority		
	National	Provincial	District/City
	Ministry of Agriculture with the authority on Plantation Business Permit on cross-provincial level	Governor with the authority on Plantation Business Permit on cross-district/city level	of district/ayor with the authority on Plantation Business Permit on one particular district/city level
Water Resources <sup>33</sup>	The mandate is held by the Ministry of Public Works and Housing, with the authority on water resources management, irrigation of more than 3,000 hectares	The mandate is held by the governor with the authority on water resources management, irrigation of 1,000 – 3,000 hectares.	The mandate is held by the head of district/mayor with the authority on water resources management, irrigation of less than 1,000 hectares.
Marine, Coasts and Small Islands	The mandate is held by the Ministry of Maritime Affairs and Fisheries, with the authority on: Management of marine space above 12 miles and nationally strategic; Issuance of permits for utilization of national sea space; Issuance of species and genetic (germplasm) utilization permits between countries; Determination of types of fish that are protected and governed by trade internationally; Determination of conservation areas; and Database of coastal and small islands.	The mandate is held by the Governor, with the authority on: Management of marine space up to 12 miles outside of oil and gas; Issuance of permits and utilization of marine space under 12 miles outside of oil and gas; Empowering coastal communities and small islands.	There is no authority.

### 3.5. Communal Rights of Indigenous Peoples

The rights of indigenous peoples are the recognition of their territories or land in a number of legislations. The governance is as follows:

Type of Right	Legal Basis	Type of Right
Communal Rights	Ministry of Land and Spatial Planning Regulation No. 10 of 2016	Public
Customary Rights of Land	Ratified through Provincial or District Local Regulation	Public
Adat Forest	Ministry of Environment and Forestry Regulation No. 32 of 2015 concerning Private Forests	Public

In the Indonesian legal system, it is possible for a land right coming from a customary right of land to be given to an individual member of an adat law community. The status of the land can then be converted, and it is given a land certificate under the land registration system<sup>34</sup>.

### 3.6. Regulations governing the designation of adat territories, adat forests and communal rights.

Adat peoples can obtain recognition of their adat laws, adat territories, adat forests or communal rights. The most important condition for obtaining such recognition is that their existence as adat peoples must be recognized first through local regulations or other local legal products such as Governor's Regulations/Decrees, Head of District Regulations/Decrees. As mentioned earlier in point 2.6, laws and regulations that can be used

<sup>33</sup> Water resources is currently governed by Law No.11 of 1974 concerning Irrigation. This is because Law No.7 of 2004 concerning Water Resources was cancelled by the Constitutional Court Decision Number 85/PUU-XI/2013.

<sup>34</sup> Government Regulation No.24 of 1997 concerning Land Registration

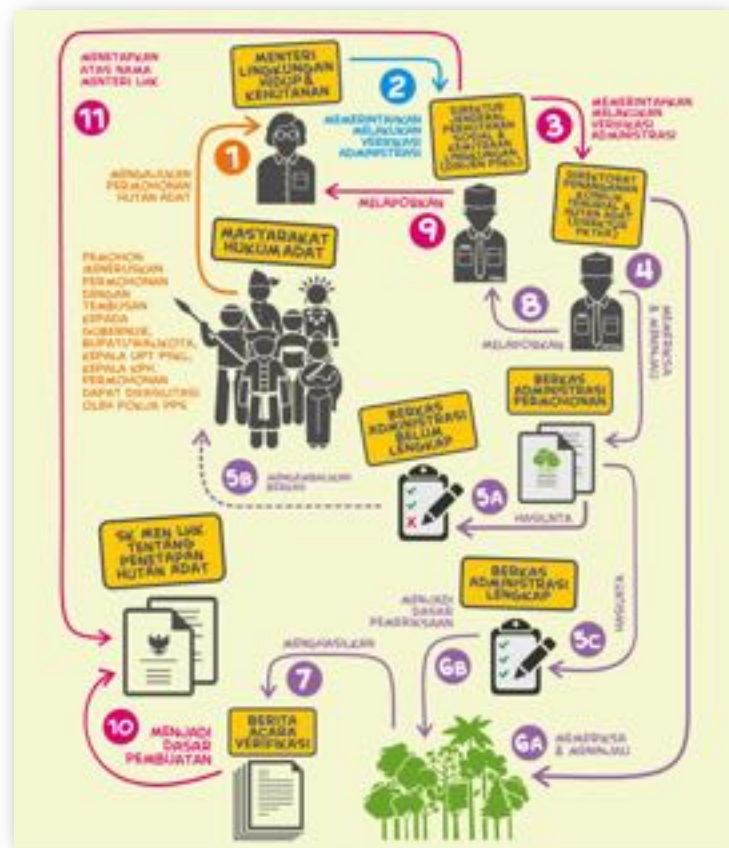


by indigenous peoples to obtain recognition of rights to customary territories, existing forests and communal rights are governed by:

- 1) Ministry of Land and Spatial Planning Regulation No. 10 of 2016
- 2) Provincial or District Local Regulation
- 3) Ministry of Environment and Forestry Regulation No. 32 of 2015 concerning Private Forests

The following are infographics on the procedural steps of obtaining legal recognition for adat territories, adat forests, and communal rights.<sup>35</sup>

**a). flowchart of  
Adat Forest application**



<sup>35</sup> Asep Y Firdaus, 2018, Panduan Praktis Penerapan Kebijakan Perhutanan Sosial, Bogor-Indonesia, CIFOR.



b). Communal Rights application



c) flowchart of Indigenous Peoples - Adat Territories application



Meskipun dasar hukum untuk pengakuan hutan adat, hak komunal dan wilayah adat sudah tersedia, namun di dalam prakteknya masih terkendala oleh minimnya kemauan dari pemerintah daerah provinsi maupun pemerintah kabupaten/kota untuk menerbitkan peraturan daerah untuk pengakuan keberadaan masyarakat adat. Peraturan daerah yang mengakui masyarakat adat adalah kunci untuk masyarakat dapat memiliki hak tenurial atas tanah, hutan dan sumber daya alam lainnya.

Although the legal basis for recognition of adat forests, communal rights and adat territories is already available, in practice it is still constrained by the lack of willingness of the provincial and district / city governments to pass local regulations that recognize the existence of indigenous peoples. Local regulations that recognize indigenous peoples are the key for the communities to have tenure rights over land, forests and other natural resources.

### **Analysis for Improvement (Reform): Regulations and Policies that need to be improved**

In terms of laws and regulations, it is necessary to have a regulation at the same level as law that specifically governs adat peoples and their rights to adat territories. The bill is currently being considered in the DPR. It is also necessary to govern the use of adat territories for investment purposes without having to convert their status to state land in this bill.

In terms of institutional perspective, the Ministry of Home Affairs needs to provide technical guidance and directions on implementing the local government mandates in providing legal recognition of adat peoples and their adat territories. This is because local governments often don't have institutions in the provinces/districts/cities that deal with adat peoples and adat territories.

## **4. Natural Resources, Environment and Culture Sectors**

### **4.1 Regulations and Policies on Natural Resources and Environment**

#### **4.1.1. Regulatory and Policy Framework**

The main legal source that forms the basis of the policy on the use of natural resources and environment (SDA-LH) in Indonesia is Article 33 paragraph (3) of the 1945 Constitution (UUD 1945) which states that "The land, the waters and the natural resources within shall be under the powers of the state and shall be used to the greatest benefit of the people". Based on these provisions of Article 33 paragraph (3) of the 1945 Constitution, the exploitation of the earth, water, and natural resources of Indonesia must fulfill two major elements, i.e. "under the powers of the state" and "the greatest benefit of the people".

The Constitutional Court Decision Number 001-021-022/PUU-I/2003 provides an interpretation of the phrase "under the powers of the state" in Article 33 of the 1945 Constitution stating that the phrase "under the powers of the state" must be translated as a broad control by the state originating from the conception of the sovereignty of the people of Indonesia over all resources " land, the waters and the natural resources within", which includes also the notion of collective public ownership by the people on the resources mentioned earlier. The people collectively were constructed by the 1945 Constitution to give a mandate to the state to conduct: policies (beleid), administration (bestuursdaad), governance (regelendaad), control (beheersdaad) and supervision (toezichthoudensdaad) for the greatest benefit of the people.<sup>36</sup> Article 33 paragraph (3) of the 1945 Constitution is explained in detail in the form of several more operational legislative products, such as a number of regulations in the Natural Resources and Environment (SDA-LH) sector in the following table:

<b>SCOPE</b>	<b>REGULATION</b>
<b>Environment, Land, and Spatial Planning</b>	Law Number 5 of 1960 concerning Basic Agrarian Laws.
	Law Number 32 of 2009 concerning the Protection and Management of the Environment
	Law Number 26 of 2007 concerning Spatial Planning
	Law Number 5 of 1990 concerning Conservation of Biological Natural Resources and their Ecosystems
	Law Number 37 of 2004 concerning Conservation of Water and Land

<sup>36</sup> Constitutional Court Decision Number 001-021-022/PUU-I/2003 on the review proposal of Law Number 20 of 2002 concerning Electric Power



<b>Forestry, Agriculture, and Plantation</b>	Law Number 41 of 1999 concerning Forestry in conjunction with Law Number 19 of 2004
	Law Number 18 of 2013 concerning Prevention and Stopping of Forest Destruction
	Law Number 39 of 2014 concerning Plantations
	Law Number 41 of 2009 concerning Protection of Agricultural Land for Sustainable Food
<b>Mining and Energy</b>	Law Number 30 of 2007 concerning Energy
	Law Number 4 of 2009 concerning Mineral and Coal Mining
	Law Number 22 of 2001 concerning Oil and Gas
	Law Number 21 of 2014 concerning Geothermal Energy
	Law Number 30 of 2009 concerning Electricity
<b>Marine and Fisheries</b>	Law Number 32 of 2014 concerning Marine Affairs
	Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands as amended by Law Number 1 of 2014 concerning Amendment of Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands
	Law Number 31 of 2004 concerning Fisheries as amended by Law Number 45 of 2009 concerning Amendment of Law Number 31 Tahun of 2004 concerning Fisheries
<b>Supporting Laws</b>	Law Number 14 of 2008 concerning Public Information Transparency
	Law Number 4 of 2011 concerning Geospatial Information
	Law No. 7 of 2012 concerning Management of Social Conflicts
	Law No. 2 of 1960 concerning Production Sharing Agreement
	Law Number 20 of 1961 concerning Revocation of Rights on Land and Objects Above it
	Law Number 2 of 2012 concerning Land Procurement for Development of Public Interest
	Law Number 19 of 2013 concerning the Protection and Empowerment of Farmers
	Law Number 23 of 2014 concerning Local Governments
	Law Number 6 of 2014 concerning Villages

However, we have not yet seen standard norms for implementing the form of state control over Indonesia's natural resources in line with Article 33 paragraph (3) of the 1945 Constitution. We can observe this in the various conceptions of exploitation of natural resources and the environment in various sectors, which stimulates the submission of judicial review of several laws concerning natural resources-environment to the Constitutional Court. As an example, there has been several judicial reviews proposed against Law No.41 of 1999 concerning Forestry, Law Number 22 of 2001 concerning Oil and Gas, Law Number 7 of 2004 concerning Water Resources, and Law Number 4 of 2009 concerning Mineral and Coal Mining.<sup>37</sup> The lack of quality of legislation in the natural resources and environment sector does not only have an impact on corrupt behavior or the loss of the country's economy, but also on the injustice of access to natural resources, deterioration of environmental quality, and arbitrary violation of public rights.

Therefore, the People's Consultative Assembly of the Republic of Indonesia Resolution Number IX/MPR/2001 concerning Agrarian Reform and Natural Resources Management governs the importance of reviewing all laws and regulations concerning land/natural resources management. And then based on a memorandum of understanding (MOU) signed by 27 ministries and seven state institutions at the State Palace on March 19, 2015, the National Movement to Save Natural Resources of Indonesia (GNP-SDA) was launched. One of the action plans of the GNP-SDA is to conduct a study on harmonization of laws and regulations related to

<sup>37</sup> Ahmad Redi, *Dinamika Konsepsi Penguasaan Negara Atas Sumber Daya Alam*, Jurnal Konstitusi, Volume 12, Nomor 2, June 2015



Natural Resources and Environment (SDA-LH) which will be conducted by the Corruption Eradication Commission (KPK) together with the Ministry of Law and Human Rights with support from experts.

This study on the harmonization of laws concerning natural resources and environment provides a conclusion that the laws and regulations concerning natural resources and environment still have several weaknesses, such as: 1) Laws in forestry, agriculture and plantation sector, mining and energy sector and maritime and fisheries sector tend to be oriented towards the exploitation of natural resources as opposed to the protection of the environment, especially the aspects of environmentally-friendly integrated natural resources management and the aspects of justice particularly related to the protection of adat law communities' and marginalized communities' rights; 2) Lack of harmonization between legislations from different sectors concerning the protection of the right to obtain information and public participation and regarding the protection of adat law communities; 3) There is the potential for disharmony of law enforcement and community protection in the use of natural resources and law enforcement between sectors, which results in misguided and ineffective law enforcement, such as the law enforcement approach in Law Number 18 of 2013 concerning Prevention and Stopping of Forests Destruction with an approach on protection in Law Number 41 of 1999 concerning Forestry, and Law No. 32 of 2009 concerning Protection and Management of the Environment.<sup>38</sup>

Land as one of the natural resources is the basic right of every person which is guaranteed by the 1945 Constitution. This is further confirmed through the passing of Law No. 11 of 2005 concerning the Ratification of the International Covenant on Economic, Social and Cultural Rights.

Land also has an important role for adat law communities as a place to live, cultivate, bury the deceased members of their peoples, and is a sacred place for supernatural beings and the spirits of ancestors.<sup>39</sup> Legally, there has been legal recognition of adat law communities and their customary rights of land, namely in Article 3 of Law Number 5 of 1960 concerning Basic Agrarian Law (UUPA) and Article 18 B paragraph (1) of the 1945 Constitution. Article 3 of the Basic Agrarian Law stipulates that the enforcement of adat law communities' customary rights of land and similar rights as long as they still exist in reality, must be such that they are in line with national and state interests, which is based on national unity and may not conflict with other higher laws and regulations. These customary rights are not only limited to customary land, but also include adat forests, water sources, ponds including plants and animals that exist and live on customary land, which can be used communally by adat law communities.<sup>40</sup>

Legal protection efforts on adat law communities in Indonesia, especially in natural resource management rights, are also governed in Law Number 2 of 2001 concerning Oil and Gas (Oil and Gas Law), which states that Oil and Gas business activities cannot be done on burial sites, sacred sites, public places, public facilities and infrastructure, nature reserves, cultural reserves, and land belonging to indigenous peoples [Article 33 paragraph (3) Oil and Gas Law], except with approval from indigenous peoples [Elucidation of Article 33 paragraph (4)].

Furthermore, the provisions of customary rights of land in addition to the rights to natural resources management for adat law communities is very closely related to forest management. The provisions on the rights of adat law communities to manage forest areas are governed in the Elucidation of Article 67 paragraph (1) of Law Number 41 of 1999 concerning Forestry. The provisions in the Forestry Law state that the existence of adat law communities is recognized if in reality they fulfill the following elements: the community still forms an association (*rechtsgemeenschap*); the presence of an institution in the form of adat rulers; the presence of clear adat law territories; the presence of legal institutions and instruments, especially adat justice systems that are still adhered to; and the community still gathers forest products in the surrounding forest area to fulfill their daily needs. One of the adat law communities' rights closely related to this Law is the management of adat forests. The

<sup>38</sup> Directorate of Corruption Eradication Commission Research and Development, *Kajian Harmonisasi Undang-Undang di Bidang Sumber Daya Alam dan Lingkungan Hidup (SDA-LH)*, Jakarta, 2018

<sup>39</sup> Maria Kaban, *Penyelesaian Sengketa Waris Tanah Adat pada Masyarakat Adat Karo*, Jurnal Mimbar Hukum, Vol. 28 No. 3, October 2016, page. 457.

<sup>40</sup> Yahya Ahmad Zein dan Dewi Nurvianti, *Konsepsi Hak masyarakat Hukum Adat Sebagai Hak Asasi Manusia*, VeJ, Vol.3, No. 2, page. 434.



significance of the recognition of adat law communities' rights to the management of forest land in Law No. 41 of 1999 has become one of the measurements for reforming the state and the private sector domination in forest management. We can see in the articles of the law that firstly, the state outlines explicitly the rights of adat law communities to forests, and secondly, the state provides a space for open participation of adat law communities in the planning, designation and development of forests planned by the state.<sup>41</sup>

Provisions regarding the management of adat forests as mandated by Forestry Laws are further emphasized by the passing of the Constitutional Court Decision Number 35/PUU-X/2012 for the judicial review of Law Number 41 of 2009 concerning Forestry, with a judicial ruling that says, "Adat Forests are forests that are within the territory of adat law communities", have broad implications in the effort to recognize the existence of adat law communities and their local wisdom and rights. However, there are various problems that hinder the adoption of the decision above, such as the unavailability of basic data on the existence of adat law communities and their local wisdom.

#### **4.1.2 Government Institutions that Have the Mandate to Enforce Regulations and Policies Concerning the Implementation of Indigenous Peoples' Customary Rights of Land**

The state governing institutions that are related to the management of natural resources and the environment are the Ministry of Environment and Forestry (KLHK); Ministry of Land and Spatial Planning; Ministry of Energy and Mineral Resources, Ministry of Agriculture, and Ministry of Maritime Affairs and Fisheries.

Regarding adat law communities, fulfilling their rights to manage natural resources is the obligation of all parties, especially the central and local governments. Local governments have a role to play in fulfilling the rights of adat law communities. The role of local governments in recognizing and fulfilling the rights of adat law communities is an elaboration of regional autonomy concept in Indonesia as contained in Law Number 23 of 2014 concerning Local Governments. After the enactment of Law Number 23 of 2014 concerning Local Government, the protection of adat law communities' rights is supposed to be improved, since this law gives authority to the Adat Law Communities to govern and manage their adat government.

Furthermore, the role of the local government in connection with the fulfillment of the recognition and rights of adat law communities is increasingly clear after the enactment of Law No. 6 of 2014 concerning Villages. Through this Law concerning Villages, it is possible to change the status of a village from administrative village into adat village depending on community initiatives and ratified in a local (provincial or district/city) regulations with the map of the region included.

#### **4.1.3 Regulations and Policies Related to the Enforcement of Indigenous Peoples' Customary Rights of Land**

Regarding biological diversity which is also related to genetic and agricultural resources, Indonesia has ratified several international conventions on this matter, which include:

- a) Ratification of the United Nations Convention on Biological Diversity through Law Number 5 of 1994, on August 1, 1994, which essentially deals with Indonesia's sovereignty over its natural resources of biological diversity;
- b) Ratification of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity through Law Number 21 of 2004, on August 16, 2004, which essentially deals with access to information, preservation and utilization, transboundary movement supervision, and institution, and traffic of Genetically Modified Organisms (GMOs);
- c) Ratification of the Agreement Concerning Plant Genetic Resources through Law No. 4 of 2006, on March 20, 2006 which deals with utilization, management, security, management institutions, benefit sharing, and exchange of plant genetic resources in the national agricultural development;
- d) Ratification of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity through Law No. 11 of 2013 on 8 May 2013.

<sup>41</sup> Mawardi, *Implikasi hak kesatuan masyarakat hukum adat dalam pengelolaan tanah kawasan hutan di kabupaten Lombok Utara*, Jurnal IUS, Vol.1, No. 3, December 2013, page. 563.



These legislations which come from ratifications of several international conventions deal more with the importance of preserving biodiversity and its general mechanism of utilization and preservation.

Other national level laws and regulations that are more directed at the communities' role in biodiversity conservation are, among others:

- a) Law Number 5 of 1990 concerning Conservation of Biological Resources and their Ecosystems, which contains the importance of conservation, the obligation of holders of land rights to preserve it, the role of the government in encouraging the participation of the people in the conservation of living natural resources and their ecosystems;
- b) KSDAE Director General Decree No. 184/KSDAE/REN.2/5/2018 concerning Appointment of Multiparty Task Force on Land Issues Settlement, Encroachment and Adat Territories Proposal in Conservation Areas;
- c) KSDAE Director General Regulation Number P.6/KSDAE/SET/Kum.1/ 6/2018 concerning technical guidance on conservation partnerships in nature reserves and nature conservation areas. Although these legislations govern the role of communities and adat law communities in biological diversity conservation, these regulations do not govern directly the conservation initiatives done by the communities, especially adat law communities in their territories.

This is different from some local legal products which more specifically strengthen conservation efforts by adat law communities in their territories. From the results of temporary identification, up to 2018 there are around 225 regional legal products that govern variously about: recognition of the existence of adat law communities, adat territories, adat villages/kampoong, adat forests, communal rights, communal rights, adat institutions, adat justice system, conservation partnership between adat law communities and concession holders.

Regarding forest and land management, there is a long list of regulations concerning forest and land management in Indonesia, and some of them are listed in the following table:

Regulation	Link to forest and land management by communities and adat law communities
Law Number 41 of 1999 concerning Forestry	This regulation has included community participation, community rights to forestry information and involvement in forest management in general, although it has not clearly given recognition to adat peoples living in forest areas. Adat forests were considered as part of state forests within adat peoples' territories, until the passing of Constitutional Court Decision No. 35/PUU-X/2012 as a ruling on the judicial review of this regulation, which states among other things that adat forests are not state forests.
Law Number 39 of 2014 concerning Plantations	Several articles in this regulation hinder the role of the communities and adat law communities in land management, such as: Article 12 paragraph 2, Article 13, Article 27 paragraph 3, Article 29, Article 30 paragraph 1, Article 42, Article 55, Article 57 paragraph 2, Article 58 paragraph 1 and 2, Article 107 and Article 114 paragraph 3 because they are in contradiction with article 18 B, 28 C paragraph 1 and 2, 28 D, 28H paragraph 2, 28I and 33 paragraph 3 of the 1945 Constitution". These articles have been proposed for judicial review to the Constitutional Court who finally granted partially for some of these articles, i.e., article 27 paragraph 3, article 29, article 30 paragraph 1, article 42, article 55, and article 107.
Law No. 32 of 2009 concerning Environmental Protection and Management	Regarding the right to information, this regulation guarantees the communities with access to information on the formulation of Environmental Impact Assessment (EIA)
Law Number 18 of 2013 concerning Preventing and Stopping Forest Destruction	Several articles of this regulation, for example in article 50 paragraph (3) letter (e) and article 50 paragraph (3) letter (i) specify the criminal penalties for communities who deliberately enter the area and, without prior permission from the authorities, bring livestock to graze in the forests that have been designated as a protected area or conservation area by the government, especially by the



Regulation	Link to forest and land management by communities and adat law communities
	Ministry of Environment and Forestry. These articles can harm and endanger the lives of adat peoples and farmers who rely on non-timber forest products for their livelihood and economies. The Constitutional Court Decision Number 95/PUU/XII/2014 finally granted a judicial review for these articles.
Government Regulation No. 4 of 2001 concerning Controlling Environmental Damage or Pollution Related to Forest and/or Land Fires	This regulation governs the role and obligations of communities in the prevention, mitigation and restoration of environmental damage and/or pollution related to forest and/or land fires,
Government Regulation No. 45 of 2004 concerning Forest Protection	This regulation states that adat law communities enforce and are responsible for the protection of forests in the forest area mandated to them in line with their traditional wisdom and in partnership with the government. For private forests, forest protection is done by and is the responsibility of the rights holder.
Presidential Regulation Number 88 of 2017 concerning Settlement of Land Control in Forest Areas	This regulation closes the opportunity to use legal instruments for the recognition of adat law communities through the Decree of the Local Head and the Communal Rights Certificate/Decree by stating that the recognition of adat law communities must be through local regulations. By stating that the solution is in the form of resettlement of communities for control and use of land that is 'designated' as a forest area with a conservation function, this regulation closes the possibility of adat forest designation in a forest area with a conservation function, even though Minister of Environment and Forestry Regulation No. 32 of 2015, recognizes that adat forests can function as conservation. Moreover, this regulation also threatens the lives of thousands of adat law communities who live in adat territories in conservation areas.
Minister of Environment and Forestry Regulation No. 83 of 2016 concerning Social Forestry	This regulation governs sustainable forest management done in state forest areas or private forests/adat forests done by local communities or adat law communities as the main entity in order to improve their welfare, environmental balance and socio-cultural dynamics through the scheme of Village Forests, Community Forests, Community Plantation Forests, People Forests, Adat Forests, and Forestry Partnerships. The government through the Ministry of Environment & Forestry in the 2015-2019 period targeted 12.7 million ha of forest areas to be managed by the communities through the scheme of Village Forest, Community Forests, Community Plantation Forests, People Forests, Adat Forests, and Forestry Partnerships.

#### 4.1.4. The Role of Local Leadership in the Enforcement of Regulations and Policies Concerning Adat Peoples and Their Adat Territories

Adat institutions are formed naturally within adat law communities that have the rights to assets contained within their jurisdiction. Adat institutions have the right and authority to govern and settle various matters related to customs and adat laws. The board of adat institutions is chosen through a consensus and a vote in line with the customs and traditions of adat law communities. There are several local law products that regulate adat institutions, for example the Gorontalo Province Local Regulation Number 2 of 2016 concerning the Implementation of Adat Institutions which is intended to guide the institutionalization of local adat institutions.

## 4.2. Traditional Knowledge and Cultural Heritage

### 4.2.1. Regulatory and Policy Frameworks

Traditional Knowledge and Traditional Cultural Expressions (TKTCEs) or folklores are the cultural heritage that gives Indonesia an intangible asset, so it is vital for the government to maintain and preserve them. In order to protect TKTCEs, the Indonesian government passed several laws and regulations. The recognition and protection of the people's culture by the State of Indonesia is contained in Article 28I paragraph (3) and Article



32 paragraph (1) and (2) of the 1945 Constitution, which in essence says that state respects the people's cultural identities such as the local dialects, as well as guarantees the freedom of the people to preserve their culture.

Indonesia has also become a member of the Agreement Establishing the World Trade Organization which also includes the Agreement on Trade Related Aspects of Intellectual Property Rights, hereinafter referred to as TRIPs, through Law Number 7 of 1994. In addition to that, Indonesia also ratified the Berne Convention for the Protection of Artistic and Literary Works through Presidential Decree No. 18 of 1997 and the World Intellectual Property Organization Copyrights Treaty (WIPO Copyright Agreement), hereinafter referred to as WCT, through Presidential Decree Number 19 of 1997.

The Indonesian regulations that concerns with Intellectual Property Rights (IPR), which can be used to protect Traditional Knowledge and Traditional Cultural Expressions (TKTCEs) are contained in several laws such as:

- Law Number 14 of 2001 concerning Patents;
- Law Number 15 of 2001 concerning Trademarks;
- Law Number 19 of 2002 concerning Copyrights;

In order to enforce these laws, there are several government regulations as well as presidential decrees and ministerial regulations that deal with patents, trademarks and copyrights.

The disadvantages of developing a protection system of Traditional Knowledge by using Intellectual Property Rights (IPRs) protection are: 1) Protecting traditional knowledge through IPRs protection regulations is not very effective because IPRs protection is a private domain which is exclusive, monopolistic and individualistic by nature. Traditional knowledge is collective by nature which implies that Traditional Knowledge is a common property without taking into account the economic benefits and there is no intention to protect that knowledge from extraction by outsiders; 2) There are very limited data, documentation, and information on Traditional Knowledge which has existed for hundreds of years. Therefore, there is no comparative document (prior art), which can be used as a reason for not granting a patent.<sup>42</sup>

Since 2008, the Indonesian government has begun the process of drafting *sui generis* bill to protect the use of intellectual property contained in TKTCEs of Indonesia. The bill which is titled the Bill on the Protection and Utilization of Traditional Knowledge and Traditional Cultural Expressions Intellectual Property (TKTCEs Bill) was included in the 2010-2014 National Legislation Program (*Prolegnas*), however, the bill has not yet been stipulated to this day (October 2018).

#### 4.2.2. The Rights of Indigenous Peoples in Traditional Knowledge and Cultural Heritage Preservation

Adat peoples play an important role in the development of TKTCEs in Indonesia, because they are the ones who develop traditional knowledge in the form of local wisdom, ceremonies, arts, cuisines, medicines, and folklores. If adat peoples become extinct, the thousands of years of accumulated knowledge about life and how to adapt to the ecosystems where they live will also disappear.<sup>43</sup> Therefore, to preserve TKTCEs in Indonesia, stipulation of TKTCEs Bill will not be enough if the bill is not supported by *sui generis* laws that protect the existence and rights of adat peoples, such as the laws of adat law communities.

---

<sup>42</sup> Imas Rosidawati Wiradirja, *Konsep Perlindungan Pengetahuan Tradisional Berdasarkan Asas Keadilan Melalui Sui Generis Intellectual Property System*, Jurnal Hukum IUS QUIA IUSTUM NO. 2 VOL. 20 APRIL 2013: 163 - 185

<sup>43</sup> Posey, D.A., "Indigenous Knowledge and Development: An Ideological Bridge To the Future", dalam Posey, D.A. (K. Plenderleith, ed.), *Kayapó Ethnoecology and Culture*, Routledge, London and New York, 2002, page. 59



### 4.3 Rights of Access and Benefit Sharing

#### 4.3.1. Regulatory and Policy Frameworks

In accordance with the mandate of the Convention on Biological Diversity, the Government of Indonesia has ratified the Law that deals with Genetic Resources Management through Law No. 4 of 2006 concerning Genetic Resources for Food and Agriculture, which is expected to protect biological resources from "theft" of genetic material and traditional knowledge (biopiracy) and prevent the development of Indonesia's resources into industrial products outside the country, without benefits sharing from it.

The Protection and Utilization of Traditional Knowledge and Traditional Cultural Expressions Intellectual Property Bill (TKTCEs Bill) which governs foreign people's access to traditional knowledge in Indonesia and the issue of benefits sharing with local communities for access and use of these resources has not been ratified.

The Republic of Indonesia Law Number 32 of 2009 concerning Protection and Management of the Environment (PME Law) essentially implies that it is the duty of the state to recognize the existence of adat peoples and local wisdom in the management and protection of the environment, given the importance of local wisdom in environmental protection and management. In fact, there are exceptions in the law to the criminal act of land or forest burning by indigenous peoples based on local wisdom (Elucidation of Article 69 paragraph 1).

Based on the mandate of Article 63 paragraph (1) letter (t) of PME Law, the Ministry of Environment and Forestry passed the implementing regulations concerning the recognition and protection of local wisdom through the Minister of Environment and Forestry Regulation No. 34 of 2017 which in essence establishes the community as the custodian of local wisdom in adat territories. This regulation tends to view local wisdom as the community's intellectual property rights by providing legal protection to both the local custodians and users of the local wisdom as well as guaranteeing a fair distribution of benefits between the custodians and the users of local wisdom utilization.

**Reform:** Article 33 paragraph (4) of the 1945 Constitution mandates that further provisions concerning the enforcement of Article 33 will be governed in laws. To this day, there is no specific law that deals with the enforcement of Article 33. A general law that provides direction and guidance for specific laws is needed, such as the laws concerning oil and gas, mineral and coal mining, geothermal energy, forestry, to explain in detail the Article 33 of the 1945 Constitution. When making laws in the natural resources sector, The People's Representative Council and the government must consider the philosophical values contained in Article 33 paragraph (3) of the 1945 Constitution. Therefore, the existence of liberalism does not conflict with the values contained in Article 33 paragraph (3) of the 1945 Constitution.

The recognition of adat communities' rights in Indonesia has been accommodated in a series of laws and regulations listed aforementioned. In practice however, they are not effective. Therefore, some observers of adat law communities believe that Indonesia needs a specific regulation that deals with adat communities in Indonesia. Currently, the demand for this specific regulation is still limited to a discourse on a bill concerning adat peoples that has not been realized for various reasons.

The rights of adat peoples that need to be included in the substance of the Laws concerning Recognition and Protection of the Rights of Indigenous Peoples including: rights to land and other natural resources, rights to culture, rights to self-determination, rights to free, prior and informed consent (FPIC). The right to FPIC is a right of adat peoples to freely determine whether a development agenda may intrude adat territories or not. For individuals or groups that are not adat people, FPIC leads to a consultation process, as for adat peoples, FPIC leads to a "consent"/ decision to accept or reject each development agenda that is about to enter adat peoples' territories.<sup>44</sup>

---

<sup>44</sup> Aliansi Masyarakat Adat Nusantara (AMAN), Indonesia Memerlukan Undang Undang Pengakuan dan Perlindungan Hak Masyarakat Adat, 20 Oktober 2018, diakses melalui <http://gaung.aman.or.id/2016/12/14/indonesia-memerlukan-uu-pengakuan-dan-perlindungan-hak-masyarakat-adat/> accessed at 20 October 2018.



The recognition and protection of indigenous peoples and their rights should be drafted using two approaches simultaneously, i.e., administrative approach and the human rights approach. The administrative approach requires the state to provide space for adat peoples to govern themselves. On the other hand, the human rights approach requires the state to take legal steps to prevent violations towards adat peoples.

Regarding Traditional Knowledge and Traditional Cultural Expressions or folklores (TKTCEs), there are several alternatives that can be done by the government in order to protect the rights of local communities in Indonesia, such as making new legislations that specifically (*sui generis*) deal with access of foreigners to traditional knowledge in Indonesia as well as the sharing of benefits with local people for access and use of these resources. Another thing that the Indonesian government needs to do is to stimulate the growth and development of community participation in order to promote the use of traditional knowledge for the welfare of the community as a whole. The most important substance of this *sui generis* law is the explicit recognition that the local community is the "owner" of this traditional knowledge. Adat law or customary law can be an alternative source or material for formulating the rights of local communities in this *sui generis* law.

The philosophy of adat law which can be accommodated into the *sui generis* law include: 1) simple characteristics; 2) taking into account the elements based on religious norms. This is in line with the adat law system which has magical and religious characteristics; 3) being based on a social system that highly values a sense of togetherness; 4) being able to guarantee or at least provide a high likelihood that the utilization of traditional knowledge (including knowledge in biological diversity) can truly provide welfare to the community as a whole.<sup>45</sup>

This TKTCEs Bill will not be enough to protect and preserve the TKTCEs of Indonesia. TKTCEs protection should not only take into account the IPRs and legal measures, but also non-IPRs and non-legal measures, such as: 1) Immediately documenting and database compiling of TKTCE in Indonesia; 2) Educating law and court officials so that they will not be confused on TKTCEs protection with IPRs protection; 3) Ratifying the Bill concerning the Protection of Indigenous Peoples in order to protect the existence and rights of indigenous peoples who are the custodians of TKTCEs in Indonesia; 4) Reviving and incorporating adat law into the TKTCEs Bill; 5) Applying the requirements for Benefit Sharing on the utilization of TKTCEs not only to foreign users, but also to Indonesian users; 6) Controlling and imposing legal sanctions on radical groups that attack TKTCEs and communities that practice TKTCEs. By now the government should have enacted the 2009 Presidential Regulation Draft on the List of Genetic Resources, Traditional Knowledge and Cultural Expression of Indonesia which is protected by the State, without waiting for the ratification of the TKTCEs Bill by the People's Representative Council. This has also been mandated for a long time by the 1982 and 2002 Copyright Laws that gave copyright of Indonesia's cultural heritage to the state and it was also mandated by Presidential Regulation Number 78 of 2007 concerning the Ratification of the Convention for the Safeguarding of Intangible Cultural Heritage.<sup>46</sup>

## 5. Natural Resources Extraction, Large Infrastructure/Development and Agricultural Projects

### 5.1. Exploration and Extraction of Natural Resources

Currently, there are a number of laws and regulations in Indonesia related to large-scale projects, such as the Plantation Law 39/2014, Mineral and Coal Mining Law 4/2009, Oil and Gas Law 22/2001, Forestry Law 41/1999, Basic Agrarian Law 5/1960, and Environmental Protection and Management Law 32/2009. These legislations are almost entirely a product of reform that replaced old laws. In terms of the contents, they are better than the old laws, however some aspects of them are still deemed contrary to the constitution (UUD 1945),

<sup>45</sup> Imas Rosidawati Wiradirja, op.cit. hlm 176-177.

<sup>46</sup> Afifah Kusumadara, *Pemeliharaan dan Pelestarian Pengetahuan Tradisional dan Ekspresi Budaya Tradisional Indonesia: Perlindungan Hak Kekayaan Intelektual dan non-Hak Kekayaan Intelektual*, Jurnal Hukum No. 1 Vol. 18 Jan2011: 20 – 41.



especially in regard to Article 33 Paragraph (2) which states that the sectors of production that are important for the country and affect the lives of the people are controlled by the State; and Article 33 Paragraph (3), which states that the land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people. The aforementioned laws were submitted several times by a number of groups to the Constitutional Court for review.

Within the laws concerning natural resources, all of them already have articles concerning the environment, which in essence states that natural resources exploitation must be done in accordance with the provisions of environmental protection. For example, each natural resources' utilization permit is subject to the obligation to have an environmental permit. The problem is in the enforcement and supervision of permits that are often inconsistent. These articles on environmental protection are not fully enforced due to the corrupt behavior of state administrators and business entities.

In addition to that, there are also articles concerning community participation as a form of respect for human rights, for example the right to information, the right to participate in development. However, the elaboration of human rights in the law concerning natural resources is not strong enough, so in practice it is not very good either.

The rules concerning community (including indigenous peoples) participation and involvement can be found in various laws and regulations that govern the utilization of land, natural resources and the environment. Here are some quotes from the articles:

Regulation	The Governing of Community Participation
Law Number 41 of 1999 concerning Forestry	<p><b>Article 68</b></p> <ol style="list-style-type: none"> <li>(1) Communities have the right to benefit from the quality of the environment produced by the forest</li> <li>(2) In addition to the rights referred to in paragraph (1), communities may: <ol style="list-style-type: none"> <li>a. utilize forests and forest products in line with applicable laws and regulations</li> <li>b. be informed with plans for forest designation, forest products utilization, and forestry information</li> <li>c. provide information, advice, and considerations in forest development; and</li> <li>d. conduct supervision on forest development implementation both directly and indirectly.</li> </ol> </li> </ol> <p><b>Article 70</b></p> <ol style="list-style-type: none"> <li>(1) Community are engaged in the development of forestry sector</li> <li>(2) The government have the duty to encourage community participation through a variety of forestry activities that are efficient and effective.</li> </ol> <p>In order to improve community participation, the central and local governments can be assisted by a forum of forest observers.</p>
Law Number 39 of 2014 concerning Plantations	<p><b>Article 100</b></p> <ol style="list-style-type: none"> <li>(1) Plantation implementation is done by involving community participation</li> <li>(2) Community participation as referred to in paragraph (1) is done in the following items: <ol style="list-style-type: none"> <li>a. Planning preparation</li> <li>b. Area development</li> <li>c. Research and development</li> <li>d. Financing</li> <li>e. Empowerment</li> <li>f. Supervision</li> <li>g. Development of data and information system</li> <li>h. Institutional development, and/or</li> <li>i. Preparation of guidelines for plantation business development</li> </ol> </li> <li>(3) Community participation as referred to in paragraph (2) can be done in the form of providing proposals, responses, submitting objections, suggestions for improvement and / or assistance.</li> </ol>



Regulation	The Governing of Community Participation
Law No. 32 of 2009 concerning Environmental Protection and Management	<b>Article 70</b> (1) Communities have equal rights and widest opportunities to play an active role in environmental protection and management. (2) The role of communities can be in the form of: <ol style="list-style-type: none"> <li>Social supervision;</li> <li>Providing suggestions, opinions, advice, objections, complaints; and/or</li> <li>Providing information and/or reports.</li> </ol> (3) The role of communities can be done to <ol style="list-style-type: none"> <li>Raise awareness in environmental protection and management</li> <li>Improve independence, community empowerment, and partnership;</li> <li>Develop community capabilities and pioneering;</li> <li>Develop community responsiveness in performing social supervision</li> <li>Develop and preserve local culture and wisdom in conserving the environmental functions.</li> </ol>
Law Number 4 of 2009 concerning Mineral and Coal Mining	There is only one paragraph in article 7 that is related to the duty of provincial government in improving community participation, i.e., Paragraph (1) letter i, which states: “development and improvement of community participation in mining business by taking into account the environmental sustainability”.
Law Number 26 of 2007 concerning Spatial Planning	<b>Article 65</b> (1) Spatial planning implementation is done by the government by involving community participation. (2) The community participation in spatial planning as referred to in paragraph (1) is done through <ol style="list-style-type: none"> <li>Participation in spatial planning preparation</li> <li>Participation in spatial utilization; and</li> <li>Participation in spatial utilization control.</li> </ol>
Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands	<b>Article 62</b> (1) Communities have the same right to participate in the planning, enforcement, and supervision of coastal areas and small islands management. (2) Provisions regarding the participation of communities in the Management of Coastal Areas and Small Islands as referred to in paragraph (1) shall be further governed in a Ministerial Regulation.

In Indonesia, which has an area of approximately 70% of the land area, the forestry business is a large-scale business.<sup>47</sup> More than 30 million hectares of forest are used for timber and pulp and paper production businesses. As for plantation business, there are approximately 24 million hectares of plantation land with 12 commodities in 2014.<sup>48</sup>

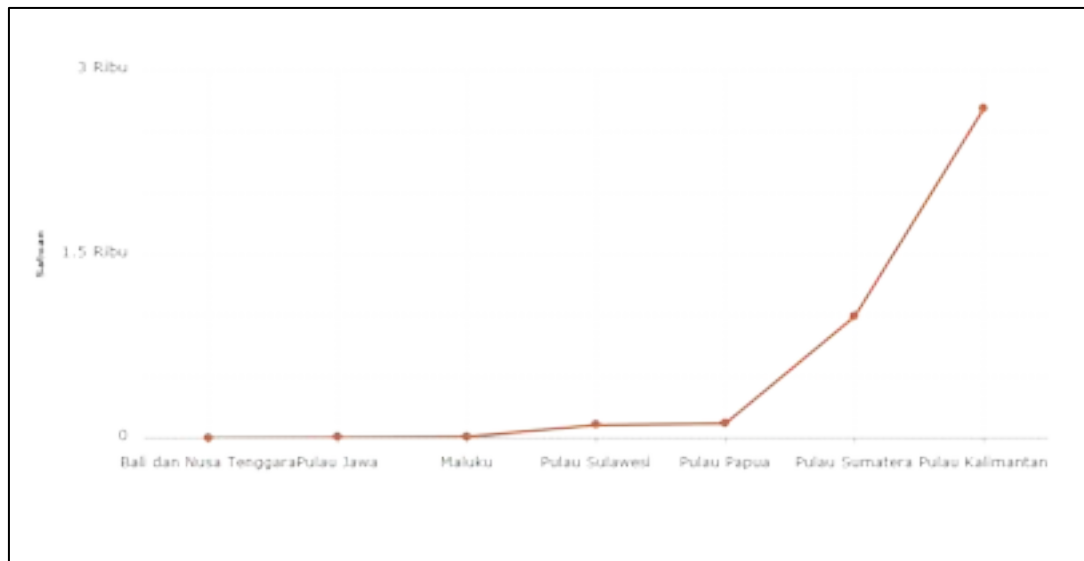
Oil palm plantations are especially at the top position in terms of their total area which reached 12.3 million hectares in 2018. The area includes of People's Plantations 4.76 million hectares, Large State Plantations 753 thousand hectares and Large Private Plantations 6.8 million hectares.<sup>49</sup> In addition to forestry and plantations, there are coal mining businesses with a total number of 3,000 permits issued.

<sup>47</sup> Ministry of Environment and Forestry, 2018, Environment and Forestry Statistics 2017.

<sup>48</sup> Directorate General of Plantation within Agriculture Ministry, tanpa tahun

<sup>49</sup> Agriculture Data Center and Information System of the Ministry of Agriculture referenced by <https://katadata.co.id/> accessed on Nov 1, 2018





If combined with other mineral mining permits, there are 10,300 permits issued throughout Indonesia up to 2015 according to the Ministry of Energy and Mineral Resources records<sup>50</sup>.

Such large-scale projects resulted in water pollution from the waste of companies, air pollution from forest and land fires, as well as soil pollution from excessive use of fertilizers or chemicals, thereby reducing soil fertility. In addition to that, they also disturbed the activities of adat law communities and local communities in their territories. Land grabbing is also another problem caused by large-scale plantations, forestry and mining businesses development. They caused prolonged tenure conflicts. KPA recorded at least 450 agrarian conflicts throughout 2016, with a total area of 1,265,027 hectares and involving 86,745 households spread across the provinces in Indonesia. In the previous year there were 252 agrarian conflicts, so there was a significant increase in 2016. On average, there was one agrarian conflict occurred each day, and a total of 7,756 hectares of land were involved in the conflicts. Plantations were still the biggest cause of agrarian conflict totalling 163 in number (36.22 %), followed by property sector with 117 conflicts (26.00%), then infrastructure sector with 100 conflicts (22.22%). Then, in forestry sector there were 25 conflicts (5.56%), mining sector 21 conflicts (4.67%), coastal and marine sectors with 10 conflicts (2.22%), and finally oil and gas sector and agriculture which both contributed 7 conflicts (1.56%).<sup>51</sup>



<sup>50</sup> <https://databoks.katadata.co.id/datapublish/2016/08/16/jumlah-kepemilikan-izin-usaha-pertambangan-batubara-di-indonesia#> accessed on November 1, 2018

<sup>51</sup> KPA, 2016, End of Year Note



## 6. Protected Areas, ICCAs and Sacred Sites

### 6.1 Protected Areas

#### 6.1.1. Regulatory and Policy Framework

The regulations that govern protected areas, ICCAs and sacred sites include:

Regulation	The governing of protected areas, ICCAs and sacred sites
Law Number 5 of 1990 concerning Conservation of Biological Resources and their Ecosystems	Governing comprehensively how biological resources and their ecosystem are protected. The governance of protection includes: <ul style="list-style-type: none"><li>- Protecting the system of biological life support;</li><li>- preservation of plant and animal species diversity and their ecosystems;</li><li>- utilization of sustainable natural resources and their ecosystems.</li></ul>
Law Number 41 of 1999 concerning Forestry	Forest areas are divided into 3 functions, namely conservation, protection and production. To utilize forest areas controlled by the state, one must obtain prior permit from the state. If the forest areas are located within adat forests whose management is handed over to indigenous peoples, then their utilization is governed by local adat rules.
Law Number 32 of 2009 concerning Environmental Protection and Management	Governing the recognition of indigenous peoples' rights, traditional knowledge, environmental permit obligations for businesses or activities that impact protected areas in accordance with the provisions stipulated in the spatial planning law.
Law Number 26 of 2007 concerning Spatial Planning	Governing the designation of cultivation areas and protected areas. Cultivation areas are intended for businesses to utilize land and natural resources both at national, provincial and district/city levels. On the other hand, protected areas are not allowed to be utilized.

#### 6.1.2 Definition of Protected Areas

Within Indonesian laws and regulations, protected areas are governed in various regulations, such as the laws concerning conservation of biological resources and their ecosystems, laws concerning spatial planning, the environment and forestry.

Citing the biological natural resources conservation and ecosystem law number 5 of 1990, it is stated that the conservation of biological natural resources is the management of biological natural resources with sound utilization practices to ensure the sustainability of their supplies by maintaining and improving their quality, diversity and grade. The principles used in the conservation enforcement are the preservation of the ability and harmonious and balanced utilization of biological natural resources and their ecosystems.

The methods of conserving biological natural resources are in the form of:

- Nature reserve areas which are regions with distinctive characteristics, both on land and in the waters which have the main function of preserving flora and fauna diversity and their ecosystems which also function as areas of biological life support system.
- Nature reserves which are nature reserve areas that due to their natural conditions have distinctive flora, fauna and their ecosystems or certain ecosystems that need to be protected and their growth take place naturally.
- Wildlife reserves which are nature reserve areas that have a specific diversity and/or distinctive fauna and their survival can be protected by preserving their habitats.
- Biosphere reserves which are areas that consist of native ecosystems, distinctive ecosystems, and/or ecosystems that have been degraded whose overall natural elements are protected and preserved for the benefit of research and education.



- e. Nature conservation areas which are areas with certain characteristics, both on land and in waters which have the function of protecting the life supporting system, preserving the diversity of plant and animal species, as well as the sustainable use of biological natural resources and their ecosystems.
- f. National parks which are natural conservation areas that have native ecosystems, managed with a zoning system that is utilized for research, science, education, supporting cultivation, tourism and recreation.
- g. Forest parks which are nature conservation areas used for collecting natural or artificial flora and/or fauna, either native and/or non-native species, which are utilized for the benefit of research, science, education, supporting cultivation, culture, tourism and recreation.
- h. Nature parks which are nature conservation areas mainly utilized for nature tourism and recreation.

### **6.1.3. Government Institutions that Have the Mandate to Enforce Regulations and Policies concerning Protected Areas**

In Indonesian context, the authority to enforce the legislations concerning natural resources sector is given to the Ministry of Environment and Forestry (MOEF). Compared to earlier administrations, the Jokowi-JK administration is far more advanced in natural resources management related to the rights of adat law communities and their welfare. This is marked by the milestone of Social Forestry which gives adat law communities and/or local communities access to manage protected areas. In addition, some areas were for the first time designated as adat forests in December 28, 2018 and handed over in person by President Jokowi himself on December 30, 2016. Therefore, up to 2018 there have been 33 locations of adat forests returned to adat law communities with a total area of 25,110.34 hectares.

In the current Jokowi-JK administration, the cooperation in natural resource management between different parties has started. However, it is still hindered by sectoral ego. This is a challenge for natural resources management in the future.

### **6.1.3 Indigenous Peoples' Response to the Governance of Indigenous Peoples Legal Recognition**

The indigenous peoples and/or local communities perceives the regulatory framework and legal recognition policies as an opportunity which provides legal protection for their rights. Nevertheless, there is still a greater demand for the government to immediately ratify the bill concerning the protection and recognition of indigenous peoples.

The existing regulatory framework and policies which are distributed in various sectors are considered challenging due to the overlapping of authority among government sectors. For example, there are currently at least 3 sectors that are closely related to the adat peoples' recognition process, i.e., Ministry of Home Affairs, Ministry of Environment and Forestry and the Ministry of Land and Spatial Planning.

### **6.1.4 Compliance of regulatory and policy frameworks concerning protected areas in Indonesia with PoWPA specifically those related to indigenous and local communities**

In general, natural resources management in both protected and conservation areas has given a space for adat law communities and/or local communities. However, this is not enough, because it has not applied the principle of justice and the benefits sharing to natural resources management.

In practice there is still a lot of overlapping of protected areas with adat law communities and/or local communities management space. Therefore, a one-map policy is needed to solve this problem, as well as the need for national-level legislations to accommodate communities' management space through the cooperation of adat peoples and/or local communities with the central government and local governments.

Community conserved areas in some regions have accommodated community conservation, such as in Tambrauw District, West Papua Province through the 2017 Regional Regulation concerning Tambrauw District as a Conservation District, which has recognized adat conservation area including land, forest and the oceans. On



the other hand, at the national level it is still nonexistent, except for the Conservation Law and its derivative rules which govern traditional zones. Even then it does not necessarily mean that adat law communities and/or local communities are allowed to manage the areas.

## 6.2. Sacred Sites

In addition to the legislations mentioned above, there is already a Cultural Heritage Law in Indonesia which governs protected cultural sites. However, it does not specifically govern adat law communities.

In practice, there are confusions in the decision-making of adat institutions, because there are claims from different institutions about who is entitled to make decisions within an indigenous community. This is due to the fact that there is a dualism of adat institution between the one formed by the government which is legal, and another traditional institution that has existed for generations. Consequently, the communities are weak in decision making process.

To this day, there are still no specific regulations that govern adat law communities, because the government thinks that a specific regulation governing adat law communities will be a waste of budget as well as a burden to the State in taking care of adat law communities' welfare. This government statement triggered protests from adat peoples, and finally the discussion of the bill concerning adat peoples was resumed.

## 6.3. Designation of Other Protected Areas

There are several world heritage sites and biosphere reserves in Indonesia, however their proposals did not involve adat law communities and/or local communities. The following is a list of other protected area sites in Indonesia:

I. Situs Ramsar (Ramsar Sites)		
1	Taman Nasional Berbak	Ramsar Site No. 554, ditunjuk tanggal 8 April 1992
2	Taman Nasional Danau Sentarum	Ramsar Site No. 667, ditunjuk tanggal 30 Agustus 1994
3	Taman Nasional Wesur	Ramsar Site No. 1624, ditunjuk tanggal 16 Maret 2006
4	Taman Nasional Rawa Aopa Watumohai	Ramsar Site No. 1944, ditunjuk tanggal 6 Maret 2011
5	Taman Nasional Sembilang	Ramsar Site No. 1945, ditunjuk tanggal 6 Maret 2011
6	Suka Margasatwa Pulau Rambut	Ramsar Site No. 1987, ditunjuk tanggal 11 November 2011
7	Taman Nasional Tanjung Puting	Ramsar Site No. 2192, ditunjuk tanggal 11 Desember 2013



		dan TWA Telaga Warna; TWA Jember			1977
2	Komodo	TN Komodo	CA Wae Wuul		Ditetapkan pada pertemuan MAB di Paris, 20-22 Januari 1977
3	Tanjung Puting	TN Tanjung Puting	TWA Tanjung Keluang		Ditetapkan pada pertemuan MAB di Paris, 20- 22 Januari 1977
4	Lore Lindu	TN Lore Lindu	THR Sulawesi Tengah	CA Pamona; TWA Wera; CA Pangi Binangga; THR Sulawesi Tengah	Ditetapkan pada pertemuan MAB di Paris, 20-22 Januari 1977
5	Pulau Siberut	TN Siberut; WA Saib Sarabua			Ditetapkan pada pertemuan MAB Tahun 1981
6	Gunung Leuser	TN Gunung Leuser	SM Rawa Singkil; CA Serbojati; TB Lingga Isaq	TB Lingga Isaq THR Subulussalam SM Karang Gading	Ditetapkan pada pertemuan MAB Tahun 1981
7	Giam Siak Kecil Bukit Batu	SM Giam Siak Kecil; SM Bukit Batu			Ditetapkan oleh UNESCO pada Sidang ICC MAB UNESCO ke 21 di Pulau Jeju, Korea Selatan pada tanggal 26 Mei 2009
8	Wakatobi	TN Wakatobi			Ditetapkan oleh UNESCO pada Sidang ICC MAB UNESCO ke 24 di Paris pada bulan Juni 2012
9	Bromo Tengger Semeru- Arjuna	TN Bromo Tengger Semeru; THR R.Soeryo		TWA Gunung Bauung; CA Gunung Abang; CA Besowo Gadungan	Ditetapkan oleh UNESCO pada Sidang ICC MAB UNESCO ke 27 di Paris pada tanggal 29 Juni 2015
10	Taka Bonerate	TN Taka Bonerate			Ditetapkan oleh UNESCO pada Sidang ICC MAB UNESCO ke 27 di Paris pada tanggal 29 Juni 2015
11	Blambangan	TN Baluran; TN Alas Purwo; TN Meru Betir; TWA Ijen		CA Curah Manis Sempolan I- VIII; CA Jaggangan Ropojampi I-II; CA Ceding	Ditetapkan oleh UNESCO pada Sidang ICC MAB UNESCO ke 28 di Peru pada bulan Maret 2016

### III. Situs Warisan Dunia (World Heritage Sites)

1	Taman Nasional Ujung Kulon dan CA Krakatau	Ditunjuk pada saat World Heritage Committee Meeting ke- 15, tanggal 13 Desember 1991
2	Taman Nasional Komodo	Ditunjuk pada saat World Heritage Committee Meeting ke- 15, tanggal 13 Desember 1991
3	Taman Nasional Lorentz	Ditunjuk pada saat World Heritage Committee Meeting ke- 23, tanggal 4 Desember 1999
4	Taman Nasional Gunung Leuser, Taman Nasional Kerinci Seblat, Taman Nasional Bukit Barisan Selatan ( <i>Tropical Rainforest Heritage of Sumatera</i> )	Ditunjuk pada saat World Heritage Committee Meeting ke- 26, tanggal 7 Juli 2004



**Reform:** In order to ensure that the management areas of adat law communities and/or local communities are recognized, the Conservation Law needs to be revised to accommodate the management areas of adat law communities and their types, both within and outside forest areas. In addition to that, a specific law that governs adat law communities is required in order to clarify which institutions will take care of adat law communities.

## 7. Non-Legal Recognition and Support

### 7.1 Non-Legal Recognition from the Government

In addition to legal recognition as explained in the previous section, the existence and rights of adat peoples are also recognized and supported non-legally. In areas with strong adat law communities such as the Dayak Indigenous Peoples, the Papua Indigenous Peoples, and Maluku Indigenous Peoples, the government recognized their de facto existence.

It is common in Indonesia to still use adat laws in various aspects of indigenous peoples' lives such as marriages, traditional celebrations, trades and conflict resolutions. Local governments generally recognize adat practices used in these life aspects. For example, in Papua when an investor needs a land to open a business and consults the district or provincial government in Papua, the first thing this investor needs to do is to negotiate compensation or purchase agreement with Papua adat peoples who own their adat land. If there is no agreement between the investor and the adat peoples, the district/provincial government in Papua will still ask the investor to negotiate with the adat peoples.

Another form of recognition is support from local governments for adat celebrations/ceremonies. For Dayak adat peoples on the island of Borneo, Dayak traditional celebrations are held every year in all the provinces and districts. The funding for such traditional celebrations is supported by the local governments. This kind of support is also intended to raise the image of the local governments to attract both domestic and foreign tourists. The local governments in several other places in Indonesia also does same thing for adat peoples, such as the Kasepuhan adat people in Banten Province.

In terms of conflict or dispute resolution in a village or subvillage where adat law is still strong and applied, adat institutions through adat judges will resolve conflicts or disputes in a *concessus* meeting (*musyawarah*) or peacefully. The cases handled include farmland disputes, inheritance disputes, and family disputes. The decisions of adat institutions are factually recognized by local governments. In fact, the government often uses these decisions as a consideration for official decision making.

### 7.2 Non-Legal Recognition from Non-Governmental Organizations

Non-legal recognition and support of indigenous peoples is also provided by non-governmental organizations. The types of recognition and support are given in various forms such as:

- a. Education and training
- b. Community organizing and facilitation
- c. Legal, advocacy and campaign.
- d. Facilitation of access to national and international networks
- e. Documentation of adat law, maps of adat territories

Non-Governmental Organizations that recognize and support adat peoples are currently led by the Archipelago Alliance of Indigenous Peoples (AMAN). Non-governmental organizations that support AMAN include:

- 1) HuMA (based in Jakarta), supports AMAN in research/legal activities, legal drafting, and legal education for AMAN members. Huma activities can be seen at [www.huma.or.id](http://www.huma.or.id)
- 2) BRWA-Adat Territories Registration Agency (based in Bogor), supports the AMAN in the registration of adat territories as a means to help adat peoples in applying for legal recognition to the government. The activities can be seen at [www.brwa.or.id](http://www.brwa.or.id)



- 3) Epistema Insitute (based in Jakarta), supports AMAN in the context of social and legal research/studies and legal drafting, publishing books relating to the issue of indigenous peoples, seminars and workshops discussing the issue of indigenous peoples. The activities of Epistema Institute can be seen at [www.epistema.or.id](http://www.epistema.or.id)
- 4) JKPP-Participatory Mapping Network (based in Bogor), supports AMAN in mapping adat territories claimed by adat people by using accurate mapping technologies represented in digital and printed maps. The maps produced by JKPP become the reference material in conducting advocacy and campaign activities. The activities can be seen at [www.jkpp.org](http://www.jkpp.org)
- 5) The WGII-ICCAs Indonesia Working Group (based in Bogor), supports AMAN in an attempt to improve understanding of how indigenous peoples in Indonesia carry out management of natural conservation through their local wisdom habits. At present WGII is monitoring the review process of the Natural Resources Conservation and its Ecosystem Law. WGII activities can be seen at [www.iccas.or.id](http://www.iccas.or.id)

### 7.3 Key Issues Related to Non-Legal Recognition

As explained in the previous subsection, non-legal recognition of indigenous peoples is a fact that often occurs in many regions in Indonesia. This non-legal recognition has a quite positive impact to provide higher confidence of adat peoples.

However, this non-legal recognition is not strong enough to deal with problems closely related to legal issues. The crucial legal issues are those related to the rights on adat land and adat territories. Non-legal recognition is only strong on social and cultural aspects of recognition, but it is not sufficient in recognizing indigenous peoples' rights to their adat lands and adat territories. As a result, there are still many cases where indigenous peoples are socially and culturally recognized by the government, and yet their adat land and adat territories are still lost/reduced because they are taken over forcibly for the purposes of extractive businesses such as large-scale plantation projects, industrial plantation forests, infrastructure projects, mining and so on.

This fact shows the ambiguity of the government's view on the cultural and social aspect of adat peoples' rights to land and development. The government wants to maintain and preserve the social and cultural side of indigenous peoples, but it does not guarantee its protection if it is related to land rights. In many conflict instances, the government often tends to be on the side of business entity's interests as opposed to the interests of adat peoples. In the case of oil palm plantations, even if there is a claim from adat peoples that a land used for oil palm plantations belongs to adat lands or adat territories. This claim will not always be supported by the government because there is no official legal recognition.

In fact, the stipulated local regulations that provide legal recognition to indigenous peoples often do not include maps of their adat territories. Therefore, it is difficult for indigenous peoples to keep their adat territories since legal recognition of their adat territories is still nonexistent.

### 7.4. Urgency of Institutional Framework for Indigenous Peoples

We can see many concrete examples from the past when the state/government merged all adat institutions uniformly into village. This was the case from 1979 to 1999. During this time, the native adat institutions which had been merged into village experienced weakening in terms of adat institutions, adat laws and rights to adat land/adat territories.

Since the reform era there have been some improvements in the way the communities are given the opportunity to revive their adat institutions, adat laws, and restore their rights to adat land/adat territories. However, in practice not all native adat institutions can recover fully to their previous state. There are examples from several provinces and districts in Indonesia where new institutions are introduced from the government's conception.



Location	Introduction of new institution
In West Kalimantan	An adat institution called Local Adat Council (DAD) was introduced which has structures in the provincial, district, and sub-district levels. DAD was formed and approved by the government. It also obtains facilitation from the government including funding.
In Central Kalimantan	An adat institution called Local Adat Council (DAD) was introduced which has structures in the provincial, district, and sub-district levels. DAD was formed and approved by the government. It also obtains facilitation from the government including funding.
In Papua	Papuan People's Assembly was introduced which is a complementary government based on the Papua Special Autonomy Law. It was formed and authorized by the government and obtains facilitation from the government including funding.
In West Sumatra	<i>Lembaga Kerapatan Adat Alam Minangkabau (LKAAM)</i> or Minangkabau Region Adat Assembly Institution was introduced. LKAAM was formed and approved by the government. It obtains facilitation from the government including funding.

## 8. Judicial Institutions' Decisions

### 8.1. Cases

After the amendments of the 1945 Constitution<sup>52</sup>, the judiciary institution in Indonesia was divided into two institutions, i.e., the Supreme Court and the Constitutional Court. In accordance with the provisions of the 1945 Constitution, the judicial power in Indonesia is held by the Supreme Court<sup>53</sup> and the Constitutional Court<sup>54</sup>

which is collectively called the Judicial Court. In addition to that, there are four judicial environments, each of which has the court of first instance and court of appeals institutions. For the highest appellate court level, it culminates in the Supreme Court. The first and second level courts in the four judicial environments are:

1. The District Court or *Pengadilan Negeri (PN)* and the Appellate Court or *Pengadilan Tinggi (PT)* in the court of general jurisdiction environment;
2. The Religious Court or *Pengadilan Agama (PA)* and the Religious Appellate Court or *Pengadilan Tinggi Agama (PTA)* in the court of religious jurisdiction environment;
3. The State Administrative Court or *Pengadilan Tata Usaha Negara (PTUN)* and the State Administrative Appellate Court or *Pengadilan Tinggi Tata Usaha Negara* in the court of state administrative jurisdiction environment; and
4. Military Court or *Pengadilan Militer (PM)* and Military Appellate Court in the military court environment.

<sup>52</sup> The Constitution of Indonesia (1945 Constitution) was amended four times (UUD 1945) i.e., in 1999, 2000, 2001 and 2002.

<sup>53</sup> Article 24A paragraph (1) of the 1945 Constitution of Indonesia "The Supreme Court has the authority to judge at the highest appellate court level, review legislations under laws against laws, and has other authorities granted by laws."

<sup>54</sup> Article 24C paragraph (1) of the 1945 Constitution of Indonesia "The Constitutional Court has the authority to judge at the first and last levels and its decision is final by nature in reviewing the laws against the Constitution, settling dispute of authority between state institutions whose authorities are given by the Constitution, deciding the dissolution of political parties, and settling disputes of election results."



In addition to that, there are also several special courts, either permanent or ad hoc by nature, such as: Human Rights Court; Corruption Court; Commercial Court; Fisheries Court; Children's Court; Industrial Work Relations Court; Tax Court; Shariah Court in Nanggroe Aceh Darussalam; Adat Court in Papua.

After the birth of Constitutional Court, the opportunity for people to file claims on basic rights is wider, especially for indigenous peoples. The Constitutional Court has a big role in guarding the constitution, especially those basic rights. Since the existence of the Constitutional Court there have been several rulings that gave recognition to indigenous peoples in Indonesia. Some of these decisions include:

- 1) Constitutional Court Decision concerning Recognition of Adat Law Communities
- 2) Constitutional Court Decision concerning Recognition of Adat Forests
- 3) Constitutional Court Decision concerning Recognition of Religious Cults and Beliefs
- 4) Constitutional Court Decision concerning Revocation of Government Policy on the Responsibility of Peat Restoration

## 8.2. Precedents of Court Rulings

In this subsection, we will try to explain briefly the precedents of court rulings based on the four examples in the previous subsection to be taken as a lesson.

### 8.2.1. Constitutional Court Decision concerning Recognition of Adat Law Communities

There are two Constitutional Court decisions concerning the recognition of adat law communities in Indonesia, i.e., the Constitutional Court Decision No. 010/PUU-I/2003 and the Constitutional Court Decision No. 31/PUU-V/2007. Within the Constitutional Court Decision No. 010/PUU-I/2003, the Constitutional Court emphasized that Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia<sup>55</sup> is interpreted "*...not intended to be used as the basis for the division of state territory but rather an affirmation that the state is obliged to recognize and respect the Unity of Adat Law Communities and their traditional rights which still remain in existence and are in accordance with societal developmen and the principles of the Unitary State of the Republic Indonesia, which is governed by law*".

Then, within the Court Decision No. 31/PUU-V/2007, the Constitutional Court further emphasized the typology and benchmarks for the adat law community units along with their traditional rights as stipulated in Article 18B paragraph (2) of the 1945 Constitution and Article 51 paragraph (1) letter b of Law Number 24 of 2003, as follow:

- a. For an Adat Law Community unit and its de facto existence to be recognized territorially, genealogically and functionally, it must contain at least the following elements:
  - The existence of a community whose citizens have an in-group feeling;
  - The existence of adat government institutions;
  - The existence of assets and/or adat objects; and
  - The existence of adat law norms.Specifically, for an Adat Law Community Unit that is territorial by nature, there are also elements of specific regions.
- b. An Adat Law Community Units and its traditional rights are viewed to be in accordance with the societal development, if:
  - Its existence has been recognized according to the applicable laws as a reflection of the development of values that are considered ideal in the current society, both in general and sectoral laws, such as agrarian law, forestry law, fisherieslaw, etc. as well as in local regulations;

---

<sup>55</sup> Article 18B paragraph (2) of the 1945 Constitution of Indonesia, "The State shall recognize and respect, adat law community units along with their traditional rights for as long as they remain in existence and are in line with societal development and with the principles of the Unitary State of the Republic of Indonesia, and they are to be regulated by law"



- The substance of their traditional rights is recognized and respected by the citizens of both the community unit and the wider community and does not conflict with human rights.
- c. An Adat Law Community Unit and its traditional rights are considered to be in accordance with the principles of the Unitary State of the Republic of Indonesia if the Adat Law Community unit does not disturb the existence of the Unitary State of the Republic of Indonesia as a political unit and a legal unit, i.e.:
  - Its existence does not threaten the sovereignty and integrity of the Unitary State of the Republic of Indonesia;
  - The substance of its adat law norms is in line with and does not conflict with the laws and regulations.

### 8.2.2. Constitutional Court Decisions concerning Recognition of Adats Forests

The Constitutional Court ruled that adat forests are no longer state forests through the Constitutional Court Decision Number 35/PUU-X/2012. The word “state” was removed from Article 1 Point 6 of the Forestry Law to become, *"Adat forests are those that are within the territory of adat law communities."* According to the Constitutional Court, based on Article 5 paragraph (3) of the Forestry Law, *forests are designated as adat forests as long as in reality the adat law communities in question remain in existence and are recognized.* The provision that adat forests as part of state forest meant that it would obscure the existence of state forests because the State could arbitrarily take over adat forests for certain purposes. Broadly speaking, the Constitutional Court Decision Number 35/PUU-X/2012 changed the perspective of adat forests, which was originally state centric to become adat centric. The decision was also a follow-up from several previous Constitutional Court decisions, such as Constitutional Court Decision Number 34/PUU-IX/2011 and Constitutional Court Decision Number 45/PUU-X/2011 which recognize the existence of adat forests and they are not a part of state forests. If we analyze these Constitutional Court's rulings thoroughly, we can see that human rights legislations are being developed in the context of protecting indigenous peoples' rights to adat forests.<sup>56</sup>

In addition to recognizing adat forests, the Constitutional Court also emphasized that the utilization of adat forests is partly the right of the community in question outside of the permission procedure from the Government. The Constitutional Court Decision Number 95/PUU-XII/2014 changed the Forestry Law as follows:

- a. Cutting down trees or harvesting or collecting forest products in the forest without having the rights or permits from authorized officials, **except** for the communities who have lived in the forest for generations and it is not intended for commercial purposes;
- b. Bringing livestock to graze in forest areas that are not specifically designated by authorized officials for this purpose, **except** for communities who have lived for generations in the forest and it is not intended for commercial purposes.

Another consequence of Constitutional Court Decision Number 95/2014 is preventing criminalization of adat law communities who rely on forest areas for their subsistence livelihood. The Constitutional Court Decision Number 95/2014 provides an interpretation that criminal provisions, including criminal exemptions apply to state forests, not to adat forests, because adat law applies to adat forests.<sup>57</sup>

### 8.3.1 Constitutional Court Decision Concerning Recognition of Religious Sects and Beliefs

Constitutional Court Decision No. 97/PUU-XIV/2016 fully grants claims from certain groups of religious sects and beliefs in Indonesia. In its ruling, the Panel of Judges argued that the word "religion" in Article 61 paragraph (1) and Article 64 paragraph (1) contradicted the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) and did not have conditional binding legal power as long as it

<sup>56</sup> Faiq Tobroni, *Menguatkan Hak Masyarakat Adat Atas Hutan Adat (Studi Putusan MK Nomor 35/ PUU-X/2012)*, Jurnal Konstitusi, Volume 10, Nomor 3, September 2013.

<sup>57</sup> Yance Arizona, Erasmus Cahyadi, dan Malik, 2015, *Mengakhiri Rezim Kriminalisasi Kehutanan Anotasi Putusan Mahkamah Konstitusi Nomor 95/PUU-XII/2014*. Jakarta: Epistema-AMAN.



did not include followers of religious sects and beliefs. In addition to that, the Constitutional Court Panel of Judges also stated that Article 61 paragraph (2) and Article 64 paragraph (5) contradicted the 1945 Constitution of the Republic of Indonesia and did not have a binding legal power.

Up to that time, certain religious sects and beliefs that have existed for a long time in Indonesia were never recognized and could not be listed in one's identity card. Thus, the plaintiff asked the government to recognize religious sects and beliefs outside the state-recognized religions in Indonesia. As a result, from the time the decision was read by the Constitutional Court, the followers of religious sects and beliefs now have an equal legal position as the followers of the six state-recognized religions in regard to population administration. Although considered a minority, the number of followers of religious sects and beliefs throughout the Indonesian archipelago is quite significant and spread in various regions in Indonesia. From government-owned data (Directorate General of Culture, Ministry of Education and Culture), there are a total of 187 different groups of religious beliefs spread across 13 provinces in Indonesia, and the largest number of the groups is in Central Java, totalling 53 groups<sup>58</sup>.

In addition to recognition of indigenous peoples, another Supreme Court decision triggered a debate by removing the businesses' responsibilities in peat restoration efforts, which is the Supreme Court Decision Number 49P/HUM/2017.

### 8.1. Supreme Court Decision concerning Revocation of Government Policy on Peat Restoration Responsibility

The Supreme Court Decision Number 49P/HUM/2017 [membatalkan Peraturan Menteri Lingkungan Hidup dan Kehutanan No. 17 Tahun 2017](#) requires companies to convert concession lands which belongs to the category of peat ecosystem areas with the function of protection and restoring these peatlands through wetting and planting. If the company's concessions are on at least 40 percent of the protected peat area, they have the right to request an exchange of land. The Supreme Court reasoned that such provisions were contrary to the Forestry Law. In addition, governing peatlands is not the authority of the Ministry of Environment and Forestry as stipulated in the Forestry Law. In this case there is a critical point and we can see that the decision is poor, considering several things, namely:

- The Supreme Court should take into account that the Ministry of Environment and Forestry was formed by combining four state organizations: Ministry of Forestry, Ministry of Environment, Reduction of Emission from Deforestation and Forest Degradation Management Agency (BP-REDD+), and Climate Change National Council. Sebagaimana dinyatakan dalam [Peraturan Presiden No. 16/2015](#). The Ministry of Environment and Forestry now adopts and enforces the mandate and functions of these four organizations, one of which is passing forest and non-forest regulations concerning the environment. The mandates and functions of the four organizations also give authority to the Ministry of Environment and Forestry to govern all government and private activities that have an impact on the environment.
- The Supreme Court rarely refers to Law No. 32/2009 concerning Environmental Protection and Management and focuses only on the Forestry Law in 1999. This limited reference in court decisions indicates a lack of understanding of the Court regarding the importance of this law as a basis for all activities related to environmental aspects - within the peat land ecosystem, forest area, Other Use Area (APL), or others<sup>59</sup>.

Based on some Constitutional Court decisions that recognize the existence of adat law communities, adat forests and religious sects and beliefs of traditional communities, we can see that the Constitutional Court has

<sup>58</sup> <http://nasional.kompas.com/read/2017/11/09/12190141/ada-187-kelompok-penghayat-kepercayaan-yang-terdaftar-di-pemerintah>. Accessed on October 2018.

<sup>59</sup> WRI Indonesia, "Menelaah Lebih Dekat Putusan Mahkamah Agung dalam Pembatalan Peraturan tentang Gambut" <http://www.wri-indonesia.org/id/blog/menelaah-lebih-dekat-putusan-mahkamah-agung-dalam-pembatalan-peraturan-tentang-gambut> accessed on October 23, 2018.



actually consistently protected the interests of indigenous/traditional communities in Indonesia. However, at the implementation level, these Constitutional Court Decisions that are either negative legislature or positive legislature must be immediately followed up within various policies at the executive level of government (Central and Local Governments). This includes ratifying the bill concerning adat law communities which is quite urgent. Thus there will be a legal umbrella for the policies concerning the rights of indigenous peoples in Indonesia. This also provides legal certainty for the Supreme Court so that it has a legal umbrella as a touchstone in implementing of its authority to review legislations. Furthermore, the Supreme Court needs to reform its judicial review procedure which so far is only governed by Perma 1/2011. So far in conducting a judicial review, the Supreme Court conducts a closed examination by not involving relevant stakeholders, so there is a potential of violating the principle of open court and it can have an impact on objectivity of the decisions.

## 9. Practice of Implementing Legal Recognition of Adat Peoples in the Field

### 9.1. Key factors that Support or Hinder the Effectiveness of Adat Peoples Legal Recognition

As explained in the previous section, the regulatory and policy framework is available with their various advantages and disadvantages. In this section we will briefly review factors that support and hinder the implementation of legal recognition of adat peoples.

Based on particular experiences by Epistema from the field activities as well as the data obtained during FGD activities, we can identify factors that support how legal recognition of adat peoples can be realized. The factors are the following:

- a. Legal recognition of adat peoples is strongly influenced by legal politics from the government and regional governments. If the government and local government do not have legal politics for the recognition and legal protection of adat peoples, then legal recognition of the community is very difficult to realize.
- b. The political interests of politicians often become used to realize the recognition and legal protection of indigenous peoples. Admittedly or not, indigenous peoples are the source of the vote at the time of general election, both the DPR/DPRD and the Regent/Governor/President. This political interest in several occasions can accelerate the issuance of legal recognition of indigenous peoples.
- c. National and international projects, which go to districts and provinces that require legal recognition of adat peoples. These projects are generally run by non-governmental organizations that are able to convince the government and local governments to legalize legal recognition of adat peoples. In some districts it can be referred to as an example where non-governmental organizations in collaboration with local governments issued regulations that recognized adat peoples, for example in Tambrau District, Jayapura Regency, Sintang District, Melawi Regency. The support of international and national projects is able to overcome the problem of limited funding from local governments in the formulation of regulations that recognize the existence of adat peoples.
- d. The profile of adat people which in reality still has customary institutions that are still alive, customary laws that are still carried out by members of adat peoples, there are customary structures that still effectively carry out their roles as adat leaders, and the clarity of adat territories is an important factor to convince the government that there are indeed adat people.

Whereas hindering factors to the effective recognition of adat peoples among others are:

- a. Quality of regulations that recognize adat peoples legally are varied. Some are strong enough, but some are still weak. Regulations that are strong enough contain real recognition from the government towards adat peoples, including adat territories that have been mapped and included in the appendix of the regulation. While the quality of weak legal recognition only recognizes the existence of adat peoples but doesn't affirm their adat territories and does not include maps of indigenous territories in the report of the regulation.
- b. Internal disputes between adat peoples both related to adat leaders or the overlapping adat territories. This is an obstacle to the recognition process because the adat institutions or the objects of adat territories to be recognized is unclear.



- c. Overlapping adat territories with forest areas and business licenses that have been issued by the government. Adat areas are generally located within forest areas. Such adat territories are difficult to be recognized because they are considered to be in a conflict status or at least overlap with the claims of other parties, such as the forest estate manager or the holder of business.

## 10. Resistance and Engagement

### 10.1. Legal Awareness and Engagement of Adat Peoples in Responding to Regulations and Policies

Adat people who already have legal awareness either because they have participated in legal training or other legal empowerment activities, or because they have access to information related to regulations concerning adat law community will make them active enough to fight for their rights. Community knowledge about rules and policies helps them to carry out dialogues, complaints to support the recognition and protection of the rights of adat peoples.

### 10.2. Resistance and Adat Peoples' Engagement in Regulations and Policies

Regarding various regulations and policies that have been issued by the government in relation to adat peoples, they are responded differently by themselves. For example, AMAN nationally still demands and criticizes a number of regulations and policies because it is considered halfhearted in recognizing the existence and rights of adat peoples. But in various regions where there is AMAN membership, the involvement of AMAN members in using available legal opportunities still occurs. For example, customary forests provided by the Minister of Environment and Forestry are accepted by the adat peoples. It implies that there is still recognition from adat peoples toward the authority of the Ministry of Environment and Forestry on customary forests, namely the authority to determine forest functions. If customary forests are granted in conservation areas, then adat peoples who accept customary forests should not change the conservation function.

In addition to the customary forest scheme, there are also indigenous people who accept village forests that have a time limit of 35 years. The village forest scheme established by the Ministry of Environment and Forestry is based on state forest status. In other words, if adat peoples accept village forests, it implies they recognize the state's authority over the forests in their adat territories.

### 10.3. Conflict between Adat Peoples and Other Actors in Forest Management

Conflicts that occur in forest management in adat territories can occur between adat peoples and the government, companies holding business licenses or conservation institutions.

Conflict manifests when one adat community claims to have rights to adat territory and confronted with other claims such as from the government which stipulates that the area is included in the forest area. Conflict will escalate if people are prohibited from entering into their adat territories and are not allowed to use their natural resources.

In some cases, such as in Danau Sentarum National Park in Kapuas Hulu District, West Kalimantan, conflicts are not manifested because the adat peoples are still given access to utilize natural resources in national parks as long as they are used to fulfill their daily needs.

Conflict resolution between adat people and the government, business permit holders and other parties, is generally resolved by *musyawarah* to reach an agreement. Generally, the mechanism used is negotiation or mediation. At present there are enough scattered mediators who can help parties in dispute to reach an agreement over a conflict.

### 10.4. Key Factors Supporting and Hindering the Effectiveness of Adat Peoples' Legal Recognition

Adat peoples movement in Indonesia is quite widespread and well known. The government and local government have given a positive response to engage community in producing regulations and policies related to adat peoples.

In building a movement to demand or enforce a regulation or policy, adat peoples use various methods. Lobby and campaign are common ways. AMAN and the supporting non-government organizations carried out



lobbying and campaign to demand appeals to the DPR and the Government so that the draft law on adat peoples was immediately discussed. These methods are quite successful to ensure that the discussion of the bill on adat peoples is included in the planned discussion in 2019.

### 10.5. Legal Awareness Measures for Adat Peoples

Conflicts faced by indigenous peoples have prompted a number of government organizations to carry out legal awareness measures. Legal awareness is carried out through training and discussions. Legal awareness is needed so that people have a collective awareness that they have legal rights that must be maintained and protected.

In order to maintain or restore the rights of adat peoples, a number of mechanisms are available, including:

Mechanism	Brief Description
Information on Adjudication Dispute	It's in the system that applies in the Public Information Commission. If community requests information from a certain government institution, for example related to licensing, yet is not given, then an application through the Information commission can be submitted. The mechanism used is adjudication.
Forestry Tenurial Conflict Mediation	It's in the system that applies in the the Ministry of Environment and Forestry, where adat people who feel their rights are harmed by a certain company or other activities can complain to the Directorate of Tenurial Conflict in the Ministry of Environment and Forestry. The mechanism used is mediation.
Complaints of violations of law	This complaint can be used if the adat people see or witness a crime committed by another party in the adat territory or adat forest that intersects with the forest area. Complaints can be submitted to the Director General of Law Enforcement at the Ministry of Environment and Forestry.
Mediation of land conflicts	Land conflicts between adat peoples and other parties can be mediated by the Ministry of Agrarian and Spatial Planning/ National Land Agency. Complaints can be submitted to the Land Office in each Regency/City
Mediation by the Local Government	Complaints submitted to local governments can now be carried out in several districts. For example, in the Kapuas Hulu District which has a Conflict Resolution Desk that has services to mediate land and natural resource conflicts within the district.

### 10.6. Forest and Natural Resource Management by Adat Peoples

In the FGD forum held in September 2018, experiences on ways of managing forests by adat peoples that were considered better than other parties such as the government were presented. Adat people still have considerations of natural sustainability and not to seek benefits in the use of forests and other natural resources.

Forest and natural resource management is threatened by the behavior of those who wish to exploit forests and natural resources for commercial purposes. The aim is multiplying profits, but not paying too much attention to environmental and social damage.



## 11. Reformation of Regulations and Policies

### 11.1. Revisions to Regulations, Policies and Institutions needed

Revisions in the rules, policies and institutions needed to enable adat peoples to gain recognition and respect for their existence and rights over their adat territories are to focus on:

- a. Immediately discuss and ratify the draft law on the recognition and protection of customary law communities that are adjusted to the basic norms in the constitution (the 1945 Constitution), the decisions of the Constitutional Court and conventions of Human Rights which have been ratified by the Indonesian government. The enactment of the bill on the recognition and protection of adat law peoples will resolve a number of uncertainties in terms of government institutions that have authority, duties and functions, uncertainty in the mechanism of legal recognition and community development in the context of economic, social and cultural development.
- b. If the bill on the recognition and protection of the legal community is already enacted, then all sectoral laws such as plantation laws, forestry laws, mineral and coal mining laws, land related laws, environmental laws, spatial planning laws, regional government laws, village laws, must be adjusted. So that there is no longer a clash of norms among laws.
- c. Synchronization of regulations also needs to be carried out with all implementing regulations starting from government regulations, presidential regulations, regional regulations, governor regulations, regent/mayor regulations and it must be carried out following the enactment of the bill on the recognition and protection of adat peoples.
- d. New legal norms that need to be accommodated in the revisions of regulations and policies such as recognition of adat peoples must be in one package with their existence and adat territories, transitional mechanisms for resolving overlaps between adat territories stipulated with the valid business permits, forest areas, and existing land rights.

### 11.2. Legal Options for ICCAs Recognition in Indonesia

Considering that ICCAs practices in Indonesia are factually diverse, the legal recognition required is not at the level of whether ICCAs method or model is allowed or not, but at the level of principles or basis that must be followed by the adat peoples.

For example, the principles that need to be used are maintaining ecosystem conservation, not being discriminatory, protecting the rights of future generations, maintaining ecological diversity, being open/transparent, participatory. While the form of ICCAs management is given to the local custom or the prevailing customary law norms.

The government and supporting parties from non-governmental organizations play a role in providing assistance and guidance so that the practice of managing ICCAs remains in line with the principles that have been set.

To facilitate legal recognition mechanism, the procedures applied in the social forestry scheme can be applied. The ministry has the main mandate but can delegate if local government has expressly committed in the work plan and budget for ICCAs recognition at the provincial, district/city level.

Legal products issued to recognize ICCAs are by local head regulations either by the governors and regents/mayors.



### 11.3. Possible Legal Opportunities in the Future

Currently, the government is pushing for the implementation of agrarian reform and social forestry. In the context of this momentum, ICCAs or the recognition and protection of adat peoples and their territories can use these opportunities.

In September, the government established a Presidential Regulation (Perpres) No. 86 of 2018 concerning Agrarian Reform. There are 7 objectives of agrarian reform that are accommodated in the Perpres, namely:

- a. reduce the imbalance of land ownership and ownership in order to create justice.
- b. handle agrarian disputes and conflicts.
- c. create a source of prosperity and agrarian-based community welfare through regulation of ownership, ownership, land use and function.
- d. create jobs to reduce poverty.
- e. improve people's access to economic resources.
- f. increase food security and sovereignty.
- g. improve and maintain the quality of the environment.

Another opportunity for this Perpres is the arrangement of handling mechanisms for agrarian disputes and conflicts. The implementation is based on the principle of legal certainty and social justice towards related parties. Handling disputes is facilitated by the Agrarian Reform Task Force in stages.

Every stakeholder is necessary to be involved in the process of updating regulations, policies and institutions. They are mainly the government, adat and local communities, business practitioners, academics and Non-Government Organizations. The involvement of each stakeholder makes it easy to find equality points and solutions that allow conflicts or disputes resolution.

## 12. Case Studies

### 12.1. ICCAs Practices in Indonesia

Given the vast territory in Indonesia and quite a lot of cases related to adat peoples and ICCAs practices, this case study will be divided into 5 regions, namely Java-Bali-Nusa Tenggara, Sumatra, Kalimantan, Sulawesi, and Maluku-Papua.

Basically, the adat community has long practiced conservation by protecting forests, rivers, coastal areas and other natural resources. Local wisdom to keep nature is handed down over generations. For most indigenous people, forests are an inseparable part of nature and themselves, so that there are adat norms that must be obeyed by the community to maintain the balance of the ecosystem. In several regions in Indonesia, conservation practices carried out by indigenous peoples have been accommodated through the issuance of regulations and government decisions that recognize this practice. The following is an overview of the conservation management practices of indigenous peoples.

#### a. Java-Bali and Nusa Tenggara Region

In Java region, there are Kasepuhan adat law communities that have local knowledge and traditional wisdom in managing their natural resources. Farming or "*ngahuma*" is the main livelihood for the people of Kasepuhan. Their existence as a whole social unit focuses on the ritual procedures in the fields. The pattern developed is the system of planting rice with local rice types with a planting period of once a year. In general, their field is not far from the settlement. Plants in the field are usually secondary crops, including cayenne pepper, chili, mustard greens, cassava, sweet potatoes, and corn. Farming among Kasepuhan residents is no longer the only main farming method. Some of them have worked on rice farming systems. However, farming is still a compulsory social activity because all forms of ceremonies rest on the ceremony of planting rice in the fields.<sup>60</sup>

---

<sup>60</sup> Kusnaka Adimihardja, 1992, Kasepuhan yang Tumbuh di Atas yang Luruh: Pengelolaan Lingkungan secara Tradisional di Kawasan Gunung Halimun Jawa Barat, Tarsito, Bandung, page 5.



For the farming community as shown by the people of Kasepuhan, forest is the only source of life. In order for life to continue, forest preservation must be maintained. The concept of forest among the Kasepuhan residents is in line with the classification based on their knowledge system about the forest which is the source of their livelihood. They know three types of forests<sup>61</sup>, namely:

- 1) *leuweng kolot* (ancient forest) or they also call it *leuweng geledegan*, an old forest which is a dense forest overgrown with various types of large and small trees (*geledegan*). The characteristics of this type of forest are that the trees are lush, very high density, and various types of animals still live within.
- 2) *leuweng sampalan*, which can be exploited widely by humans. In this type of forest, people may open fields, graze livestock (buffalo), collect firewood, and so on. This type of forest is also called '*Leuweng bukaan/ open forest*'. This type of forest is located around residential areas.
- 3) *leuweng titipan* is a forest recognized by all Kasepuhan residents as sacred forest. This type of forest should not be exploited by anyone without the permission of the elders. Sustainability must be maintained. The use of these forests is possible if messages have been received from their ancestors through the elders. Among the residents of Kasepuhan, Gunung Ciawitali and Gunung Girang Cibareno are believed as *leuweng titipan*.

Lebak Regulation No. 8 of 2015 concerning Recognition, Protection and Empowerment of the Kasepuhan Adat Law Community recognizes the existence of the Kasepuhan adat territories consisting of *Leuweung kolot /tutupan/ geledegan/ paniisan*, *Leuweung titipan/ cawisan*; and *Leuweung bukaan/sampalan/ garapan*. *Leuweung Kolot*, also known as *Leuweung Tutupan*, is an adat area that is based on adat law is maintained as an environmental conservation area. Whereas *Leuweung Titipan or Cawisan* based on adat law is maintained as a reserve area for soil and natural resources.

The regulation also stipulates the existence of a traditional Kasepuhan institution which has the duty to carrying out adat law in the Kasepuhan area. This adat institutions are led by the the Chief Elder. It is this traditional institution that will give adat sanctions if there are violations in *Leuweung kolot/tutupan/geledegan/ paniisan* and *Leuweung titipan/ cawisan*.

A number of researches have shown that conservation practices carried out by adat law communities are friendly and adaptive to natural conditions because they are generated from a process of interaction carried out over generations. One of them is the study of the community's adat law conservation area carried out by Marcia Langton, et al (2005). Hunting for adat law communities does not only fulfill their basic needs, but most importantly relates to their relationship with the Creator and social relations. During hunting, they carry out local values and communicate with fellow members. This term is different with the concept of hunting and gathering in the western community that emphasizes more to the fulfillment of clothes and food. For the adat law community, conservation they have carried out has these functions; (1) ensure food sovereignty; (2) maintain local wisdom; and (3) maintain economics independence and local politic.<sup>62</sup>

## **b. Kalimantan Region**

Kalimantan is identical to the Dayak tribe. Dayak tribe is synonymous with forest. Forest utilization is one of the rooted traits in their life, culture and customs since their ancestors. The Dayak Kenyah community, for example, recognizes conservation and utilization of natural resources through *tana' ulen*. *Tana'* means land, *ulen* means rights, property. In a narrow sense, *tana' ulen* is the term to refer to something that has been considered as property or has been owned and has limited use and access and is considered as saving. Broadly speaking, the understanding of *tana' ulen* is the area of forest that is used as adat protected forest and owned. The management and utilization are also arranged together so that it remains sustainable for the next generation.<sup>63</sup>

---

<sup>61</sup> Adimihardja, *Op.Cit.*, page 120

<sup>62</sup> Dahniar Andriani, "Urgensi Areal Kelola Hak Atas Akses dan Pemanfaatan Spesies untuk Perburuan Tradisional, Ritual dan Agama", ICCAs Indonesia, page 15.

<sup>63</sup> "Inilah Tana' Ulen Masyarakat Adat Dayak Kenyah", <http://iccas.or.id/dokumentasi-iccas/suku-dayak-kenyah/>, accessed at 14 September 2018.



In general, *tana' ulen* cannot be opened for fields. The area ranges from 3,000 to 12,000 hectares. Tana' ulen Nggeng River even reaches to 11,000 hectares. The area lies at an altitude of 400-1,500 m and is a very good hunting site. There are a lot of logs in addition to many non-timber forest products. This area is also important because of the history of adat peoples and there are many megalithic graves, evidences that this area has been inhabited and controlled by their ancestors for over 400 years.<sup>64</sup>

Tana' ulen is usually a forest area rich in natural resources such as rattan (*Calamus spp*), sang (*Licuala sp*), logs for construction, fish and bush meats. All are natural resources with high economic value and benefiting for the community. The oral stories over generations said that the emergence of tana' ulen as a forest management practice in the Dayak Kenyah community was related to the customs and power of the nobles (*paren*). Villages and the nobles in the Bahau and the Pujungan River in the past always had an area or set aside an area within their village area as *tana' ulen*.<sup>65</sup>

In 2012, Malinau District Regulation No. 10 of 2012 was enacted which regulates comprehensively everything related to the position of adat law communities, the rights of adat peoples, institutions that take care of adat law communities, the processes and forms of legal recognition, dispute resolution as well as the responsibility of local government in the Malinau District area. This has a positive impact and supports conservation efforts of natural resources in Malinau, particularly in the indigenous Dayak tribal areas.

This Malinau Local Regulation also regulates the adat law community in Malinau Regency as a legal subject with inherent and originating rights. In its position as the legal subject of the adat law community in Malinau Regency, they have the authority to carry out legal acts relating to their rights, including rights over land, territory and natural resources within their adat territories.<sup>66</sup> Affirmation of adat law communities as legal subjects in relation to the rights and obligations is inherent in them especially the rights to their adat territories.

Adat law communities have the right over lands, territories and natural resources that they have or occupy for generations and/or obtained through other mechanisms.<sup>67</sup> Rights over land, territory and natural resources include the right to own, use, develop and control on the basis of hereditary ownership and/or other means. In addition to that, rights over land can be communal/collective and/or individual in nature in accordance with local adat law.

Efforts to protect indigenous territories are regulated in Article 8. Land rights that are communal/collective can't be transferred to other parties whereas rights to individually owned land can only be transferred in accordance with the requirements and processes determined by adat law. The use of communal/collective land and individual land within adat territories by other parties can only be done through a mechanism of joint decision making based on adat law.

Therefore, if there is communal/collective land that will be used by other parties outside the adat community, then the related adat community must conduct *musyawarah* first to make a decision whether the communal/collective land can be utilized by other parties outside their community. Such *musyawarah* is also needed if the individual lands owned by members of the adat community will be utilized by other parties outside them. This is because even though the land is owned individually, but control over the transition and changes in the status of individual land rights as member of adat community remain in the adat *musyawarah*.

### c. Maluku-Papua Region

Located on Haruku Island, Central Maluku Regency, there is an adat community referred as the Haruku Negeri (adat territory) Adat Community. Most of the people are farmers and fishermen because they live on the coast and small islands.

---

<sup>64</sup> Ibid

<sup>65</sup> Ibid

<sup>66</sup> Article 5 Local Regulation of Malinau District No. 10 of 2012

<sup>67</sup> Pasal 7 ayat (1) Perda Kab. Malinau No. 10 Tahun 2012



Adat law which is still alive until now and applied in adat law community of Maluku, especially Central Maluku, is known as *Sasi law*. The law of *sasi* is an adat law in relation to the prohibition of taking, either forest products or marine products within a certain period of time determined by the local government. The *sasi* law has become part of the Maluku way of life. This tradition is intended not only to preserve natural environment, but also as a form or way for Maluku people to maintain the productivity of agricultural and marine products. *Sasi* is also a protection measure for continuation of their economy and ecosystem of living things on the sea and on land, so that damage to the environment will not occur or decrease.<sup>68</sup>

According to Pattiro's research, the implementation of *Sasi Laut* (marine *sasi*) is able to maintain the sustainability of fish biomass. One example is *Sasi Ikan Lompa*, that is able to maintain the availability of *lompa* fish which is believed to be a heirloom food in Haruku *Negeri*/adat territory. In addition to that, the implementation of *Sasi Ikan Lompa* also teaches the value of not being selfish and considering the value of social inclusion. This can be seen from the fish distribution system of when harvesting (open *sasi*). Widows and orphans are given more shares than the general public. From an economic point of view, the results of *Sasi Laut* also become a source of income for the *Negeri* to carry out development.

The implementation of *Sasi* in several *negeri* in Central Maluku continued to be carried out due to the role of adat *kewang* institutions. In general, *kewang* plays a role in overseeing the implementation of *Sasi*. However, every *negeri* has a *Kewang* with different details of role. One example is Negeri Haruku. *Kewang* has a role in holding adat meetings every Friday, regulating the economic life of the community, supervising the implementation of *Sasi* regulations, giving sanctions to violators of *Sasi*, protecting and maintaining marine resources before opening *Sasi*, and reporting unresolved matters at the adat meeting to the king. Apart from *kewang*, *Sasi* supervision also involves the role of adat communities so that when there are violators, other members of the adat communities report to *kewang*. The good enforcement of *Sasi Laut* in Negeri Haruku is also supported by good coordination between *Kewang* and the Negeri government.<sup>69</sup>

In the context of sustainable natural resource management, the people of Negeri Haruku also have local wisdom, among others *nanaku*. *Nanaku* is the knowledge of the community to determine the fishing ground. The location is referred to as *saaru* or *rep*. The terms have been around since the ancestors, there are also terms such as *sair*, *rurete*, *oha lau* (long), *oha dara*, *pasal*, *wamarima* and *rutial*. The pattern of land ownership in Haruku is still using the adat system. Spatial planning according to adat rules or types of land that are managed by adat, namely:<sup>70</sup>

- 1) *Tanah dati*, this land is managed by a family. Female offspring can't manage land in Dati hamlet as the rule of management. They can only get a share of plantation and/or agricultural produce.
- 2) *Tanah pusaka* (Heritage land), which is managed and belongs to the clan.
- 3) Public land whose management rights are held by the *negeri*, usually include lands in prone areas and are used for conservation purposes. There are rules of not using land with certain slopes for farming.

Meanwhile, the land of Papua is known for its natural plethora of both flora and fauna. Tambrauw Regency is one of the districts or even the first district in Papua which has the status of a Conservation District through the Local Regulation of 2017 which accommodates community managed conservation areas, one of which is a sacred forest within adat territories. Their adat territories consist of adat forests, and other areas or places that are used as part of adat territories by Indigenous Peoples. The conservation area of adat law communities is managed by them, and can be within the forest conservation area, coastal and marine conservation areas, and/or land and waters. In terms of management, the government and local governments facilitate adat law communities to be actively involved in conservation activities based on local wisdom through the establishment

<sup>69</sup> "Sasi laut: Peran Masyarakat Adat dalam Pengelolaan Sumber Daya Kelautan di Maluku Tengah", <http://fwatcher.fwi.or.id/sasi-laut-peran-masyarakat-adat-dalam-pengelolaan-sumber-daya-kelautan-di-maluku-tengah/> accessed at 13 Sept 2018.

<sup>70</sup> "Kewang, Kisah Laut dan Ikan Lompa", <http://iccas.or.id/dokumentasi-iccas/haruku-maluku/>, accessed on 13 Sept 2018.



of conservation areas for adat law communities and managed by them. This conservation practice of indigenous and tribal peoples in Tambrau District is one of the portraits of many districts and adat peoples in Papua.

#### d. Sulawesi Region

In Sulawesi region, there are Wana Posangke adat communities in Bungku Utara Subdistrict, North Morowali District. In the pattern of land and forest use, they are familiar with the *Kapali* or prohibited forests that may not be used or managed.

Wana Posangke people still maintains their traditional wisdom which is inherited and guarded over generations, including a model of good food security. Pitopang's (2008) research shows that Wana people naturally cross breed rice varieties by always replacing varieties grown with seeds from other villages. Other local wisdom, which still exists and continues to be practiced today is the knowledge of traditional medicine which ingredients are mostly from the forest. Some well-known medical practices are using *goraka* to treat people who suffer from diarrhea and vomiting, *andolia* as medicine for abdominal pain, *tofu mioli* for ulcers, and *kukul* as medicine to treat a wound.<sup>71</sup>

In November 26, 2012, Morowali Head of District approved Local Regulation (Perda) of Morowali District No. 13 of 2012 on the Recognition and Protection of Wana Adat People. Four years later, the Ministry of Environment and Forestry Decree No. SK.6747/MENLHK-PSKL/KUM.1.12/2016 was enacted. It is about the Determination of Wana Posangke Forest covering an area of 4,660 hectares in Bungku Utara Subdistrict, North Morowali District, Central Sulawesi. An area of 3,988 hectares from the Morowali Nature Reserve area and an area of 672 hectares from the production forest area were designated as private forest for the Wana Posangke adat community with the main function for conservation.

Not only Morowali Utara District, conservation practices of adat peoples and other local communities in Central Sulawesi are still common to be found in the community. Sigi District and its surroundings, for example, is known with *Ombo*. *Ombo* is a wisdom in maintaining the conservation within settlement area, protecting certain animals and plants, maintaining forest to keep intact, marine conservation, conservation of springs and watersheds, and protecting community lands or adat land.<sup>72</sup> *Ombo* in the Kaili adat rules is referred as *Pekanaolu Mpangale*. The word *pekanaolu* means conservation and the word *mpangale* means forest. Therefore, *pekanaolu mpangale* can be translated as forest conservation. The ban imposed in *Ombo* is a ban on taking something and destroying forests in the Kaili adat territory. The prohibition on taking something in the forest referred to everything within the forest, such as plants and animals. They should not be taken for personal gain. In case of violation, it will tilt the balance of the forest. The prohibition on damaging the forest referred to here is a prohibition to carry out activities that can harm ecosystems in the forest, such as throwing plastic waste carelessly in the forest, logging illegally or without permission from traditional leaders. Sanction given for violators is *samporesi tovau*.<sup>73</sup>

#### e. Sumatera Region

The tradition of wise forests management has been practiced for generations in Acehnese society. This was carried out through the *uteun* adat institution led by *Commander Uteun* (Taqwaddin, 2008). There was once a false view from some people (parties) who stated that Acehnese adat were obsolete, outdated, had not been in accordance with the development of the community and hampered progress, thus didn't need to be maintained. Actually, such opinion is due to their ignorance and lack of understanding of Aceh's adat. In reality there are still many people who don't know yet that the Acehnese people in the past, present, and future are still very much tied to their adat life patterns and customs in their daily lives.<sup>74</sup>

<sup>71</sup> "Tau Taa Wana Posangke, Sulawesi Tengah", <https://huma.or.id/penetapan-hutan-adat-demi-terwujudnya-kesejahteraan-masyarakat/rangkaian-kegiatan/tau-taa-wana-posangke-sulawesi-tengah>, accessed on 13 September 2018.

<sup>72</sup> I Wayan Nitayadnya, "Ombo Sebagai Wujud Kearifan Lokal Masyarakat Kaili Dalam Menjaga Harmonisasi Alam", Jurnal Walasuji Vol. 5 No. 1, June 2014, page 131.

<sup>73</sup> *Ibid.* I Wayan Nitayadnya, p. 139.

<sup>74</sup> Evi Apriana, "Adat Aceh Dalam Praktek Konservasi Lingkungan", Jurnal Serambi Akademika, Vol III, No. 2. November 2015, p. 116.



On Aceh presence's conservation practices, there are not only forest conservation but also several other conservation activities, such as plant conservation, agriculture, and plantations.<sup>75</sup> In addition to that, there are adat forests, adat for rice farming, gardening/*meawampoih*, adat farming, and adat for harvesting crops. Out of many conservation practices carried out by the people in Aceh, forest management and farming practices based on adat rules in this paper take, include:

The tradition of forests wise management has been practiced for generations in Acehnese society through adat forests (adat *glee*). Adat *glee* is a regulation in forestry, in a forest that has been/hasn't been processed by the people. The adat regulates (1) the person in charge, referred as *panglima huteun/uteun pawang* (forest handler)/*panglima glee*; (2) the person in charge of conservation of the river is referred as the *panglima krueng*; (3) honey-producing trees in the forest may not be cut down; (4) banyan trees may not be cut down because they are capable of storing water; (5) cutting down trees near springs are prohibited for fear of losing water; (6) cutting down trees at a distance of 100 m on the left and right edges of the river are prohibited because it will cause the river to dry; (7) utilizing the wood only as needed; (8) planting rice using natural fertilizers (organic and compost); (9) sowing beneficial tree seeds in the forest such as durian, rambutan, mangosteen while maintaining the balance of the ecosystem; (10) safeguarding forests to protect water sources for human life, wildlife and forest plants; (11) soldiers participate in protecting the forest and the community must not cut down the forest; and (12) wood may only be taken from fallen trees, used for firewood, houses- scale and not for commercial use.

While adat for farming (*meuladang*) is the regulation of opening plantation land outside the village, namely in the mountains and flat land on the edge of the forest. The land is opened to be used for perennials. The adat regulates, among others: (1) the person in charge who is referred as *peutua ladang*; (2) clearing lands for perennials (coffee, nutmeg, cloves), while waiting for the plants to be productive, the land will be co-planted with rice, cassava, yams, and vegetables; and (3) using rotating turns system. People who plant *kupi* (coffee) which can be harvested after 3 years, then plant intermediary plants (vegetables) or annual crops (eggplant, patchouli, nutmeg, *redep raya*).

Local wisdom is a system in the order of social, political, cultural, economic, and environmental life that lives in the midst of the local community.<sup>76</sup> The existence of adat peoples in Riau from day to day is increasingly alarming. This community is a community that is very prone and vulnerable to change. The adat law community depends heavily on the forest, as a place to fulfill their needs. These communities are not separated from their lives as shifting farmers in the forest. In the forest they can actually sustain themselves, because various fauna and flora and other natural resources such as water and land for their survival are provided there. Today, the forest where they live is diminishing. The forest has been converted into conglomerate plantation land and oil exploitation over their settlements. The loss of this forest has been an extraordinary environmental change. For example, the flora and fauna, water and forest products as their sources of life are currently very limited.

Traditional Malays who are essentially living as fishermen and farmers are very friendly with their natural environment. Nature is not only used as a means of earning a living but also related to culture and beliefs. Malay elders say that their lives are very dependent on nature. In adat it is known that there are several natural divisions, especially the distribution of land forests. There is a nature that can be owned privately, there is one that is reserved for one tribe and people, there are also those intended for the kingdom, *negeri*, the wider community, and so on. Forests and land are also determined according to adat, there are uses for personal interests and common interests. This is reflected in protected forests called "*rimba larangan*", "*rimba kepungan*", atau "*kepungan sialang*", and so forth.<sup>77</sup>

<sup>75</sup> *Ibid.* Evi Apriana, p. 167 & 169.

<sup>76</sup> Husni Thamrin, "Kearifan Lokal dalam Pelestarian Lingkungan (The Lokal Wisdom in Enviromental Sustainable), Jurnal Kutubkhanah, Vol. 16 No. 1, January-June 2013, p. 46-47.

<sup>77</sup> *Ibid.* Husni Thamrin, p. 49.



## 12.1. Practice of Legal Recognition by the Local Government

There are 225 local legal products concerning Adat Law Communities, which regulate adat institutions, adat villages/kampooings, adat forests, adat territories, communal rights and customary rights of land, conservation partnerships between adat communities and concession holders. A total of 54 local legal products concerning adat law communities spread in the Maluku and Papua regions, namely Papua, West Papua, Maluku and North Maluku Provinces; and Sulawesi region, namely the provinces of South Sulawesi, Central Sulawesi, West Sulawesi, Southeast Sulawesi, and Gorontalo Province. While in North Sulawesi Province there have not been identified local legal products regarding adat law communities. Based on the results of the interim review, local legal products from North Sulawesi are not all relevant to this study.

### a) Maluku-Papua Region

In Maluku-Papua region, several local regulations relating to ICCAs have varied regulatory material. Some of these regulations govern general provisions concerning the rights and obligations of adat law communities in managing conservation areas, conservation forests, and procedures for managing conservation areas. For example, the Perdasus No. 20 of 2008 concerning Adat Justice in Papua which recognizes the existence of customary rights of land as a communal right owned by certain adat law communities over a certain area where they live, which includes the right to use land, forest and water and its contents in accordance with regulations and legislation.<sup>78</sup> Whereas the Perdasus No. 21 of 2008 concerning Sustainable Forest Management in Papua Province, among others, regulates the obligations of adat law communities to protect forests and conserve nature in adat territories; government services to adat law communities and forest users through FMU; strategy for developing forest management; and distribution of forest areas according to the functions of conservation, protection and production. While the Perdasus No. 22 of 2008 concerning the Protection and Management of Natural Resources of the Papuan Adat Law Community regulates the rights of adat communities to obtain compensation in accordance with written agreements contained in authentic deeds for the reduction or loss of access of adat law communities to their territories as they are designated as conservation areas or for propose adat forest in the region.<sup>79</sup> Adat law communities that have the authority to regulate the management of customary rights to land are obliged to improve the welfare of their citizens by optimally utilizing customary land rights over land<sup>80</sup> and is obliged to maintain environmental sustainability of the land. Perdasus No. 23 of 2008 concerning Customary Rights of Land of Adat Law Communities and Individual Rights of Adat Law Communities over land also regulates the authority of adat peoples in managing customary rights of land to improve the welfare of their people.<sup>81</sup>

The rights of adat law communities are also regulated in the District Regulation of Jayapura No. 8 of 2016 concerning Adat Village which states that the rights of adat law peoples are over oceans, land, air and all of the contents therein as long as there is no transfer of rights within. Meanwhile the Regent Decree of Jayapura No. 319 of 2014 concerning Recognition and Protection of Adat Law Communities in Jayapura District regulates the protection of customary rights which include, homeland, air, forests and natural resources contained therein.

Local regulations in the Maluku-Papua region that are more specifically regulate the subjects and objects related to the KKMA among others are the Regent Decree of Jayapura Number 320 of 2014 concerning the Establishment of 36 Adat Villages in Jayapura District; Regent Decree of Manokwari No. 112 /KPTS/BUP-MKW/2016 concerning Determination of Communal Rights over Land of the Doreri Adat Law Community on Mansinam Island, Mansinam Kampong, East Manokwari District of West Papua Province Area extending to 3,943,298 m<sup>2</sup> and the spatial structure and patterns on communal land; and Local Regulation of Sorong District Number 10 of 2017 concerning Recognition and Protection of Moi Adat Law Communities in Sorong District. Ownership and utilization of customary land in the territory of the Moi Adat Law Community are communal or joint property and private managed land.

<sup>78</sup> Article 1 number 14, Perdasus 20 of 2008.

<sup>79</sup> Article 7 letter g, Perdasus 22 of 2008.

<sup>80</sup> Article 13 paragraph (1), Perdasus 23 of 2008.

<sup>81</sup> Article 13 paragraph (1), Perdasus 23 of 2008.



Local Regulation of Tamberauw of 2017 concerning Adat Peoples in Tamberauw District recognizes adat territories in Tamberauw in which adat forests, and areas or places which are considered sacred by the local adat law community. When some part or all of the adat territory has been designated or determined by the government as a forest area, then the adat territory can be designated as adat forest. When the adat territories have been functioned by the adat peoples as settlements, public facilities or social facilities, the adat territory is excluded from the forest area. In addition to that, the Regent Decree of Jayapura No. 319 of 2014 concerning Recognition and Protection of Adat Law Communities in Jayapura District recognizes nine adat law communities in Jayapura District and states the need for protection of customary rights, including: land, water, air, forests and natural resources contained therein.

The regulation that regulates the institutions that support the realization of KKMA is the Regent Decree of Tamberauw No. 800/138/2017 concerning the Establishment of a Working Group to Accelerate the Establishment of Tamberauw as a Conservation and Adat Peoples District; West Papua Governor Decree Number 522/105/6/2017 concerning the Establishment of the Working Group for the Acceleration of Social Forestry of West Papua Province in 2017-2019.

Regulations in the Maluku-Papua region which explicitly regulate the conservation area of adat peoples are the District Regulation of Tamberauw of 2017 concerning Tamberauw District as a conservation district by stating that the conservation area managed by the adat peoples is a conservation area within the territory of adat law community and managed based on local wisdom determined by the Regent/Head of District.

#### **b) Sulawesi Region**

In Sulawesi region there are a number of regulations in relation to KKMA, however they only regulate general understanding of adat peoples, adat territories, adat institutions; and the driving force for establishing adat law communities. Governor Regulation of Central Sulawesi Number 42 of 2013 dated May 29, 2013 concerning Adat Justice Guidelines in Central Sulawesi states that Adat Law Communities are a group of people who have traditionally settled in certain geographical regions in Indonesia due to ties to ancestral origins, strong relations with the land, territory, natural resources and have adat government institutions, and adat law in their territories.<sup>82</sup> Whereas District Regulation of Sigi No. 15 of 2014 dated December 4, 2014 concerning Empowerment and Protection of Adat Law Communities states that adat territories controlled by adat law communities over generations that have clear and definite boundaries are recognized by the government and can be used by the community according to customs and habits.<sup>83</sup> The regulation governing the driving institution for the establishment of adat forest peoples is the Regent Decree of Sigi Number 189.1-280 of 2015 dated May 18, 2015 regulating the establishment and working procedures of the Adat Law Community Committee in encouraging the establishment of adat law communities; the last is Regional Regulation of Gorontalo Province Number 2 of 2016 concerning the Implementation of Adat Institutions.

Several other regulations in Sulawesi region regulate the recognition of certain adat law communities including the recognition and protection of their adat territories without mentioning their extent. For example the Regent Decree of Sigi Number 189.1-521 of 2015 concerning Recognition of To Kaili and To Kulawi Adat Law Communities in Sigi District; Local Regulation of Enrekang District Number 1 Year 2016 dated, February 19, 2016 concerning Guidelines for Recognition and Protection of Adat Law Communities in Enrekang District; Regent Decree of the Enrekang Number: 155 /KEP/II/2018 dated February 14, 2018 concerning Recognition of the "Marena" Adat Law Community; Local Regulation No. 4 of 2015 concerning the recognition, protection and empowerment of Moronene Hukaea Laea adat people in Bombana;

Some other regulations regulate the recognition of certain customary law communities, including adat territories, and their adat forests by mentioning the extent and division of functions. These regulations form the basis for listing adat territories of the adat communities into the revision of the District Spatial

<sup>82</sup> Article 1 number 3, Governor Regulation of Central Sulawesi Number 42 of 2013.

<sup>83</sup> Article 19 paragraph (1), Local Regulation of Sigi District Number 15 of 2014.



Planning (RTRW). These regulations include: Regent Decree of Sigi Number 189-014 of 2017 concerning Recognition and Protection of Kulawi Adat Law Community in Marena, Kulawi Subdistrict, Sigi District; Regent Regulations of Sigi Number 189-595 of 2017 dated, 5 December 2017 concerning Recognition and Protection of To Lindu Adat Law Communities; Regent Regulations of Sigi Number 189-595 of 2017 dated 5 December 2017 concerning Recognition and Protection of To Lindu Adat Law Communities; Regent Decree of North Luwu Number 300 of 2004 concerning Recognition of the Existence of Seko Adat Peoples; Regional Regulation of Bulukumba District Number 9 of 2015 Concerning the Inauguration, Recognition and Protection of Ammatoa Kajang Adat Law Communities; Regent Decree of Mamuju Number 188.45/124/KPTS/ I/ 2018 dated, 22 January 2018 concerning Recognition and Protection of Bela Adat Law Communities in Tapalang Subdistrict, Mamuju District; Regent Decree of Mamuju Number 188.45/122 KPTS/I/2018 concerning Recognition and Protection of Kopeang Adat Law Community in Tapalang Subdistrict, Mamuju District; Regent Decree of Mamuju Number 188.45/121/KPTS/I/2018 concerning Recognition and Protection of Makkaliki Customary Law Communities in Tapalang Subdistrict, Mamuju District; Regent Decree of Mamuju Number 188.45/122/KPTS/I/2018 concerning Recognition and Protection of Rantedoda Adat Law Community in Tapalang Subdistrict, Mamuju District.

#### c) Java-Bali-Nusra Region

For Java-Bali-Nusra Region, local regulations relating to KKMA contain varied regulatory material. The Regent Decree of Lebak Number 430/Kep.298/ Disdikbud/2013 dated August 22, 2013, only stated that the existence of Adat Peoples in the Banten Kidul Adat Union Territories in Lebak District amounted to 17 *Kaolotan*. Some other regulations, namely East Manggarai Regulation No. 1 of 2018, only contain statement that the East Manggarai adat community is a legal subject and as a legal subject of the East Manggarai customary community, they have rights and obligations, including rights to adat land and territories.

Some other regulations contain the recognition and protection of certain adat law communities, the extent of their adat territories, adat territorial boundaries, rights and obligations (including sustainable use of forests); and *ulayat* land; as well as the procedures of adat law communities in managing their adat territories in the distribution or zoning based on adat law. Among others are forests with various functions, for example: District Regulation of Ciamis Number 15 Year 2016 dated November 29, 2016 concerning Recognition and Protection of Kuta Subvillage Adat Law Communities; Local Regulation Number 8 of 2015 dated 15 December 2015 concerning Recognition, Protection and Empowerment of the Kasepuhan Adat Law Community;

There are also regulations that specifically regulate protected forests in the area of customary rights, namely the Governor Decree of the Head of the West Java Region Number 203/ BV/Pem/SK/1968 on 19 August 1968 concerning the Determination of the "*Larangan*" Status of Forest of Kanekes Village, Baduy area as "Absolute Protection Forest" in the West Java Province Customary Rights Area<sup>84</sup> and also regulations specifically regulating customary rights such as Local Regulation Number 32 of 2001 dated August 13, 2001 concerning the Protection of Customary Rights of the Baduy Community.

#### d) Sumatra Region

In Sumatra Region there are local regulations which generally regulate the ownership and management of *mukim* adat forest, namely Qanun Mukim Lango Number 1 Year 2014 dated 13 November 2014 M or 20 Muharram 1436 H concerning Ownership and Management of *Mukim* Adat Forests.

Some other regulations stipulate the boundaries of certain *mukim* territories; total area of the *mukim* area; the distribution and utilization of *mukim* area including adat-based forest utilization along with their respective areas, as stated in Regent Decree of Pidie Number 140/342/KEP.02/2016 dated 11 July 2016 M or 6 Shawwal 1437 H concerning Mukim Paloh Regional Boundary Determination of Padang Tiji Subdistrict,

<sup>84</sup> See explanation of Perda Number 32 of 2001.



Pidie District; Regent Decree of Pidie No. 140/343/KEP.02/2016 concerning the determination of the boundaries of the Mukim Kunyet area, Padang Tiji Subdistrict, Pidie District; Regent Decree of Pidie Number 140/344/KEP.02/2016 concerning the Determination of Mukim Beungga Area of Pidie Subdistrict, Tangse District that establishes the boundaries of the mukim Beungga region of Tangse Subdistrict;

Some other regulations specifically regulate the ownership and management of mukim adat forests; utilization types of mukim adat forests (protection, production, community plantations) and the extent of each type of forest utilization; and procedures for utilization. These regulations include the Qanun Mukim Kunyet Number 1 Year 2014 dated 15 December 2014 M or 22 Shafar 1436 H concerning Ownership and Management of the Mukim Adat Forest; Qanun Mukim Paloh Number 1 Year 2015 dated 1 June 2015 M or 14 Syakban 1436 H concerning Ownership and Management of the Mukim adat forest;

Determination of certain adat forests and their extent is regulated in the Governor Decree of West Java Level I Number 203/BV/Pem/SK/1968 dated August 19, 1968 concerning Determination of *Larangan* (prohibited) Forest Status of Baduy Kanekes Village as "Absolute Protection Forest" in West Java Province Customary Rights Area; SK.6741/MENLHK-PSKL/KUM.1/12/2016 which stipulates Marga Serampas Adat Forest in Rantau Kermas Village, Jangkat Subdistrict; Regent Decree of KDH TK. II Kerinci No. 176 of 1992 dated November 6, 1992 concerning the establishment of adat forests in Keluru Village, Keliling Danau Sub-District located in Other Use Areas (APL); Regent Decree of KDH TK II Kerinci No. 226 of 1993 dated 7 December 1993 concerning the stipulation of Nenek Limo Hiang, Nenek Empat Betung Kuning and Muaro Air Duo Adat Forests, Sitingjau Laut Subdistrict; Regent Decree of KDH TK II Kerinci No. 96/1994 dated May 10, 1994 concerning the establishment of Hulu Air Lempur, Lekuk 50 Tumbi Adat Forests, Gunung Raya District; Regent Decree of Kerinci No. 522.21/Kep. 435/2011 on November 15, 2011 concerning the establishment of the Sembahyang Hill and Padun Gelanggang Adat Forests of Airtjerjun Village, Siulak Subdistrict; Regent Decree of Kerinci No. 522.21/Kep. 437/2011 on November 15, 2011 concerning the establishment of the Bukit Tinggai Adat Forest, Sungai Deras Village, Air Hangat Timur Subdistrict; Regent Decree of Kerinci No. 522.21/Kep. 181/2013 dated July 25, 2013 regarding the establishment of the Tigo Luhah Kemantan Adat Forest, Air Hangat Timur Subdistrict and Tigo Luhah Kemantan Adat Forest, Kemantan, Air Hangat Timur Subdistrict; Decree No.6737/ MENLHK-PSKL/ KUM.1/12/12 2016 stipulates the Customary Forest of Sembahyang Hill and Padun Hill Arena in Airtjerjun Village of Siulak Subdistrict; Decree No.6738/MENLHK-PSKL/KUM.1/12/2016 stipulates Bukit Tinggai Adat Forest in Sungai Deras Village, Air Hangat Subdistrict; Decree No.6739/MENLHK-PSKL/KUM.1/12/2016 stipulates the Tigo Luhah Permenti Adat Forest in Pungut Mudik Village, Air Hangat Subdistrict; and Decree No. 6740/MENLHK-PSKL/KUM.1/12/2016 concerning stipulation of the Tigo Luhah Kemantan Adat Forest in the Air Hangat Timur Subdistrict; Regent Decree of Sarolangun Bangko No. 225 of 1993 dated June 15, 1993 concerning adat forests in Baru Village, Pangkalan Jambu Subdistrict; Regent Decree of Sarolangun No. 206 of 2010, dated April 21, 2010 concerning the Bukit Bulan "Batin Jo Pangulu" Adat Forest spread in 11 locations; Regent Decree of Surolangun No. 357/Bunhut/2014 concerning the Inauguration of Mengkadai Subvillage Adat Forests in Temenggung Village, Limun Subdistrict, namely Imbo *larangan sakti*, Imbo *larangan pematang kulim*; Regent Decree of Sarolangun No 356/Bunhut/2014 concerning Inauguration of the Imbo *Larangan* Forest Area of Muaro Mensio and Benteng Tinggi Subvillage, Panca Karya Village, Limun Subdistrict is located in four locations; Regent Decree of Sarolangun No. 289 of 2015 concerning the Inauguration of Adat Forest Areas in Raden Anom Village; Regent Decree of Sarolangun Number 290 of 2015 concerning the Inauguration of Adat Forest Areas in Muaro Pemuat Village; Regent Decree of Sarolangun No. 291 of 2015 concerning Inauguration of Adat Forest Areas in Demang Village; Regent Decree of Bungo No. 1249 of 2002 dated July 16, 2002 concerning the establishment of adat forests in Batu Kerbau Subvillage, Pelepat Subdistrict, namely Batu Kerbau adat forest, Belukar Panjang Kampooong adat forest, Lubuk Tebat adat village forest, Batu Kerbau Kampooong protected forest, and Belukar Panjang Kampooong protected forest; Local Regulation of Bungo District No. 3 of 2006, dated October 17, 2006 which stipulates the adat forest of Baru Pelepat Subvillage, Pelepat Subdistrict; Regent Decree of Bungo No. 48/Hutbun of 2009 dated 10 February 2009 which stipulates Adat Forest of Bukit Bujang, Senamat Ulu Hamlet, Bathin III Ulu District; Regent Decree of Bungo No. 528/Hutbun of 2010 concerning the establishment of the Rimbo Bulim Indigenous Forest of the Bathin II Batang Uleh Community, Rambah Hamlet, Tebing Tinggi Uleh, Bukit Kemang & Renah Jelm Tanah Tumbuh Sub-District.



There are also local laws that regulate general procedures for utilizing natural resources, such as Qanun Mukim Beungga Number 01 Year 2014 dated 17 March 2014 M or 15 Jumadil Awal 1435 H concerning Natural Resource Management for the protection of the Mukim community groups' interests by applying natural resources management principles that are able to harmonize social, ecological and economic functions.

While several other regulations govern the Recognition and Protection of Certain Adat Law Communities; system and procedure for land acquisition and utilization; and regional boundaries; such as District Regulation of Merangin Number 8 of 2016 dated 17 July 2016 concerning Recognition and Protection of the Marga Serampas Adat Law Community; or adat forests in Baru Village, Pangkalan Jambu District through the Regent Decree of Sarolangun Bangko No. 225 of 1993 dated, June 15, 1993.

#### **d) Kalimantan Region**

Kalimantan Region also has various regulations that vary in content related to KKMA. Regent Decree of Malinau No. 189 of 2015 doesn't only acknowledge and protect the Punan Long Adiu community as adat law community in Malinau District, but also acknowledged certain areas of adat territory of the Punan Long Adiu adat community, the boundaries within territories, the division of land use in adat territories, and recognition of adat law and local wisdom as the basis for adat territorial management and dispute resolution. Regent Decree of Paser Number 413.3/KEP-268/2018 dated April 24, 2018 is likewise. It also regulates the Recognition and Protection of Mului Adat Law Communities in Paser District, an adat territory of the Mului Adat Law Community and its area. This regent's decree is the derivative of Article 5 paragraph (4) Regent Regulation of Paser Number 63 Year 2017 dated, December 20, 2017 concerning Guidelines for Identification, Verification and Determination of Adat Law Communities in Paser District and Regent Decree of Paser Number 189.1/KEP-460/2017 dated August 23, 2017 concerning Establishment of Committee for Adat Law Communities in Paser District.

Another regulation is District Regulation of Malinau Number 10 of 2012 that regulates comprehensively everything related to the position of adat law communities, the rights of adat peoples, institutions that take care of adat law communities, the processes and forms of legal recognition, dispute resolution and the responsibility of local government in Malinau District. This has a positive and supportive effect on conservation efforts to protect natural resources in Malinau. Regional Regulation of Malinau also regulates adat law community in Malinau District as a legal subject with inherent and originating rights. In its position as the legal subject of adat law community in Malinau District, it has the authority to carry out legal acts relating to adat rights, including rights over land, territory, and natural resources herein.

The protection of adat forests is explicitly regulated in the District Regulation of Kutai Barat Number 6 of 2014 which regulates 4 important points including: 1) Protection of adat forests; 2) Protection of historical sites; 3) Protection of flora and fauna; 4) Environmental protection.

Determination of adat forests and their extent is regulated in the Local Regulation of Kutai Barat District Number 9 of 2014 concerning the establishment of the Hemaq Pasoq and Hemaq Beniung areas as Adat Forests.<sup>85</sup> Hemaq Beniung Adat Forest locates in Juaq Asa kampoong, Barong Tongkok Sub-district Kutai Barat District, whereas Kekau Adat Forest locates in Muara Begai kampoong, Muara Lawa Subdistrict, Kutai Barat District.<sup>86</sup> This local regulation also regulates the rights and obligations of adat law communities to protect and conserve adat forests. Furthermore, this Perda also mandates the Forest Service of Kutai Barat District to supervise and facilitate the conservation of the Hemaq Pasoq and the Hemaq Beniung Adat Forests<sup>87</sup>, and to set punishment for any person or legal entities that carry out destructive activities and use adat forest land for personal or certain group's interests.<sup>88</sup>

---

<sup>85</sup> Article 2 District Regulation of Kutai Barat Number 9 of 2014

<sup>86</sup> Article 5 District Regulation of Kutai Barat Number 9 of 2014

<sup>87</sup> Article 12 District Regulation of Kutai Barat Number 9 of 2014

<sup>88</sup> Article 15 District Regulation of Kutai Barat Number 9 of 2014



Regulations regarding the management of coastal, marine and small islands in Kalimantan region are regulated in the Provincial Regulation of East Kalimantan Number 07 of 2009 concerning Management of Coastal, Marine and Small Islands Resources. In addition to arranging management plans for coastal areas, oceans and small islands through the preparation of Strategic Plans (RS) and Zoning Plans (RZ) including conservation zones, this Regional Regulation also regulates coastal borders and coastal conservation areas, fisheries reserves and the establishment of KKLD (conservation area).<sup>89</sup> This Perda also regulates environmental guarantees and supervision to planning and implementation of coastal area, oceans and small islands management.



<sup>89</sup> Article 16 of the Local Regulation of East Kalimantan Province Number 07 of 2009

## Section Three

### CLOSING

Recognition and respect for the existence and rights of adat peoples is a constitutional duty that must be carried out by the Government of Indonesia. However, in practice the implementation of government duties needs to be supported by all stakeholders so that recognition and respect for indigenous peoples can be effective.

This analysis was prepared to provide an overview of the legal, policy and institutional situation in Indonesia related to adat and local communities who are constitutionally having the same legal rights as other stakeholders. There is an opportunity for adat and local communities to be able to gain their rights, along with various opportunities and constraints.

This analysis is expected to be able to be a material for stakeholders to encourage the acceleration and improvement of the regulatory, policy and institutional framework into the future.



## References

### Books

- Badan Pusat Statistik Indonesia. 2018. Statistik Indonesia 2018. BPS-Statistics Indonesia, Jakarta;
- Dahniar Andriani. 2017. Urgensi Areal Kelola Hak Atas Akses dan Pemanfaatan Spesies untuk Perburuan Tradisional, Ritual dan Agama. ICCAs Indonesia. [http://iccas.or.id/wp-content/uploads/Tinjauan-kritis\\_Isi.pdf](http://iccas.or.id/wp-content/uploads/Tinjauan-kritis_Isi.pdf). Diakses pada tanggal 15 Oktober 2018;
- Direktorat Penelitian dan Pengembangan Komisi Pemberantasan Korupsi. 2018. Kajian Harmonisasi Undang-Undang di Bidang Sumber Daya Alam dan Lingkungan Hidup (SDA-LH). KPK, Jakarta;
- Epistema Institute. 2017. Pengakuan Hukum Terhadap Masyarakat Adat: Tren Produk Hukum Daerah dan Nasional Pascaputusan MK 35/PUU-X/2012. Epistema Institute, Jakarta;
- Firdaus, Asep Y, 2018, Panduan Praktis Penerapan Kebijakan Perhutanan Sosial: Kerangka Percetakan Reformasi Tenurial Kehutanan, Bogor-Indonesia, CIFOR.
- Kementerian Lingkungan Hidup dan Kehutanan. 2018. Statistik Lingkungan Hidup dan Kehutanan 2017. Kementerian LHK, Jakarta;
- Konsorsium Pembaruan Agraria (KPA). 2016. Catatan Akhir Tahun 2016: Liberalisasi Agraria Diperhebat, Reformasi Agraria Dibelokkan. KPA, 2016. <http://kpa.or.id/assets/uploads/files/publikasi/703f7-laporan-akhir-tahun-2016.pdf>. Diakses pada tanggal 15 Oktober 2018;
- Kusnaka Adimihardja. 1992. Kasepuhan yang Tumbuh di Atas yang Luruh: Pengelolaan Lingkungan secara Tradisional di Kawasan Gunung Halimun Jawa Barat. Tarsito. Bandung;
- LPEM UI. 2018. Indonesia Economic Outlook 2018. LPEM UI, Depok;
- Mustafa Abdullah. 1998. Aspek Hukum Penerapan KUHAP DI Perairan Indonesia dan Zona Ekonomi Eksklusif. BPHN, Jakarta;
- Posey, D.A. (K. Plenderleith, ed.). 2002. Kayapó Ethnoecology and Culture. Routledge, London and New York;
- R. Herlambang Perdana Wiratraman. 2007. Politik Hukum Amandemen Kelima UUD 1945. Position Paper pada Pertemuan Ahli Hukum Tata Negara Dengan Tema: “Memperkuat Kewenangan Dewan Perwakilan Daerah Melalui Perubahan Kelima UUD Negara Republik Indonesia 1945.” Diselenggarakan oleh Pusat Studi Konstitusi (PusKon) Universitas 45 Makassar dengan Dewan Perwakilan Daerah (DPD), Makassar. 29 Juni-1 Juli 2007;
- R. Herlambang Perdana Wiratraman. Hak-Hak Konstitusional Warga Negara Setelah Amandemen UUD 1945: Konsep, Pengaturan dan Dinamika Implementasi. Jurnal Hukum Panta Rei Vol. 1 No. 1. Desember 2007. Konsorsium Reformasi Hukum Nasional, Jakarta;
- Rikardo Simarmata. 2006. Pengakuan Hukum Terhadap Masyarakat Adat di Indonesia. Regional Initiative on Indigenous Peoples' Rights and Development, UNDP Regional Office, Bangkok;
- Teddy Anggoro. 2017. Kajian Hukum Masyarakat Hukum Adat Dan HAM Dalam Lingkup Negara Kesatuan Republik Indonesia. Jurnal Hukum dan Pembangunan, Volume 36 Nomor 4, 2017;
- Yance Arizona, Erasmus Cahyadi, dan Malik. 2015. Mengakhiri Rezim Kriminalisasi Kehutanan Anotasi Putusan Mahkamah Konstitusi Nomor 95/PUU-XII/2014. Epistema-AMAN, Jakarta.

### Journals



- Afifah Kusumadara. 2011. Pemeliharaan dan Pelestarian Pengetahuan Tradisional dan Ekspresi Budaya Tradisional Indonesia: Perlindungan Hak Kekayaan Intelektual dan non-Hak Kekayaan Intelektual. *Jurnal Hukum* No 1. Vol 18. Januari 2011;
- Ahmad Redi. 2015. Dinamika Konsepsi Penguasaan Negara Atas Sumber Daya Alam. *Jurnal Konstitusi* Volume 12. Nomor 2. Juni 2015;
- Evi Apriana. 2018. Adat Aceh Dalam Praktek Konservasi Lingkungan. *Jurnal Serambi Akademica*, Vol III. No 2. November 2015;
- Husni Thamrin. 2013. Kearifan Lokal dalam Pelestarian Lingkungan (The Lokal Wisdom in Enviromental Sustainable). *Jurnal Kutubkhanah*, Vol 16. No 1. Januari-Juni 2013.
- I Wayan Nitayadnya. 2014. Ombo Sebagai Wujud Kearifan Lokal Masyarakat Kaili Dalam Menjaga Harmonisasi Alam. *Jurnal Walasuji* Vol 5. No. 1. Juni 2014;
- Imas Rosidawati Wiradirja. 2013. Konsep Perlindungan Pengetahuan Tradisional Berdasarkan Asas Keadilan Melalui Sui Generis Intellectual Property System. *Jurnal Hukum IUS QUIA IUSTUM* No 2. Vol 20. April 2013;
- Maria Kaban. 2017. Penyelesaian Sengketa Waris Tanah Adat pada Masyarakat Adat Karo. *Jurnal Mimbar Hukum* Vol. 28 No. 3. Oktober 2017;
- Mawardi. 2013. Implikasi hak kesatuan masyarakat hukum adat dalam pengelolaan tanah kawasan hutan di kabupaten Lombok Utara. *Jurnal IUS* Vol 1. No 3. Desember 2013;
- Yahya Ahmad Zein dan Dewi Nurvianti. Konsepsi Hak masyarakat Hukum Adat Sebagai Hak Asasi Manusia, *VeJ*. Vol.3, No. 2.

## Articles/Online Media

- <http://fwatcher.fwi.or.id/sasi-laut-peran-masyarakat-adat-dalam-pengelolaan-sumber-daya-kelautan-di-maluku-tengah/>. Accessed on 13 September 2018;
- <http://gaung.aman.or.id/2016/12/14/indonesia-memerlukan-uu-pengakuan-dan-perlindungan-hak-masyarakat-adat/>. Accessed on 20 October 2018;
- <http://iccas.or.id/dokumentasi-iccas/haruku-maluku/>. Accessed on 13 September 2018;
- <http://iccas.or.id/dokumentasi-iccas/suku-dayak-kenyah>. Accessed on 14 September 2018;
- <http://nasional.kompas.com/read/2017/11/09/12190141/ada-187-kelompok-penghayat-kepercayaan-yang-terdaftar-di-pemerintah>. Accessed on 22 Oktober 2018;
- <http://www.kemendag.go.id/id/economic-profile/10-main-and-potential-commodities/10-main-commodities>. Accessed on 21 Oktober 2018;
- <http://www.wri-indonesia.org/id/blog/menelaah-lebih-dekat-putusan-mahkamah-agung-dalam-pembatalan-peraturan-tentang-gambut>. Accessed on 23 Oktober 2018;
- <https://databoks.katadata.co.id/datapublish/2016/08/16/jumlah-kepemilikan-izin-usaha-pertambangan-batubara-di-indonesia#> Accessed on 1 November 2018;
- <https://databoks.katadata.co.id/datapublish/2018/07/25/berapa-pdb-perkapita-indonesia>. Accessed on 21 Oktober 2018;
- <https://databoks.katadata.co.id/datapublish/2018/08/21/1995-2017-produktivitas-kelapa-sawit-tumbuh-072tahun>. Accessed on 1 November 2018;
- <https://huma.or.id/penetapan-hutan-adat-demi-terwujudnya-kesejahteraan-masyarakat/rangkaian-kegiatan/tau-taa-wana-posangke-sulawesi-tengah>. Accessed on 13 September 2018.



## Laws, Regulations and Court Decisions

Presidential Decree No. 6 of 2017 concerning The Establishment of Small Outermost Islands;

Govt Reg. No. 24 Tahun 1997 concerning Land Registration;

The Ruling Of The Constitutional Court No. 001-021-022/PUU-I/2003;

The Ruling Of The Constitutional Court RI No. 35/PUU-X/2012;

Law No. 11 of 1974 concerning Irrigation;

Law No. 32 of 2009 concerning Environment Protection and Management;

Law No. 39 of 2014 concerning Agriculture;

Law No. 4 of 2009 concerning Mineral and Coal Mining;

Law No. 41 of 1999 concerning Forestry;

Law No. 5 of 1960 concerning Basic Regulation of Agrarian Principles.



## Attachments

No.	Nama Peraturan	Analisis Isi
<b>Level Nasional</b>		
	Law no. 5 of 1994 concerning Ratification ratifying the United Nations Convention concerning Biodiversity	By ratifying this Convention, Indonesia will not lose sovereignty over its biodiversity natural resources. This Convention recognizes the States in accordance with the Charter of the United Nations and the principles of international law, that States have sovereign right to utilize natural biodiversity resources in a sustainable manner in line with environmental conditions and in accordance with development policies and their corresponding responsibilities, so as not to damage the environment.
	Law no. 21 of 2004 concerning ratification of the Cartagena Protocol on Biosafety on the Convention on Biological Diversity	Nine benefits for Indonesia in ratifying the Cartagena Protocol are to be able to: (1) Access information about Genetically Modified Organisms (GMO); (2) Increasing the conservation and sustainable use of biodiversity; (3) Obtain optimal benefits from the use of modern biotechnology safely which does not harm biodiversity and human health; (4) Strengthen monitoring base of GMO cross-border movement considering that Indonesia has the second longest coastline in the world that has the potential for GMO to illegally exit and enter; (5) Prepare regional capacities to play an active role in supervising and making decisions on the crossing of GMO boundaries; (6) Manifest cooperation among countries to deal with emergency response to overcome the dangers that occur due to accidental cross-border of GMO transfers; (7) Increase institutional capacity and human resources in biosecurity sector both at the central and regional levels; (8) Strengthen national and regional coordination, especially a more comprehensive understanding of all government institutions related to GMO traffic that is detrimental to parts or components of Indonesia's biodiversity. Coordination also includes representatives of the Republic of Indonesia abroad as a frontline and bridge to information traffic regarding the development of biotechnology; and (9) Mobilize international cooperation to prevent illegal trade in GMO products.
	UU no. 4 of 2006 concerning Ratification of the Agreement Regarding Plant Genetic Resources	Indonesia will benefit from: (a) Increasing awareness of the importance of plant genetic resources in national agricultural development through workshops, seminars, expo, and dissemination using APBN (national budget) funds and assistance from SML; (b) Increasing national capacity in managing plant genetic resources through capacity building assistance from the support system of this Agreement; (c) Preventing illegal search and collection of plant genetic resources and their development by other countries/parties; (d) Developing regional and international cooperation in the management of plant genetic resources for food and agriculture through the exchange of information, material, expertise and cooperation in research, training and education; (e) Ensuring fair access and sharing of benefits, from the use of plant genetic resources for food and agriculture; (f) Benefiting from the establishment of a Multilateral System for the exchange of plant genetic resources included in Annex I; (g) Obtaining access to genetic resources (Appendix I), which are stored in the Contracting Party, as well as from international agricultural research centers; (h) Get maximum benefits from: a) related international programs, for example the <i>Global Plan of Action</i> ; b) ex situ collections stored in international agricultural research centers ( <i>International Agricultural Research Centers</i> ); c) global information systems; and (i) Increasing institutional and human resource capacity in the field of conservation and sustainable use of agricultural genetic resources both at the central and in locals level.
	UU no. 11 of 2013 concerning Ratification of the Nagoya Protocol Regarding Access to Genetic Resources and Fair and Balanced Benefit Sharing that Arises from its Use of the Convention on Biological Diversity	Based on the Indonesian Biodiversity Status published by the Indonesian Institute of Sciences in 2011, the diversity of species possessed by Indonesia consists of: 707 mammal species; 1,602 bird species; 1,112 amphibian and reptile species; 2,800 invertebrate species; 1,400 species of fish; 35 primate species; and 120 butterfly species. <sup>90</sup> According to data from the Ministry of Maritime Affairs and Fisheries, Indonesia has 450 coral species out of 700 world species. While according to data from the Ministry of Environment and Forestry in 2014 there were 470 local Genetic Resources identified and corrected. These local genetic resources consist of 229 fruits, 121 plantations, 55 vegetables, and 29 ornamental plants or flowering fruit. <sup>91</sup> These data shows that Indonesia is one of the countries that has high biodiversity and has a diversity of genetic and ecosystem resources with certain characteristics. This potential can be used as a resource to fulfill increasingly diverse and complex life needs. Measures to protect genetic resources have been carried out through the allocation of a number of areas, both on land, on the coast, and on the sea to be used as conservation areas in various forms such as national parks, land and water

<sup>90</sup> See explanation of Law No. 11 Tahun 2013.

<sup>91</sup> Malik, "Hak Kekayaan Intelektual Dalam Pengembangan Teknologi, Inovasi dan Invensi atas SDA", p. 29.



		<p>conservation areas, and land and sea wildlife reserves. In addition to aiming to protect genetic resources, conservation areas are also intended to ensure the existence, availability and sustainability of coastal and marine resources by increasing the quality of values and diversity. Other measures that have been made including building an ecological map of Indonesia. In addition to that, the protection is also intended to maintain the continuity of the use of genetic resources and traditional knowledge related to genetic resources for future generations. Traditional knowledge related to genetic resources is an inseparable part of genetic resources and is continually inherited by the ancestors of indigenous and local communities to the next generation. Therefore, in preserving and utilizing genetic resources and traditional knowledge related to genetic resources, it must be patterned and reflected in the knowledge, innovation, and practices that are related and management arrangements need to be developed so that they can accommodate the dynamics and aspirations of indigenous peoples and local communities.</p> <p>The benefits obtained by Indonesia through the ratification of the Nagoya Protocol include: (1) Protecting and preserving genetic resources and traditional knowledge related to genetic resources; (2) Preventing biopiracy and illegal utilization of biodiversity; (3) Ensuring fair and balanced distribution of benefits (financial and non-financial) on the use of genetic resources and traditional knowledge related to genetic resources to providers of genetic resources based on mutual agreement (Mutually Agreed Terms ); (4) Laying out the legal basis for regulating fair and balanced access and distribution of benefits for the utilization of genetic resources and traditional knowledge related to genetic resources based on mutual agreement; (5) Strengthening state control over natural resources as mandated by Article 33 of the 1945 Constitution and recognizing the existence of adat law communities and adat rights in accordance with Article 18 of the 1945 Constitution; (6) Affirming the sovereignty of the state in regulating access to genetic resources and traditional knowledge related to genetic resources; (7) Providing incentives and funding support in accordance with the provisions of legislation; and (8) Creating opportunities for access to technology transfer in sustainable biodiversity conservation and utilization activities.</p>
	<b>Law No. 5 of 1990</b>	<p>According to Law No. 5 of 1990 dated August 10, 1990 concerning Conservation of Biological Natural Resources and its Ecosystem that biological natural resources are biological elements in nature which consist of plant-based natural resources (flora) and animal natural resources (fauna) which together with the abiotic elements creates an ecosystem. Conservation of natural resources is the management of biological natural resources whose utilization is carried out wisely to ensure the continuity of its supply while maintaining and improving the quality of its diversity and value. Biotic natural resource ecosystems are a system of reciprocal relationships between elements in nature, both biotic and abiotic which are interdependent and influence each other.<sup>92</sup></p> <p>Each holder of land rights and concession rights in the waters within the life support system must maintain the continuity of the protection function of the area. In the context of implementing the protection of life support systems, the Government regulates and enforces measures against the use and management of land and concession rights in waters located within the protection area of the life support system. The management of natural reserve areas is carried out by the Government as an effort to preserve the diversity of plants and animals and their ecosystems. Management of national parks, major forest parks, and natural tourism parks is carried out by the Government. In the zone of utilization of national parks, large forest parks, and natural tourism parks, tourism facilities can be built based on management plans. For tourism and recreation activities, the Government can provide concession rights to the utilization zone of the national park, a large forest park, and a natural tourism park by involving the people.<sup>93</sup></p> <p>Furthermore, the participation of the people in the conservation of living natural resources and their ecosystems is directed and driven by the Government through various activities that are efficient and effective. In developing the role of the people, the Government fosters and increases awareness of the conservation of living natural resources and their ecosystems among the people through education and elucidation.<sup>94</sup> The ten new ways of managing conservation areas in Indonesia voiced by the Director General of KSDAE does not merely involve the people or grow and increase awareness of biotic natural resources conservation and their ecosystems among the people through education and elucidation. More than that, it must position the adat and local communities as the main subjects or actors in the management of conservation areas, respect for Human Rights (HAM), and respect for cultural values and customs.</p>

<sup>92</sup> Article 1 number 1, number 2, and number 3, Law No. 5 of 1990

<sup>93</sup> Article 9 paragraph (1) and paragraph (2), Article 16 paragraph (1) and paragraph (2), Article 34 paragraph (1), paragraph (2) and paragraph (3), Law No. 5 of 1990.

<sup>94</sup> Article 37 paragraph (1) and paragraph (2), Law No. 5 of 1990.



	<b>Bill of KSDAE Banleg Version, December 2017</b>	<p>The Central Government and Local Government recognize and protect <i>Ulayat</i> Rights over Biological Resources and their Ecosystems in areas that are still ongoing in accordance with certain criteria. Certain criteria for the ongoing Ulayat rights, includes these elements: Adat Law Community; the area where adat rights take place; the relationship, relevance and dependence of the Adat Law Community with its territory; and the authority to regulate jointly the use of the Natural Resources and Ecosystems in the area of the Adat Law Community concerned, based on the applicable adat law and adherence to the community. The Adat Law Community must fulfill the requirements: the unity of its citizens has a shared feeling in the group; have adat government institutions; possess assets and/or adat objects; have a set of adat law norms; the existence and substance of traditional rights are recognized by the Law, the unit of the related people, and the general public at large; and the substance of adat law norms is appropriate and does not conflicted with the provisions of the laws and regulations. The authority of the Adat Law Community to regulate is carried out in accordance with the provisions of the local Adat Law while observing the provisions of this Law.<sup>95</sup></p> <p>Management of Biological Resources and their Ecosystems that have elapsed or erased due to certain reasons: then the right to manage is given back to the control of the related Adat Law Community; or the right to manage is in the control of the state if the related Adat Law Community is no longer present. Requests for extension or renewal of management of Biological Resources and their Ecosystems of <i>ulayat</i> rights in Adat Law Communities can be proposed for extension or renewal after obtaining written approval from the relevant Adat Law Community.<sup>96</sup></p> <p>Adat Law Communities can provide written approval to Everyone in the area of their Adat Law Community to manage Biological Resources and supporting Ecosystems that support Adat Law Community's interest and support natural conservation. Written approval is used as a recommendation to submit an application to manage the Natural Resources and Ecosystems to the authorized agency. Every person who has the right to manage Biological Resources and their Ecosystems can register their rights in accordance with the provisions of the legislation.<sup>97</sup></p> <p>The Central Government and Local Government provide recognition for the protection of important Ecosystems in adat land areas managed by the Adat Law Community. Adat forests or other areas that have been designated or stipulated by the Central Government as areas of Community Management and are located in state forest areas, can't be converted into other uses and are protected from plans for spatial changes that are not in accordance with the objectives of the stipulation<sup>98</sup>.</p> <p>Adat Law Communities and Local Communities that create, develop, maintain or preserve traditional knowledge associated with genetic resources are considered as owners of traditional knowledge. Technology, innovation, or inventions that are developed from samples of material or components of genetic resources or traditional knowledge obtained in accordance with the provisions of this Act, can be proposed to obtain protection of intellectual property rights. The protection of intellectual property rights does not eliminate or reduce the rights of adat or local law communities in the exchange and dissemination of genetic resources components or materials and traditional knowledge practiced within the Adat or Local Communities for their own interests and based on traditional practices. The protection of intellectual property rights does not eliminate the obligation of genetic resources' users to share fair benefits and access to technology and technology transfer as referred to in Article 103 and Article 104.<sup>99</sup></p> <p>All activities utilizing specimens from plant and animal species can only be carried out with specimens through controls or restrictions. Control and/or restrictions as referred to in paragraph for Specimens originating from in situ conditions are carried out through: stipulation of capture or extraction quota; restrictions on size classes or age groups; open and closed seasonal areas of capture or extraction; and restrictions on fishing gears or harvesting rotation. Control of specimens sourced from ex situ conditions is carried out through: monitoring the production of plant or animal specimens from ex situ conditions; and development of a database of production of plant or animal specimens from ex situ conditions. Control is carried out each by a minister who handles government affairs in the forestry sector or the minister who handles government affairs in the field of maritime affairs and fisheries in accordance with his/her authority after receiving consideration from government institutions in the field of science development. Provisions regarding control are excluded for the</p>

<sup>95</sup> Article 9 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), KSDAE Bill version of Banleg dated December 6, 2017.

<sup>96</sup> Article 10 paragraph (1) and paragraph (2), Bill of KSDAE version of Banleg dated December 6, 2017

<sup>97</sup> Article 11 paragraph (1), paragraph (2), and paragraph (3), Bill of KSDAE version of Banleg dated December 6, 2017

<sup>98</sup> Article 79 paragraph (1) and paragraph (2), Bill of KSDAE version of Banleg dated, December 6, 2017.

<sup>99</sup> Article 90, Article 105 paragraph (1), paragraph (2), and paragraph (3), Bill KSDAE version of Banleg dated December 6, 2017



		Adat Law Community. Provisions regarding Category I species still apply to the Adat Law Community, unless stated otherwise by a ministerial regulation that handles government affairs in the forestry sector or ministerial regulations that handle government affairs in the field of maritime affairs and fisheries in accordance with their authority. <sup>100</sup>
	<b>Law no. 27 of 2007 in conjunction with Law No. 1 of 2014</b>	<p>The definition of Adat Peoples according to Law No. 27 of 2007 dated July 17, 2007 concerning Management of Coastal Areas and Small Islands states that Adat Peoples are Coastal Community groups that have traditionally settled in certain geographical areas due to the existence of ties to ancestral origins, strong relationships with Coastal and Small Islands Resources, as well as the existence of a value system that determines economic, political, social, and legal institutions. After revision, Article 1 number 33 has phrases addition and subtraction into "<i>Adat Law Community is a group of people who have traditionally settled in certain geographical areas in the <u>Unitary State of the Republic of Indonesia</u> due to ties to ancestral origins, strong relations with land, territories, natural resources, have adat government institutions, and adat law arrangements in their adat territories in accordance with the provisions of legislation</i>".</p> <p>Local Communities are groups of people who carry out an order of daily live based on the accepted habits as generally accepted values but not fully dependent on certain Coastal and Small Islands Resources. Traditional communities are traditional fisheries communities whose traditional rights are still recognized in carrying out fishing activities or other legitimate activities in certain areas within the archipelagic waters in accordance with the rules of international marine law.<sup>101</sup></p> <p>Law no. 1 of 2014 dated 15 January 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands. Adat community is revised into Adat Law Community and defined as a group of people who have traditionally settled in certain geographical areas in the Unitary State of the Republic of Indonesia due to ties to ancestral origins, have strong relationships with land, territory, natural resources, adat government institutions, and the order of adat law in its adat territory is in accordance with the provisions of the laws and regulations. Local Communities are groups of people who carry out an order of daily live based on the accepted habits as generally accepted values but not fully dependent on certain Coastal and Small Islands Resources. Traditional communities are traditional fisheries communities whose traditional rights are still recognized in carrying out fishing activities or other legitimate activities in certain areas within the archipelagic waters in accordance with the rules of international marine law</p> <p>Coastal Water Concession (HP-3) is given in a certain area and time. The granting of HP-3, must consider the importance of the conservation of Coastal and Small Islands Ecosystems, Adat Community, and national interests as well as rights for innocent passages for foreign vessels. HP-3 can be given to: Individual Indonesian citizens; Legal entity established under Indonesian law; or Adat Community.<sup>102</sup> Provision of HP-3 must meet technical, administrative and operational requirements. Technical requirements including: conformity with Zoning plans and/or plans for the Management of Coastal Areas and Small Islands; the results of public consultations in accordance with the amount and volume of utilization; and consideration of the results of testing of various alternative proposals or activities that have the potential to damage Coastal and Small Islands Resources. Administrative requirements, including: the provision of administrative documents; planning and implementation of utilization of Coastal and Small Island Resources in accordance with the carrying capacity of the ecosystem; making the results of the monitoring and reporting system to the HP-3 provider; and in the case of directly adjacent HP-3 to the coastline, the applicant must have land rights. Operational requirements, including the obligation of HP-3 holders to: empower the community around the location of the activity; recognize, respect, and protect the rights of Adat community and/or local communities; pay attention to the right of the community to gain access to the border of the beach and river estuary; and rehabilitate damaged resources at HP-3 locations. Refusal of an HP-3 application must be accompanied by one of these reasons: serious threat to the sustainability of the Coastal Area; not supported by scientific evidence; or expected damage that can't be recovered. Granting of HP-3 is done through open announcements.<sup>103</sup></p> <p>The Government recognizes, respects and protects the rights of Adat Community, Traditional Communities, and Local Wisdom over Coastal Areas and Small Islands</p>

<sup>100</sup> Article 111 paragraph (1), paragraph (2), paragraph (3) and paragraph (4), Article 112 paragraph (1) and paragraph (2), Bill of KSDAE version of Banleg dated December 6, 2017.

<sup>101</sup> Article 1 number 33, number 34 and Article 1 number 35, Law No. 27 of 2007.

<sup>102</sup> Article 17 paragraph (1) and paragraph (2), Article 18 letter a, letter b, and letter c, Law No. 27 of 2007.

<sup>103</sup> Article 21 paragraph (1), paragraph (2) letter a, letter b, and letter c, paragraph (3) letter a, letter b, letter c, and letter d, paragraph (4) letter a, letter b, letter c and letter d, paragraph (5) letter a, letter b, and letter c, paragraph (6), Law No. 27 of 2007



		which have been used for generations. Recognition of the rights of Adat Community, Traditional Communities, and Local Wisdom is used as a reference in the sustainable Management of Coastal Areas and Small Islands. <sup>104</sup>
	<b>Director General Decree of KSDAE No. 184 /KSDAE/REN.2/5/2018</b>	Ministry of Environment and Forestry through the Director General of Natural Resources and Ecosystems Conservation (Dirjen KSDAE) dated 20 April 2018 issued Decree No. 184/KSDAE/REN.2/5/2018 concerning the Appointment of Multiparty Task Force on Settlement of Land Problems, Encroachment and Proposal of Adat Areas in Conservation Areas. This multistakeholder task force functions for one year and has 4 (four) main tasks, namely (1) Conducting collection, processing, and analysis of data and information related to land issues, encroachment and proposed adat territories; (2) Coordinating and multilevel and multi-stakeholder consultations in preparing strategies for resolving land problems, encroachment and proposals for adat territories; (3) Providing assistance to the technical implementation unit of the Director General of KSDAE; and (4) Providing input to the Director General of KSDAE regarding the formulation of system regulations for multi-stakeholder support in resolving land issues, encroachment and proposals for adat territories
	<b>Perdirjen KSDAE No: P.6/KSDAE/SET/Kum.1/6/2018</b>	Technical guidelines for conservation partnerships in nature reserves and conservation areas No: P.6/KSDAE/SET/Kum.1/6/2018 dated June 6, 2018 in the framework of implementing Article 13, Article 14 and Article 15 of Ministerial Regulation of LHK No: P.43/PenLHK/Setjen/Kum.1/6/2017 concerning Community Empowerment around Natural Reserve Areas and Nature Conservation Areas, and Article 12 of Ministerial Regulation of LHK No: P.6/44/MenLHK/Secretariat General/Kum.1/6/2017 concerning Amendments to the Implementation of Collaboration in Nature Reserve Areas and Nature Conservation Areas.  The purpose of this technical guide is to provide guidance to technical implementers at the Director General of KSDAE in implementing conservation partnerships in Nature Reserve Areas and Nature Conservation Areas. While the purpose of this technical guide is to realize the independence and welfare of the community to strengthen the governance and function of conservation areas and biodiversity. Therefore, this technical guideline is only a matter of aborting obligations and reaffirming conservation functions and has not yet provided a space for cooperation in conservation area management.
	<b>Regulation of the Minister of Marine Affairs and Fisheries No. 8 of 2018</b>	Regulation of the Minister of Marine and Fisheries Number 8/PERMEN-KP/2018 dated 23 February 2018 concerning Procedures for Determining Management Areas of Adat Communities in Coastal Areas and Small Islands Spatial Use (Ministrial Regulation of KP No. 8 of 2018). This Ministerial Regulation is the implementing of Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands as amended by Law No. 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal and Small Islands Areas, on spatial use and marine resources in coastal and small islands areas by the Adat Law Community.  Spatial use and coastal and small island resources in management areas by adat law communities is the authority of adat law community within the area. Spatial use and coastal and small islands resources is carried out by considering national interests and in accordance with the provisions of laws and legislation. Then, recognition and protection of adat law community is stipulated the by the regent/mayor. Adat Law Community that has been determined for recognition and protection, can propose its Management Area through regents/mayors in the Zoning Plan for Coastal Areas and Small Islands (RZWP-3-K) to the Governor, and the Zoning Plan for National Strategic Areas (KSN RZ), Zoning Plans of Certain National Strategic Areas (KSNT RZ), as well as inter-regional Zoning Plans (RZ), to the Minister. The management area proposal is identified and mapped by the governor and the Minister according to their authority. Furthermore, the results of identification and mapping carried out by the governor, are allocated to the RZWP-3-K. While the results of identification and mapping carried out by the Minister are allocated in the KSN RZ, KSNT RZ, and inter regional RZ. <sup>105</sup>
<b>Local Level</b>		
<b>1) Maluku-Papua Region</b>		
	<b>Special Local Regulation (Perdasus) No. 20 of 2008</b> concerning Adat Justice in Papua	Perdasus No. 20 of 2008 concerning Adat Justice in Papua that <i>ulayat</i> rights are unitary rights owned by certain adat law communities over a certain area which is the environment of its people, which includes the right to use land, forests and water and everything within in accordance with the provisions of laws and regulations. According to the definition of Article 1 number 14, <i>ulayat</i> rights are certain rights to a region, including the right to use land, forests and water.

<sup>104</sup> Article 61 (1) and paragraph (2), Law No. 27 of 2007.

<sup>105</sup> Article 4 (1), paragraph (2), and paragraph (3), Article 5 paragraph (1), letters a and b, paragraph (2), paragraph (3), and paragraph (4), Permen KP 8 of 2018.



	<p><b>Perdasus No. 21 of 2008</b> concerning Sustainable Forest Management in the Papua Province</p>	<p>Perdasus No. 21 of 2008 concerning Sustainable Forest Management in Papua Province stated that conservation forest is a forest area with certain characteristics, which has the main function of preserving the diversity of plants and animals and their ecosystems. Conservation forest is a forest area with certain characteristics, which has the main function of preserving the diversity of plants and animals and their ecosystems in the territory of adat community. The adat law community in the utilization of forest products is obliged to: do forest protection and nature conservation, and the adat law community is obliged to carry out forest protection and nature conservation in adat territories (Article 10 letter d).</p> <p>Protection and conservation; Government services to adat law communities and forest users through KPH include; forest management, preparation of forest management plans, forest use, forest rehabilitation, protection and conservation, guidance, internal audit, and control.</p> <p>Forest management includes: forest management; forest governance and preparation of forest management plans; forest use and use of forest areas; forest management rights and permits of forest use; forest rehabilitation and reclamation; forest protection and nature conservation; implementation of silviculture; increase capacity in human resources; and equipment for the use of forest products. Forest management according to the Perdasus refers to the Forestry Law, such as forest management, forest governance and preparation of forest management plans, forest use and forest area use, forest management rights and forest utilization permits, forest rehabilitation and nature conservation, silviculture implementation, increase capacity of human resources, and equipment for the use of forest products.</p> <p>Distribution of work areas follows the main characteristics of forest areas that involve the functions of conservation, protection, and production into blocks or zones. Distribution of work areas follows the main characteristics of forest areas that involve the functions of conservation, protection, and production into blocks or zones. The material for the perdasus content has not yet shown its specificity.</p> <p>Feasibility of strategies for developing forest management covers forest governance, utilization and use of forest areas, forest reclamation rehabilitation, forest protection and nature conservation; Strategies for developing forest management covers forest governance, utilization and use of forest areas, rehabilitation of forest reclamation, forest protection and nature conservation, and measures to increase the income of adat peoples.</p> <p>Forest utilization in conservation forest areas, protected forests and production forests is carried out according to the provisions of this Perdasus. The use of forest areas for the development of public interests can be carried out in production, protection and conservation areas. However, what about the use of forest areas by adat law communities? This question needs to be explored further.</p> <p>Rehabilitation of forest and land areas is carried out through these activities; the application of vegetative soil conservation techniques and civil engineering on critical and unproductive land. Forest area rehabilitation is carried out based on vegetative soil conservation techniques and civil engineering on critical unproductive land.</p> <p>Holders of forest utilization permits play an active role in conserving biological natural resources and their ecosystems in accordance with laws and regulations. The permit holder is obliged to conserve biological natural resources and their ecosystem. Indirectly, this Perdasus provides an opportunity for permit holders to manage conservation areas in Papua.</p> <p>Forest area being used for non-forestry interests and in the border of protected forest areas and/or conservation areas needs to make a buffer area of 1 (one) km to the outside of the area boundary. Shall there be any cases of a forest area used for non-forestry purposes, a one-kilometer buffer zone is drawn out from the boundaries of protected forest areas and conservation forest areas based on this Perdasus.</p>
	<p><b>Perdasus No. 22 of 2008</b> concerning the Protection and Management of Natural Resources of the Papuan Adat Law Community</p>	<p>Perdasus No. 22 of 2008 concerning the Protection and Management of Natural Resources of the Papuan Adat Law Community. The adat law community has the right to obtain compensation in accordance with the written agreement contained in the authentic deed for the reduction or loss of access of adat law communities because the establishment of their adat territories as conservation areas. If there is an adat territory of the adat law community that is designated as a conservation area, then according to Permen 32/2015 concerning Forest rights, Adat Law Community can re-propose to be declared as adat forest. Thus, the government can give back the area to the adat law community.</p>
	<p><b>Perdasus No. 23 of 2008</b> concerning <i>Ulayat</i> Rights of the Adat Law Community and Individual Rights of the people of the Adat Law Community over Land</p>	<p>Perdasus No. 23 of 2008 concerning <i>Ulayat</i> Rights of the Adat Law Community and Individual Rights of the people of the Adat Law Community over Land. The adat law community that has the authority to regulate the management of adat rights to land is obliged to improve the welfare of its people by optimally utilizing the area of <i>ulayat</i> rights. The adat law community has the authority to regulate the management of <i>ulayat</i> rights over land and the optimal use of <i>ulayat</i> rights over land after it has been determined through a Decree of the Regent/Mayor and or Governor (Vide Article 8 paragraph (1)).</p> <p>The holders of <i>ulayat</i> rights of adat law communities and/or individual rights of adat peoples over land are obliged to release the land that is needed by the</p>



		<p>Government/Local Government for public interest by providing compensation for physical factors and compensation for non-physical factors based on the results of <i>musyawarah</i> and legislation. Holders of <i>ulayat</i> rights of adat law communities or individual rights must release their land when needed by the government/local government for public interest. In the name of public interests, adat law community as if don't have the right to defend their adat territory.</p> <p>Holders of <i>ulayat</i> rights of adat law communities and/or individual rights of the people of adat law community over land are obliged to preserve the environment. While on the other hand, for adat communities as holders of <i>ulayat</i> rights or individual rights, they must maintain the sustainability of their environment.</p>
	<b>Local Regulation of Jayapura District No. 8 of 2016 concerning Adat Villages</b>	Local Regulation of Jayapura District No. 8 of 2016 concerning Adat Villages. In the area of Adat Villages, the rights of adat peoples still apply over land, sea, air and everything within, as long as there is no transfer of rights to other parties. Article 6 paragraph (3) of this Adat Village Regulation stipulates in detail that the rights of adat peoples are adat, sea, air and everything within as long as there is no transfer of rights on it. For legal certainty of the establishment of adat villages, a map of the adat rights of adat peoples is required. The boundaries of the adat village territory expressed in the form of a map of the adat rights of the traditional village community needs to be certain and have been determined by regional regulations.
	<b>Regent Decree of Jayapura No. 319 of 2014 concerning Recognition and Protection of Adat Law Communities in Jayapura District</b>	Regent Decree of Jayapura No. 319 of 2014 concerning Recognition and Protection of Adat Law Communities in Jayapura District. First Dictum: Recognizing nine territories of Adat peoples in Jayapura District. Local government of Jayapura has acknowledged nine adat territories through a Regent Decree. Second dictum letter d. protection of adat rights, including: land, water, air, forests and natural resources contained herein. Protection of <i>ulayat</i> rights includes land, air, forest and natural resources contained herein. This protection is everything contained within and on earth without exception.
	<b>Regent Decree of Jayapura Number 320 of 2014 concerning Establishment of 36 Adat Villages in Jayapura District</b>	Regent Decree of Jayapura Number 320 of 2014 concerning the Establishment of 36 Adat Villages in Jayapura District. FIRST: Establish 36 adat villages in each adat community area whose name is the adat community, district name and the name of the adat village ... In the First Dictum of this Bupati Decree, 9 adat territories or communities consisting of 14 districts and 36 traditional villages scattered in the Jayapura District area is stipulated.
	<b>Regent Decree of Manokwari No. 112 of 2016 concerning the Establishment of Communal Rights over Land of the Doreri Tribe Adat Law Community of the Mansinam Island, Mansinam Kampong, East Manokwari District, Manokwari, West Papua Province Area covering an area of 3,943,298 m<sup>2</sup></b>	<p>Regent Decree of Manokwari No. 112/KPTS/BUP-MKW/2016 concerning Determination of Communal Rights over Land of the Adat Law Society of the Doreri Tribe on Mansinam Island Kampung Mansinam, East Manokwari District, Manokwari Regency, West Papua Province covering an area of 3,943,298 M<sup>2</sup>. Spatial planning is a form of spatial structure and spatial pattern in the Communal Land of the Adat Law Community of the Doreri Tribe on Mansinam Island, East Manokwari District, Manokwari Regency, West Papua Province. Article 1 number 7 in the Regent Decree of Manokwari concerns about the communal rights of the Doreri tribal adat community on Mansinam Island, East Manokwari District, Manokwari Regency, West Papua Province. The article isn't only about the establishment of communal rights of adat law communities, but also stipulates the spatial layout and spatial structure and pattern in communal land.</p> <p>Implementation of article 7 as referred to in Article 2, for the use and transfer of communal rights land to the Government Agencies, Legal Entities and Individuals refer to the Manokwari District Spatial Plan and based on the applicable laws and regulations. The use and transfer of communal land rights to the Government Agencies, Legal Entities and Individuals refer to the Spatial Planning of Manokwari Regency and of West Papua Province.</p>
	<b>Local Regulation of Tamberauw of 2017 concerning Adat Peoples in Tamberauw District.</b>	<p>Local Regulation of Tamberauw 2017 concerning Adat Peoples in Tamberauw District. Adat forests are forests that are inside adat territories. Tamberauw District is a conservation district where it accommodates community management conservation areas, one of which is sacred forests within adat territories. Adat territories consist of: adat forests, and other areas or places that are used as part of adat territories by Adat Peoples. The regulation on the recognition of the Tamberauw adat people includes the recognition of adat territories including adat forests, and sacred areas or places to the local adat peoples.</p> <p>In case part or all the adat territory has been designated or determined by the government as a forest area, then the adat territory can be designated as adat forest. If that adat territories have been functioned by Adat Peoples as settlements, public facilities or social facilities, the adat territory is excluded from the forest area. All adat areas that have been designated or have been determined by the government as forest areas, can be submitted and determined as adat forests. In the case of a forest area that has been determined by the government as a settlement, public facilities or social facilities, then adat territory is excluded from the forest area.</p>
	<b>Local Regulation of Tamberauw Conservation 2017 concerning Tamberauw District as a conservation district</b>	Local Regulation of Tamberauw District in 2017 concerning Tamberauw District as a conservation district. Conservation areas of adat community managed by adat community are conservation areas that are within the territories of adat peoples, managed based on local wisdom and are determined by the Regent. The conservation area consists of: forest conservation areas; coastal marine and small islands



		<p>conservation areas; land and water conservation area; adat community conservation areas managed by adat community; and peatland and wetland conservation areas. Adat community conservation areas that are managed by adat community can be within forest conservation areas, coastal and marine conservation areas, and/or land and water areas.</p> <p>The establishment of adat community's conservation areas managed by adat community is determined by the Regent by referring to the local wisdom of adat peoples. Utilization of plant species, animals and marine biota in adat community conservation areas is carried out in a subsistence and/or traditional manner based on the agreement of adat community by considering the continuity of potential, carrying capacity and diversity of plants, animals and marine biota. The government facilitates adat community to be actively involved in conservation activities based on local wisdom through the establishment of adat community conservation areas managed by adat community</p>
	<b>Governor Decree of West Papua No. 522 of 2017</b> Establishment of Working Group for the Acceleration of Social Forestry of West Papua Province 2017-2019	<p>Governor Decree of West Papua Number 522/105/6/2017 concerning the Establishment of Working Group for the Acceleration of Social Forestry of West Papua Province in 2017-2019. FOURTH Diktum: Working Group on Social Forestry of West Papua Province 2017-2019 has these following tasks: 1) Regular coordination through social forestry coordination meetings at the provincial level to discuss strategic planning, work schedules and targets; 2) Building and developing networking and social forestry multi-stakeholder forums that are communicated nationally through Nusantara Social Forestry Forum (PeSoNa Forum); 3) Carrying out dissemination of Social Forestry Program to local community and related parties; 4) Conducting spatial thorough checking of the Indicative Map of Social Forestry Areas (PIAPS) and conducting ground checks on the field; 5) Facilitating proposals from local communities regarding social forestry programs in accordance with the applicable regulations; 6) Assisting technical verification of community proposal for access to management; 7) Carrying out control, monitoring and evaluation of social forestry programs in accordance with the provisions of laws and regulations; 8) Conducting capacity and institutional strengthening, as well as developing social forestry business in accordance with the applicable laws and regulations. The Working Group on Social Forestry is a follow-up to the Ministerial Regulation 83 of 2016 concerning Social Forestry. The Governor's Decree of West Papua is a legal basis for districts/cities to encourage acceleration of social forestry, to accept community proposals, conduct verification and validation according to community proposals, such as Village Forest (HD), Community Forestry (HKm), Community Plantation Forest (HTR), Forestry Partnership. Besides, there is another scheme, such as Adat Forest (HA).</p>
	<b>Regent Decree of Tambrauw No. 800 of 2017</b> concerning the Establishment of the Working Group (Pokja) to Accelerate the Establishment of Tambrauw as District of Conservation and Adat Community	<p>Regent Decree of Tambrauw No. 800/138/2017 concerning the Establishment of the Working Group (Pokja) for Tambrauw Acceleration as District of Conservation and Adat Community. The main task is to periodically coordinate and facilitate the initiative of Tambrauw's determination to become a Conservation District and to carry out measures to recognize indigenous peoples with a range of activities, among others: compiling and designing Tambrauw local institutional model as a Conservation District through FGD mechanism, consultation and workshops. The Decree of the Tambrauw Regent is a follow-up to the local regulation of conservation and of the Tambrauw adat community recognition to establishing adat community and their adat territories. Apart from that, also to compile and design institutional models at the district level as a conservation district, to assist in reviewing and revisiting the West Papua RTRWP and RTRK in Tambrauw District to include district's strategic areas for the implementation of Conservation district policies, adat conservation areas and areas for expanding social forestry within the RTRWP and RTRWK. This working group is also reviewing and revisiting West Papua Province Spatial Plan and Tambrauw Regency RTRW as conservation districts, adat conservation areas and other expansion of social forestry.</p>
	<b>Local Regulation of Sorong District No. 10 of 2017</b> concerning Recognition and Protection of Moi Adat Law Communities in Sorong District	<p>Local Regulation of Sorong District No. 10 of 2017 concerning Recognition and Protection of Moi Adat Law Communities in Sorong District. Ownership and utilization of Ulayat Land in the territory of the Moi Adat Law Community can be communal or shared property and private management land. Shared communal <i>ulayat</i> land based on the type of land use includes: Adat land; Adat forests; coastal areas, marine and adat islands. Individual management land based on the type of land use includes residential land, yards and gardens. For the Moi adat law community, all areas contained in adat territories or ulayat lands are shared property based on their land use, such as adat land, adat forests, and coastal, marine, and adat islands. Whereas ulayat lands for Moi adat law communities are all natural and cultural resources in which there are plants, wildlife, rivers and springs.</p>
<b>2) Sulawesi Region</b>		
	Governor Regulation of Central Sulawesi Number 42 of 2013 concerning Guidelines for Adat Justice in Central Sulawesi	<p>Governor Regulation of Central Sulawesi Number 42 of 2013 concerning Guidelines for Adat Justice in Central Sulawesi. Adat Law Community is a group of people who have settled in certain geographical areas in Indonesia for over generations because of ties to ancestral origins, strong relationships with land, territory, natural resources, adat government institutions, and adat law in their adat territories. The definition in Article 1 number 3 refers to the Bill on the Recognition and Protection of Adat Law</p>



		<p>Community Rights, version of the Republic of Indonesia Legislative Body in 2013 (see (Bill of Governor Regulation of Central Sulawesi version of BALEG RI).</p> <p>Objectives of the Central Sulawesi adat justice guidelines are: Adat Stakeholders in adat community territories of Central Sulawesi and law enforcers in the formal court, as a reference. This guideline can be used by adat elders as executors of adat justice as well as conflicting parties in adat courts at various levels of community social units in Central Sulawesi. These guidelines are also useful as information provider for consideration materials in the execution of formal legal considerations such as the District Court, High Court and the Supreme Court that hear the case that has been prosecuted by the Adat Courts.</p>
	Local Regulation of Morowali District Number 13 of 2012 concerning Recognition and Protection of the Wana Tribe Adat Community	<p>Local Regulation of Morowali District Number 13 of 2012 concerning Recognition and Protection of the Wana Tribe Adat Community The adat law community of Wana is a community that has traditionally lived in certain geographical regions for over generations based on ancestral origins, has rights that are born from strong relationships with natural resources and has distinctive customs, values and cultural identity which determines economic, political, social and legal institutions enforced by adat institutions.</p> <p>Adat rights are communal rights in Wana Tribal adat law system over their adat territory which is the living space for their people to benefit from natural resources including land, water, air, plants, animals, sacred places and ancient heritage constructions, for their survival and life, which arises from physical and spiritual relations, hereditary and unbroken between the Wana and their adat territories. Adat territory is an area where adat law applies.</p> <p>Local regulation on Recognition and Protection of Adat Law Community of Wana Tribe aims to realize justice, equality and respect for the social, cultural, political, legal and human rights of the Wana Tribe based on the origin of existence, adat territories, adat institutions and the application of social systems and its adat law which is still valid for generations.</p> <p>Local government protection towards the Wana tribal adat community is carried out through; give freedom to the Wana tribal adat community to carry out their social life according to the values that live in the community; guarantee and protect the enactment of adat laws of the Wana tribal adat community which are maintained in accordance with the existing order and by adat institutions; and guarantee and protect Wana tribal adat law area. Local government is obliged to protect the existence of the tribal adat law community from every threat and disruptions either to the community, adat law and adat territory. Every development policy related to the Wana tribal adat community must involve them.</p>
	Local Regulation of Sigi District Number 15 of 2014 concerning Empowerment and Protection of Adat Law Communities	<p>Local Regulation of Sigi District Number 15 of 2014 dated 4 December 2014 concerning Empowerment and Protection of Adat Law Communities. Determination of adat territories managed by adat peoples over generations that have clear and definite boundaries, is recognized by the government and can be used by the community according to custom and prevailing adat. These territories are determined by the government and can be used by adat peoples according to prevailing adat and customs.</p> <p>If adat territory is affected by a development plan by the Government or Local Government and the private sector, the adat law community must obtain reasonable compensation based on an agreement between the Adat Institution and related party in accordance with the applicable provisions. In case of adat territories being affected by development plans of local government and the private sector, then the adat law community must obtain reasonable compensation based on community agreement through adat institutions and the related parties in accordance with applicable regulations.</p> <p>Changes in adat territories due to development and other natural factors are discussed among adat peoples, Adat Institutions with central, local and village government. In case there's a change in the adat territory as a result of development plan, it is then discussed among adat peoples through adat institutions with the Local and the Village Government</p>
	Regent Decree of Sigi Number 189.1-280 of 2015 concerning the Establishment of Adat Law Community Committee	<p>Regent Decree of Sigi Number 189.1-280 of 2015 dated 18 May 2015 concerning the Establishment of Adat Law Community Committee, Second Dictum: The duties and working procedures of the Committee as referred to in the FIRST Dictum are as follows: A. Committee's Task: 1) Accompany adat law communities to carry out identification; 2) Receive results of identification carried out by adat law communities; 3) Verify and validate the results of identification; 4) Facilitate the resolution of objections that arise in the context of adat peoples verification; and 5) Provide recommendations on the establishment of adat law communities to the Regent. In the third dictum, a Secretariat of the Adat Law Community Committee is established to accept the results of identification and objection from the adat law community. The committee is based under the Community Empowerment Agency and Village Government of Sigi District. This Regent Decree of Sigi is a follow-up of the Ruling of Constitution Court on the case of No: 35/PUU-X/2012 or testing of the Forestry Law. The adat law community constitutionally is a subject of legal</p>



		recognition (see the basis for the establishment of this decree). In addition to that, the Regent Decree of Sigi was formed based on Permendagri 52/2014 and the Regent has the authority to establish adat law communities.
	Keputusan Bupati Sigi Nomor 189.1-521 Tahun 2015 Tentang Pengakuan Masyarakat Hukum Adat To Kaili dan To Kulawi di Kabupaten Sigi	Keputusan Bupati Sigi Nomor 189.1-521 Tahun 2015 Tentang Pengakuan Masyarakat Hukum Adat To Kaili dan To Kulawi di Kabupaten Sigi, Diktum Kedua: Mengakui dan melindungi: a. wilayah adat masyarakat hukum adat To Kaili dan To Kulawi sebagaimana tercantum dalam lampiran II; SK Bupati Sigi ini merupakan implementasi dari SK Panitia masyarakat hukum adat dengan berpedoman pada Permendagri 52/2014. Dengan demikian harusnya SK ini menetapkan komunitas adat yang ada di Kabupaten Sigi. Dalam konsep pengelolaan wilayah adat Masyarakat Hukum Adat To Kaili dan To Kulawi menerapkan konsep kearifan lokal dan aturan adat yang diatur oleh kelembagaan adat di wilayah adat tersebut
	Keputusan Bupati Sigi Nomor: 189-014 Tahun 2017 tentang Pengakuan dan Perlindungan Masyarakat Hukum Adat Kulawi di Marena Kecamatan Kulawi Kabupaten Sigi	Keputusan Bupati Sigi Nomor: 189-014 Tahun 2017 tentang Pengakuan dan Perlindungan Masyarakat Hukum Adat Kulawi di Marena Kecamatan Kulawi Kabupaten Sigi Diktum Kedua: Masyarakat Hukum Adat Kulawi sebagaimana dimaksud pada Diktum Kesatu sebagai bagian dari masyarakat hukum adat To Kulawi yang berada di Desa/Ngata Marena Kecamatan Kulawi Kabupaten Sigi dengan batas wilayah sebagai berikut: a) Batas wilayah terdiri dari: (1) Batas Titik koordinat; (2) Batas Administratif; dan (3) Batas Alam; b) Wilayah adat seluas 1.806,5 Ha; c) Hutan adat seluas 1.441,5 Ha yang terdiri dari Wana, Pangale, Oma dan Taolo/Dumpolo; dan e) Peta pemanfaatan ruang tradisional. Pemerintah daerah Kabupaten Sigi melalui SK ini mengakui sekaligus melindungi MHA Kulawi di Marena. Berdasarkan Diktum Kedua bahwa wilayah adat juga sekaligus merupakan wilayah administratif desa atau Ngata merupakan sebutan lain dari desa memiliki titik koordinat, batas administratif, dan batas alam dengan luas wilayah adat dan wilayah desa 1.806,5 hektar terdiri dari hutan seluas 1.441,5 hektar yang memiliki fungsi konservasi, lindung, produksi dan APL. Diktum Keempat: Wilayah adat Masyarakat Hukum Adat Kulawi di Marena sebagaimana dimaksud dalam Diktum Kedua huruf b merupakan satu kesatuan dengan wilayah administratif Pemerintah Desa/Ngata Marena Kecamatan Kulawi. Wilayah adat Marena merupakan satu kesatuan yang tidak terpisahkan dengan wilayah administrasi di Desa/Ngata Marena di Kecamatan Kulawi, Kabupaten Sigi.  Diktum Kelima: Mengakui keberadaan peraditan adat dalam menyelesaikan sengketa yang terjadi di wilayah adat Masyarakat Hukum Adat Kulawi di Marena baik yang berhubungan dengan kehidupan sosial maupun yang berkaitan dengan sumber daya alam dengan mengutamakan prinsip penghormatan terhadap Hak Asasi Manusia (HAM), keadilan sosial dan kelestarian lingkungan. Dalam penyelesaian sengketa yang terjadi di wilayah adat Marena, baik berhubungan dengan kehidupan sosial, sumberdaya alam diselesaikan berdasarkan peraditan adat dengan prinsip hak asasi manusia, keadilan sosial dan kelestarian lingkungan hidup. Prinsip ditekankan, agar tidak terjadi tumpang tindih antara aturan Negara dengan aturan adat
	Peraturan Gubernur Sulawesi Tengah Nomor 37 Tahun 2012 Pedoman Umum Pelaksanaan Free, Prior And Informed Consent Pada Reducing Emission From Deforestation and Forest Degredation Plus Provinsi Sulawesi Tengah	Peraturan Gubernur Nomor 37 Tahun 2012 tentang Pedoman Umum Pelaksanaan Free, Prior And Informed Consent Pada Reducing Emission From Deforestation and Forest Degredation Plus Provinsi Sulawesi Tengah, Reducing Emission From Deforestation and Forest Degradation Plus yang selanjutnya disebut REDD+ adalah pendekatan kebijakan dan insentif positif pada isu yang berkenaan dengan pengurangan emisi yang berasal dari penurunan kerusakan hutan dan tutupan hutan di Negara berkembang, peran konservasi, pengelolaan hutan secara lestari serta peningkatan stok karbon hutan di negara berkembang. Tujuan penyusunan Pedoman Umum Pelaksanaan FPIC adalah sebagai salah satu dokumen dalam pelaksanaan FPIC guna memastikan keadilan dan akuntabilitas dari pelaksanaan program REDD+ bagi masyarakat adat dan/atau masyarakat lokal yang kehidupan dan haknya akan terkena pengaruh.
	Peraturan Bupati Sigi Nomor: 189-595 Tahun 2017 tentang Pengakuan dan Perlindungan Masyarakat Hukum Adat To Lindu, Menetapkan To Lindu sebagai masyarakat hukum adat dan Ngata Lindu sebagai wilayah adatnya yang mencakup Desa Puroo, Desa Langko, Desa Tomado, Desa Anca, dan Desa Olu, Kecamatan Lindu. Adat To Lindu tersebar di lima desa, yaitu Desa Puroo, Langko, Tomado, Anca, dan Desa Olu	Peraturan Bupati Sigi Nomor: 189-595 Tahun 2017 tanggal, 5 Desember 2017 tentang Pengakuan dan Perlindungan Masyarakat Hukum Adat To Lindu, Menetapkan To Lindu sebagai masyarakat hukum adat dan Ngata Lindu sebagai wilayah adatnya yang mencakup Desa Puroo, Desa Langko, Desa Tomado, Desa Anca, dan Desa Olu, Kecamatan Lindu. Adat To Lindu tersebar di lima desa, yaitu Desa Puroo, Langko, Tomado, Anca, dan Desa Olu.  To Lindu memiliki wilayah adat seluas 57.157,83 (lima puluh tujuh ribu, seratus lima puluh tujuh delapan puluh tiga) hektar, dengan batas wilayah sebagai berikut: Luas wilayah adat To Lindu mengikuti luas wilayah administrasi Kecamatan Lindu dengan luas mencapai 57.157,83 hektar.  Wilayah adat sebagaimana dimaksud pada Diktum Ketiga memiliki penggunaan lahan tradisional dengan luasan sebagai berikut: a) Posoua (pemukiman) seluas 97,47 hektar; b) Lida (sawah) seluas 1.186,59 hektar; c) Bondea (kebun tanaman tahunan) seluas 3.205,58 hektar; d) Tongo (danau) seluas 3.489,81 hektar; e) Talinti (rawa-rawa) seluas 1.521,32 hektar; f) Rano (kolam) seluas 0,98 hektar; g) Lambara (tempat pengembalaan) seluas 43,15 hektar; h) Ngurah (bekas lahan garapan) seluas 3.187,57 hektar; i) Pampa (kebun palawija) seluas 6.158,65 hektar; j) Pangale (hutan muda) seluas 2.321,89 hektar; dan k) Wanangkiki (hutan rimba) seluas 35.944,82 hektar. Dari total luas 57.157,83 hektar wilayah adat dan wilayah Kecamatan Lindu terbagi menjadi: Posoua seluas 97,47 hektar, Lida 1.186,59 hektar, Bondea 3.205,58 hektar,



		<p>Tongo 3.489,81 hektar, Talinti 1.521,32 hektar, Rano 0,98 hektar, Lambara 43,15 hektar, Ngurah 3.187,57 hektar, Pampa 6.158,65 hektar, Pangale 2.321,89 hektar, dan Wanangkiki seluas 35.944,82 hektar. Luas wilayah adat yang tercantum dalam lampiran itu menjadi dasar untuk mencantumkan wilayah adat ke dalam perubahan Rencana Tata Ruang Wilayah (RTRW) Kabupaten Sigi dan RTRW Provinsi Sulawesi Tengah.</p> <p>Pengelolaan sumber daya alam di wilayah adat dan hutan adat To Lindu dilaksanakan berdasarkan hukum adat, kearifan lokal, dan peraturan perundang-undangan yang berlaku. Dalam hal pengelolaan wilayah adat tersebut berdasarkan hukum adat, kearifan lokal dan peraturan perundang-undangan yang berlaku.</p> <p>Mengakui keberadaan peradilan adat yang diselenggarakan oleh lembaga adat dalam menyelesaikan sengketa yang terjadi di wilayah adat Masyarakat Hukum Adat To Lindu baik yang berhubungan dengan kehidupan sosial maupun yang berkaitan dengan sumber daya alam dengan mengutamakan prinsip penghormatan terhadap Hak Asasi Manusia (HAM), keadilan sosial, kesetaraan gender, dan kelestarian lingkungan hidup. Dalam hal terjadi sengketa di wilayah adat To Lindu, baik dalam kehidupan sosial maupun terkait pengelolaan sumber daya alam terlebih dahulu diselesaikan melalui peradilan adat yang diselenggarakan oleh lembaga adat berdasarkan prinsip hak asasi manusia, keadilan sosial, kesetaraan gender dan kelestarian lingkungan hidup</p>
	Keputusan Bupati Luwu Utara Nomor 300 Tahun 2004 tentang Pengakuan Keberadaan Masyarakat Adat Seko. Pemerintah Daerah mengakui Masyarakat Adat Seko sebagai komunitas Masyarakat Adat yang memiliki Tata Nilai, Sistem Hukum Adat dan Kelembagaan Adat	<p>Keputusan Bupati Luwu Utara Nomor 300 Tahun 2004 tentang Pengakuan Keberadaan Masyarakat Adat Seko. Pemerintah Daerah mengakui Masyarakat Adat Seko sebagai komunitas Masyarakat Adat yang memiliki Tata Nilai, Sistem Hukum Adat dan Kelembagaan Adat. Masyarakat Adat Seko adalah masyarakat yang berdasarkan asal-usul leluhur dan mendiami wilayah adat Seko serta memiliki tata nilai dan atau norma-norma adat istiadat serta lembaga adat yang diakui bersama secara turun temurun dan memiliki kearifan-kearifan lokal. Wilayah Masyarakat Adat Seko meliputi 9 (Sembilan) wilayah hukum adat, yang terdiri dari; Singkalong; Turong; Lodang; Hono'; Ambalong; Hoyane; Pohoneang; Kariango; Beroppa'.</p> <p>Pemerintah Daerah wajib melindungi Masyarakat Adat Seko sebagai komunitas Masyarakat Adat yang memiliki Tata Nilai, Sistem Hukum Adat dan Kelembagaan Adat. Perlindungan diwujudkan dengan cara: Setiap pemberian izin pemanfaatan sumber daya alam di Wilayah Masyarakat Adat Seko harus sepengetahuan Masyarakat Adat Seko.</p>
	Peraturan Daerah Kabupaten Bulukumba Nomor 9 Tahun 2015 Tentang Pengukuhan, Pengakuan dan Perlindungan Masyarakat Hukum Adat Ammatoa Kajang	<p>Peraturan Daerah Kabupaten Bulukumba Nomor 9 Tahun 2015 Tentang Pengukuhan, Pengakuan dan Perlindungan Masyarakat Hukum Adat Ammatoa Kajang. MHA Ammatoa Kajang berkedudukan sebagai subjek hukum yang memiliki hak yang melekat dan bersifat asal-usul.</p> <p>Wilayah adat MHA Ammatoa Kajang terdiri dari wilayah Ilalang Embayya atau Rambang Seppang dan Ipantarang Embayya atau Rambang Luara. Wilayah Ilalang Embayya atau Rambang Seppang berdasarkan peta wilayah adat dan wilayah Ipantarang Embayya atau Rambang Luara seluas 552.62 hektar. Ilalang Embayya atau Rambang Seppang merupakan wilayah adat dimana Pasang dilaksanakan dalam seluruh sendi-sendi kehidupan oleh seluruh warga masyarakat yang bermukim di dalamnya. Ipantarang Embayya atau Rambang Luara merupakan wilayah adat dimana sebagian besar warga masyarakat yang bermukim di wilayah ini tidak secara utuh melaksanakan Pasang. Wilayah adat terdapat dalam wilayah administratif Kecamatan Kajang, Kecamatan Bulukumpa, Kecamatan Ujungloe, dan Kecamatan Herlang sebagaimana tergambar pada Peta dalam Lampiran I yang merupakan bagian yang tidak terpisahkan dari Peraturan Daerah ini. Ilalang Embayya tergambar pada Peta dalam Lampiran II yang merupakan bagian yang tidak terpisahkan dari Peraturan Daerah ini.</p> <p>Borong lompoa tergambar pada Peta dalam Lampiran III yang merupakan bagian yang tidak terpisahkan dari Peraturan Daerah ini. Wilayah adat MHA Ammatoa Kajang terdiri dari wilayah Ilalang Embayya atau Rambang Seppang dan Ipantarang Embayya atau Rambang Luara. Ilalang Embayya atau Rambang Seppang merupakan wilayah adat dimana Pasang dilaksanakan dalam seluruh sendi-sendi kehidupan oleh seluruh warga masyarakat yang bermukim di dalamnya. Ipantarang Embayya atau Rambang Luara merupakan wilayah adat dimana sebagian besar warga masyarakat yang bermukim di wilayah ini tidak secara utuh melaksanakan Pasang.</p> <p>Penguasaan dan pemanfaatan lahan-lahan yang berada di wilayah MHA Ammatoa Kajang terdiri dari lahan milik bersama dan lahan milik pribadi. Lahan milik bersama berdasarkan tataguna lahannya meliputi: hutan adat (borong lompoa); tanah kalompoang/gallarang; tanah Adat; dan tanah girilang. Lahan milik bersama berdasarkan tataguna lahan terdiri atas, hutan adat (borong lompoa), tanah kalompoang/gallarang, tanah Adat, dan tanah girilang seluas 313,99 hektar.</p> <p>Hutan adat merupakan lahan milik bersama di wilayah MHA Ammatoa Kajang yang tidak boleh diubah status penguasaan dan pemanfaatannya. Hutan adat terdiri dari Borong Lompoa/hutan besar dan Palleko'na Boronga'/hutan kecil. Borong Lompoa mencakup seluruh sumberdaya alam dan sumberdaya budaya yang di dalamnya terdapat tumbuhan, satwa liar, danau, mata air, dan saukang. Palleko'na Boronga' terdapat di sepuluh lokasi yaitu Hutan Karenglohe, Hutan Kalimbuara, Hutan</p>



		<p>Barombong, Hutan Pudondo', Hutan Buki' Madu, Hutan Buki'a, Hutan Sangkala Lombok, Hutan Pokkolo, Hutan Tamaddohong dan Hutan Bongki.</p> <p>MHA Ammatoa Kajang berhak atas lingkungan hidup yang sehat. Dalam rangka pemenuhan hak atas lingkungan hidup yang sehat masyarakat adat berhak untuk mendapatkan pendidikan lingkungan hidup, akses atas informasi, dan partisipasi yang luas dalam pengelolaan dan perlindungan lingkungan hidup</p>
	Peraturan Daerah Kabupaten Enrekang Nomor 1 Tahun 2016 tentang Pedoman Pengakuan dan Perlindungan Terhadap Masyarakat Hukum Adat di Kabupaten Enrekang	Peraturan Daerah Kabupaten Enrekang Nomor 1 Tahun 2016 tanggal, 19 Februari 2016 tentang Pedoman Pengakuan dan Perlindungan Terhadap Masyarakat Hukum Adat di Kabupaten Enrekang. Wilayah adat adalah satu kesatuan geografis dan sosial yang secara turun temurun didiami dan dikelola oleh masyarakat hukum adat sebagai pendukung kehidupan mereka yang diwarisi dari leluhurnya, melalui kesepakatan dengan masyarakat hukum adat lainnya dan/atau gugatan kepemilikan berupa tanah ulayat atau hutan adat. Pengakuan terhadap masyarakat hukum adat di Kabupaten Enrekang bertujuan untuk: Menjamin terlaksananya penghormatan oleh semua pihak terhadap keberadaan masyarakat hukum adat dan wilayah adatnya yang diakui secara hukum.
	Keputusan Bupati Enrekang Nomor: 155/KEP/II/2018 tentang Pengakuan Terhadap Masyarakat Hukum Adat "Marena"	Keputusan Bupati Enrekang Nomor: 155/KEP/II/2018 tanggal, 14 Februari 2018 tentang Pengakuan Terhadap Masyarakat Hukum Adat "Marena" Diktum Kesatu: Menetapkan pengakuan terhadap Masyarakat Hukum Adat "Marena" Kabupaten Enrekang. Diktum Keempat: Pengelolaan wilayah adat dan penyelesaian sengketa yang terjadi antar warga masyarakat diselenggarakan berdasarkan hukum adat Masyarakat Hukum Adat Marena dengan memperhatikan prinsip keadilan sosial, kesetaraan gender, hak asasi manusia dan kelestarian lingkungan hidup
	Keputusan Bupati Mamuju Nomor: 188.45/124/KPTS/I/2018 tentang Pengakuan dan Perlindungan Masyarakat Hukum Adat Bela di Kecamatan Tapalang Kabupaten Mamuju	<p>Keputusan Bupati Mamuju Nomor: 188.45/124/KPTS/I/2018 tanggal, 22 Januari 2018 tentang Pengakuan dan Perlindungan Masyarakat Hukum Adat Bela di Kecamatan Tapalang Kabupaten Mamuju, Diktum Ketiga: Masyarakat hukum adat Bela Kecamatan Tapalang sebagaimana dimaksud pada Diktum Kesatu memiliki wilayah seluas 6.548,03 hektar, dengan batas-batas sebagai berikut: Batas Koordinat, Batas Administrasi; dan Batas Alam. Masyarakat hukum adat Bela Kecamatan Tapalang memiliki wilayah adat seluas 6.548,03 hektar, dengan batas-batas, yaitu Batas Koordinat, Batas Administrasi, dan Batas Alam.</p> <p>Diktum Kedelapan: Wilayah adat sebagaimana dimaksud pada Diktum Ketiga termuat dalam lampiran II, dan merupakan bagian tidak terpisahkan dari keputusan ini; Wilayah adat Bela termuat dalam lampiran II merupakan bagian tidak terpisahkan dari keputusan ini. Diktum Kesembilan: Keputusan ini menjadi dasar untuk mencantumkan wilayah adat masyarakat hukum adat Bela Kecamatan Tapalang ke dalam perubahan Rencana Tata Ruang Wilayah (RTRW) Kabupaten Mamuju. Setelah keluarnya SK penetapan ini, selanjutnya dapat diusulkan dalam perubahan Rencana Tata Ruang Wilayah (RTRW) Kabupaten Mamuju.</p>
	Keputusan Bupati Mamuju Nomor: 188.45/122/KPTS/I/2018 tentang Pengakuan dan Perlindungan Masyarakat Hukum Adat Kopeang di Kecamatan Tapalang Kabupaten Mamuju	<p>Keputusan Bupati Mamuju Nomor: 188.45/122/KPTS/I/2018 tentang Pengakuan dan Perlindungan Masyarakat Hukum Adat Kopeang di Kecamatan Tapalang Kabupaten Mamuju, Diktum Ketiga: Masyarakat hukum adat Kopeang Kecamatan Tapalang sebagaimana dimaksud pada Diktum Kesatu memiliki wilayah pekkatuhoang seluas 4.057,81 hektar, dengan batas-batas sebagai berikut: Batas Koordinat, Batas Administrasi, dan Batas Alam. Masyarakat hukum adat Kopeang Kecamatan Tapalang memiliki wilayah pekkatuhoang seluas 4.057,81 hektar, dengan batas-batas, yaitu Batas Koordinat, Batas Administrasi, dan Batas Alam.</p> <p>Diktum Kedelapan: Wilayah adat sebagaimana dimaksud pada diktum Ketiga termuat dalam lampiran II, dan merupakan bagian tidak terpisahkan dari keputusan ini. Wilayah adat Kopeang termuat dalam lampiran II, dan merupakan bagian tidak terpisahkan dari keputusan ini. Diktum Kesembilan: Keputusan ini menjadi dasar untuk mencantumkan wilayah adat masyarakat hukum adat Kopeang Kecamatan Tapalang ke dalam perubahan Rencana Tata Ruang Wilayah (RTRW) Kabupaten Mamuju. Keputusan ini menjadi dasar untuk mencantumkan wilayah adat masyarakat hukum adat Kopeang Kecamatan Tapalang ke dalam perubahan Rencana Tata Ruang Wilayah (RTRW) Kabupaten Mamuju.</p>
	Keputusan Bupati Mamuju Nomor: 188.45/121/KPTS/I/2018 tentang Pengakuan dan Perlindungan Masyarakat Hukum Adat Makkaliki di Kecamatan Tapalang Kabupaten Mamuju	<p>Keputusan Bupati Mamuju Nomor: 188.45/121/KPTS/I/2018 tentang Pengakuan dan Perlindungan Masyarakat Hukum Adat Makkaliki di Kecamatan Tapalang Kabupaten Mamuju, Diktum Ketiga: Masyarakat hukum adat Makkaliki sebagaimana dimaksud pada Diktum Kesatu memiliki wilayah seluas 5.601,60 hektar, dengan batas-batas sebagai berikut: Batas Koordinat, Batas Administrasi, dan Batas Alam. Masyarakat hukum adat Makkaliki memiliki wilayah adat seluas 5.601,60 hektar, dengan batas-batas, yaitu Batas Koordinat, Batas Administrasi, dan Batas Alam.</p> <p>Diktum Kedelapan: Tallu Lolona (Ruang penghidupan dan kehidupan masyarakat hukum adat) sebagaimana dimaksud pada Diktum Ketiga termuat dalam lampiran II, dan menjadi bagian yang tidak terpisahkan dari Keputusan ini. Tallu Lolona atau Ruang penghidupan dan kehidupan masyarakat hukum adat tercantum dalam lampiran II dalam Keputusan ini.</p> <p>Diktum Kesembilan: Keputusan ini menjadi dasar untuk mencantumkan wilayah adat masyarakat hukum adat Makkaliki Kecamatan Tapalang ke dalam perubahan Rencana Tata Ruang Wilayah (RTRW) Kabupaten Mamuju. Mencantumkan wilayah adat</p>



		Kopeang Kecamatan Tapalang ke dalam perubahan Rencana Tata Ruang Wilayah (RTRW) Kabupaten Mamuju.
	Peraturan Daerah Bombana No 4 tahun 2015 tentang pengakuan, perlindungan dan pemberdayaan masyarakat Adat Moronene Hukaea Laea di Bombana	<p>Peraturan Daerah No 4 tahun 2015 tentang pengakuan, perlindungan dan pemberdayaan masyarakat Adat Moronene Hukaea Laea di Bombana. Penetapan Wilayah Adat adalah Pernyataan Penerimaan dan Pemberian status keabsahan oleh Pemerintah Daerah terhadap wilayah adat Masyarakat Adat Moronene Hukaea Laea. Angka 13: Hutan adalah hutan yang berada di wilayah hukum adat dan dikelola bersama masyarakat hukum adat Moronene Hukaea Laea.</p> <p>Pemerintah Daerah mengakui wilayah adat masyarakat adat Moronene Hukaea Laea. Melalui perda ini, pemerintah daerah kabupaten Bombana mengakui wilayah adat Moronene Hukaea Laea. Wilayah adat Masyarakat Moronene Hukaea Laea adalah keseluruhan wilayah Masyarakat Adat Moronene Hukaea Laea yang meliputi darat dan perairan berdasarkan hak-hak komunal masyarakat. Seluruh wilayah Moronene Hukaea Laea baik di darat maupun perairan merupakan wilayah adat dalam pengelolaannya berdasarkan komunal.</p> <p>Wilayah adat Masyarakat Adat Moronene Hukaea Laea terdiri dari: Inalahi Pure (Hutan inti); Inalahi Popalia (Hutan Penyangga); Inalahi Puema (Hutan Perkebunan); Olobu (Hutan Kecil); Kura (Perladangan); Lueno (Padang); Bako (Bakau); Beo (Tambak Garam); Bolo (Tambak Ikan tradisional). Wilayah adat Moronene Hukaea Laea terdiri dari; Hutan inti, Hutan Penyangga, Hutan Perkebunan, Hutan Kecil, Perladangan, Padang, Bakau, Tambak Garam, dan Tambak Ikan tradisional.</p>
	Peraturan Daerah Provinsi Gorontalo Nomor 2 Tahun 2016 tentang Penyelenggaraan Lembaga Adat.	Peraturan Daerah Provinsi Gorontalo Nomor 2 Tahun 2016 tentang Penyelenggaraan Lembaga Adat. Desa adalah desa dan desa adat atau yang disebut dengan nama lain, selanjutnya disebut Desa, adalah kesatuan masyarakat hukum yang memiliki batas wilayah yang berwenang untuk mengatur dan mengurus urusan pemerintahan, kepentingan masyarakat setempat berdasarkan prakarsa masyarakat, hak asal usul, dan/atau hak tradisional yang diakui dan dihormati dalam sistem pemerintahan Negara Kesatuan Republik Indonesia. Lembaga adat berwenang: memfasilitasi masyarakat adat dalam pengurusan kepentingan masyarakat adat setempat; mengelola hak dan/atau kekayaan adat untuk meningkatkan kemajuan dan taraf hidup masyarakat kearah yang lebih baik; Lembaga ada memiliki kewenangan memfasilitasi dan mengurus masyarakat adat serta pengelolaan hak-hak maupun kekayaan ada yang ada di atasnya untuk kepentingan masyarakatnya.
<b>3) Region Jawa-Bali-Nusra</b>		
	Perda Nomor 32 Tahun 2001 tentang Perlindungan Atas Hak Ulayat Masyarakat Baduy	<p>Kabupaten Lebak, sebelumnya merupakan Provinsi Jawa Barat kemudian sejak tahun 2000 menjadi Provinsi Banten melalui Undang-Undang Nomor 23 Tahun 2000 tentang Pembentukan Propinsi Banten (lembaran Negara Tahun 2000 Nomor 182, Tambahan Lembaran Negara Nomor 4010). Berbagai kesulitan telah dihadapi dalam merumuskan pemberian perlindungan Hak Ulayat Masyarakat Baduy, hal ini berkaitan dengan hakikat hukum adat yang hanya diakui dalam bentuk tak tertulis oleh persekutuan hukum yang didasarkan pada kesamaan tempat tinggal (teritorial) dan keturunan (genealogis). Jauh sebelum Peraturan Daerah Nomor 32 Tahun 2001 tanggal, 13 Agustus 2001 tentang Perlindungan Atas Hak Ulayat Masyarakat Baduy, upaya memberikan perlindungan terhadap tanah-tanah Masyarakat Baduy sudah dilakukan jauh sebelum diundangkannya Peraturan Daerah ini yang dirintis sejak Tahun 1986 dengan dikeluarkannya Surat Keputusan Gubernur Kepala Daerah Tingkat I Jawa Barat Nomor: 203/B.V/Pem/SK/1968 Tanggal 19 Agustus 1968 tentang Penetapan Status Hutan “Larangan” Desa Kanekes Daerah Baduy sebagai “Hutan Lindung Mutlak” dalam Kawasan Hak Ulayat Adat Propinsi Jawa Barat.</p> <p>Masyarakat Baduy bertempat tinggal di Wilayah Desa Kanekes Kecamatan Leuwidamar Kabupaten Lebak yang dijadikan Desa Definitif dengan Surat Keputusan Gubernur Kepala Daerah Tingkat I Jawa Barat Nomor: 140/Kep. 526Pemdes/1986 Tanggal 10 April 1986 dengan luas 5.101 Ha dan jumlah penduduk sebanyak 7181 jiwa dengan 1.997 kepala keluarga. Masyarakat Baduy terdiri atas 2 (dua) kelompok, yaitu: □ masyarakat Baduy Dalam yang mendiami kampung Cikeusik, Cikertawana, dan Cibeo. Sementara masyarakat Baduy Luar yang mendiami 51 kampung-kampung, antara lain: Kampung Keduketug; Cipondok; Babakan Kaduketug; Kadukaso; Cihulu; Balingbing; Marengo; Gajeboh; Leuwibeleud; Cipaler; Cipaler Pasir; Cical Girang; Babakan Cikakal Girang; Cipiil; Cilingsuh; Cisagu; Cijanar; Ciranji; Babakan Eurih; Cisagulandeh; Cijengkol; Cikadu; Cijangkar; Cinangsi; Batubeulah; Bojong Paok; Cangkudu; Cisadane; Cibagelut; Cibogo; Pamoean; Cisaban; Babakan Cisaban; Leuwihandam; Kaneungay; Kadukohak; Ciracakondang; Panyerangan; Batara; Bingludemok; Sorokokod; Ciwaringin; Kaduketer; Babakan Kaduketer; Cibongkok; Cikopeng; Cicatang; Cigula; Karahkal; Kadugede; dan Kampung Kadujangkung</p>
	Perda Nomor 8 Tahun 2015 tentang Pengakuan, Perlindungan dan	Putusan Mahkamah Konstitusi dalam Perkara Nomor 35/PUUX/2012 terkait dengan pengujian beberapa ketentuan dalam Undang-Undang Nomor 41 Tahun 1999 tentang Kehutanan telah mengoreksi kekeliruan kebijakan yang menyatakan bahwa hutan adat



<p>Pemberdayaan Masyarakat Hukum Adat Kasepuhan</p>		<p>adalah bagian dari hutan negara. Putusan Mahkamah itu menegaskan bahwa hutan adat adalah salah satu bentuk dari hutan hak. Kehadiran Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012 semakin menguatkan kedudukan hukum masyarakat hukum adat, termasuk masyarakat Kasepuhan, dan hak-hak mereka atas wilayah adat dan hutan yang ada di atasnya. Untuk menjadikan hak-hak konstitusional masyarakat Kasepuhan terpenuhi dan menjalankan perintah peraturan perundang-undangan lainnya maka diperlukan pengaturan mengenai pengakuan, perlindungan dan pemberdayaan masyarakat Kasepuhan di Kabupaten Lebak dengan Peraturan Daerah ini. Pengaturan ini sekaligus merupakan amanat dari UUD 1945 yang menyatakan bahwa negara mengakui dan menghormati masyarakat hukum adat.</p> <p>Peraturan Daerah ini dimaksudkan untuk memberikan dasar hukum bagi upaya Pemerintah Daerah, masyarakat Kasepuhan dan pihak-pihak lain dalam mewujudkan pengakuan, perlindungan dan pemberdayaan Kasepuhan sebagai masyarakat hukum adat. Peraturan Daerah ini bertujuan untuk memberikan kepastian hukum mengenai keberadaan, wilayah adat dan hak masyarakat Kasepuhan dan melindungi hak serta memperkuat akses Masyarakat Hukum Adat Kasepuhan terhadap tanah, air dan sumber daya alam. Peraturan Daerah ini juga meningkatkan peran serta incu putu dalam pengambilan keputusan dan Lembaga Adat dan mewujudkan penyelesaian sengketa yang berbaris kepada pengakuan dan penghormatan terhadap hak-hak Masyarakat Hukum Adat Kasepuhan dan hukum adatnya. Selain itu, Peraturan Daerah ini juga bertujuan untuk mencapai pengelolaan wilayah adat secara lestari berdasarkan hukum adat, peningkatan kesejahteraan Masyarakat Hukum Adat Kasepuhan, mewujudkan kebijakan pembangunan di daerah yang mengakui, menghormati, melindungi dan memenuhi hak-hak Masyarakat Hukum Adat Kasepuhan dan perlindungan sistem nilai yang menentukan pranata sosial, ekonomi, politik, budaya dan hukum adat Kasepuhan.</p> <p>Peraturan Daerah Nomor 8 Tahun 2015 tanggal, 15 Desember 2015 tentang Pengakuan, Perlindungan dan Pemberdayaan Masyarakat Hukum Adat Kasepuhan yang menetapkan 522 Kasepuhan, yaitu kasepuhan inti, kokolot lembur, dan kasepuhan gurun/rendangan dengan total luas mencapai 116.789,76 hektar. Sebelumnya tahun 2013, Pemerintah Daerah Kabupaten Lebak mengakui keberadaan Masyarakat Adat di Wilayah Kesatuan Adat Banten Kidul (SABAKI), melalui Keputusan Bupati Lebak Nomor 430/Kep.298/Disdikbud/2013 tanggal, 22 Agustus 2013 tentang Pengakuan Keberadaan Masyarakat Adat Di Wilayah Kesatuan Adat Banten Kidul di Kabupaten Lebak berjumlah 17 Kaolotan, antara lain: Cisungsang, Cisit, Citarucub, Ciherang, Citorek, Bayah, Karang, Guradog, Pasireurih, Garung, Karangcombong, Jamrut, Cibedug, Sindangagung, Cibadak, Lebak Larang, Babakanrabig sebagai Komunitas Masyarakat Adat yang menghuni Kawasan/Wilayah (wewengkon) Adat yang memegang teguh tiga Falsafah Hukum, yaitu Hukum Adat, Hukum Agama, dan Hukum Negara dalam suatu kelembagaan Adat/Kaolotan/Kasepuhan dalam Bingkai Negara Kesatuan Republik Indonesia.</p> <p>Masyarakat Kasepuhan memiliki tata cara sendiri dalam mengelola wilayah adatnya, hal itu dapat dilihat dalam pembagian atau zonasi berdasarkan hukum adat, seperti Wewengkon adalah wilayah adat yang terdiri dari tanah, air dan sumber daya alam yang terdapat di atasnya, yang penguasaan, pengelolaan dan pemanfaatannya dilakukan menurut hukum adat; Leuweung Kolot atau disebut dengan Leuweung Tutupan adalah wilayah adat yang berdasarkan hukum adat dipertahankan sebagai wilayah konservasi lingkungan; Leuweung Titipan atau Cawisan adalah wilayah adat yang berdasarkan hukum adat dipertahankan sebagai wilayah cadangan untuk kegiatan pemanfaatan tanah dan sumber daya alam; Leuweung Sampalan atau Garapan adalah wilayah adat yang berdasarkan hukum adat dipergunakan untuk kepentingan mata pencaharian atau pemukiman masyarakat hukum adat; dan Leuweung Kolot atau Titipan adalah hutan adat yang berada di dalam wilayah adat</p>
<p>Perda Nomor 15 Tahun 2016 tentang Pengakuan dan Perlindungan Masyarakat Hukum Adat Kampung Kuta</p>		<p>Pemerintah Daerah mengakui dan melindungi eksistensi Masyarakat Hukum Adat Kampung Kuta, meliputi identitas budaya, hak Masyarakat Hukum Adat Kampung Kuta, hak kolektif dan hak perorangan warga atas tanah melalui Peraturan Daerah Kabupaten Ciamis Nomor 15 Tahun 2016 tanggal, 29 November 2016 tentang Pengakuan dan Perlindungan Masyarakat Hukum Adat Kampung Kuta. Luas Wilayah Adat Masyarakat Hukum Adat Kampung Kuta berada di Desa Karangpaningal, Kecamatan Tambaksari ditetapkan seluas 97 hektar. Batas Wilayah Adat itu meliputi: (a). Sebelah utara berbatasan dengan dusun Cibodas; (b). Sebelah selatan berbatasan dengan sungai Cijolang; (c). Sebelah barat berbatasan dengan dusun Margamulya; dan (d). Sebelah timur berbatasan dengan sungai Cijolang.</p> <p>Selain mengakui subyek hukum, Pemerintah Daerah juga mengakui dan melindungi tanah ulayat Masyarakat Hukum Adat Kampung Kuta sebagai objek, terdiri atas: (a) Hutan titipan; (b) Hutan tutupan; dan (c) Hutan bukaan. Tidak hanya itu, Masyarakat Hukum Adat Kampung Kuta yang melakukan pemungutan hasil hutan atau pemanfaatan hutan secara lestari untuk pemenuhan kebutuhan hidup sehari-hari wajib mempunyai izin. Masyarakat Hukum Adat Kampung Kuta berhak: (a). Melakukan pemungutan hasil hutan untuk pemenuhan kebutuhan hidup sehari-hari; (b). Melakukan kegiatan pengelolaan Hutan Adat berdasarkan Hukum Adat yang berlaku</p>



		dan tidak bertentangan dengan peraturan perundangundangan; dan (c). Mendapatkan pemberdayaan dalam rangka meningkatkan kesejahteraan. Selain itu, Masyarakat Hukum Adat Kampung Kuta wajib: (a). Menjaga kelestarian hutan dalam pengelolaan Hutan Adat; (b). Melindungi jenis tumbuhan dan satwa yang dilindungi yang berada di kawasan Hutan Adat; dan (c). Melindungi kawasan Hutan Adat dari gangguan manusia maupun ancaman lain.
	Perda Manggarai Timur Nomor 1 Tahun 2018 tentang Pengakuan, perlindungan dan pemberdayaan Masyarakat Hukum adat	<p>Pengakuan, perlindungan dan pemberdayaan Masyarakat Hukum adat bertujuan untuk menjamin kepastian hukum, menjamin keberlangsungan, dan menjamin partisipasi Masyarakat Hukum Adat. Dalam Peraturan Daerah ini, Masyarakat Hukum Adat secara tegas mengatakan sebagai Subjek Hukum. Karena sebagai Subjek Hukum, Masyarakat Hukum Adat Manggarai Timur memiliki hak dan kewajiban, yaitu ha katas spiritualitas dan kebudayaan, ha katas lingkungan hidup, hak untuk menjalankan hukum adat dan peradilan adat dalam penyelesaian sengketa terkait dengan hak adat dan pelanggaran atas hukum adat, ha katas tanah ulayat, wilayah adat, dan sumber daya alam, dan/atau ha katas pembangunan. Disamping hak, Masyarakat Hukum Adat, wajib menghormati prinsip-prinsip dalam Negara Kesatuan Republik Indonesia, menjunjung tinggi Pancasila dan UUD 1945, menghormati dan mematuhi peraturan perundang-undangan yang berlaku, mengormati dan menjunjung tinggi nilai-nilai keadilan dan kemanfaatan, menghormati dan menjunjung tinggi HAM dan nilai-nilai kemanusiaan, menghormati dan menjunjung tinggi hak-hak perempuan dan anak, mengupayakan penyelesaian konflik dan sengketa melalui cara-cara damai dan bermartabat, berperan aktif dan membangun kemitraan untuk mewujudkan pengakuan, perlindungan dan pemberdayaan Masyarakat Hukum Adat, dan berperan aktif untuk mewujudkan program pembangunan.</p> <p>Mansarakat Hukum Adat Manggarai Timur memiliki karakteristik, antara lain: (a) genealogis yaitu Wa'u atau sebutan lainnya; (b) teritorial yaitu Gendangan One Lingkon Pe'ang; (c) lembaga yaitu Tu'a Golo, Tu'a Teno Gendang, Tu'a Panga, Tu'a Kilo; (d) pandangan hidup yaitu Mbaru Bate Kaeng, Uma Bate Duat, Natas bate Labar, Wae Bate Teku, Gompang Bate Takung; dan (e) norma yaitu Ruku/Sake/Kuta/Ireng/Woni/Mawa dan Go'et atau sebutan lainnya</p>
<b>4) Region Sumatera</b>		
	SK Bupati Pidie No. 140/342/KEP.02/2016 tentang Penetapan Batas Wilayah Mukim Paloh Kecamatan Padang Tiji Kabupaten Pidie	<p>Demi kepastian hukum bagi masyarakat mukim Paloh dan terhindar dari konflik batas wilayah dalam penyelenggaraan Pemerintahan Mukim dengan wilayah mukim lainnya serta dapat mengelola sumber daya alam yang berbasis pemeliharaan lingkungan hidup secara adat sesuai dengan kewenangannya, perlu ditetapkan batas wilayah mukim Paloh, Kecamatan Padang Tiji, Kabupaten Pidie. Hal itu diatur ditetapkan melalui Keputusan Bupati Pidie Nomor: 140/342/KEP.02/2016 tanggal, 11 Juli 2016 M atau 6 Syawal 1437 H tentang Penetapan Batas Wilayah Mukim Paloh Kecamatan Padang Tiji Kabupaten Pidie.</p> <p>SK Bupati Pidie itu menetapkan batas wilayah Mukim Paloh, Kecamatan Padang Tiji, Kabupaten Pidie meliputi 12 Gampong dengan luas 7.189 hektar. Wilayah Mukim Paloh itu, terdiri dari Gampong Trieng Paloh, Leuhob Paloh, Gampong Cut Paloh, Suyo Paloh, Kreb Paloh, Capa Paloh, Jurong Anoe Paloh, Balee Paloh, Jurong Gampong Cot, Pante Cermen, dan Pasar Paloh. Pembagian dan pemanfaatan wilayah mukim Paloh terdiri dari: (a) Pemukiman seluas 161 hektar; (b) persawahan seluas 271 hektar; (c) perkebunan seluas 3.828 hektar; (d) pemanfaatan hutan secara adat seluas 2.921 hektar; dan (e) waduk sluas 8 hektar.</p>
	SK Bupati Pidie No. 140/343/KEP.02/2016 tentang penetapan batas wilayah mukim Kunyet, Kecamatan Padang Tiji, Kabupaten Pidie	<p>Keputusan Bupati ini menetapkan batas wilayah mukim Kunyet, Kecamatan Padang Tiji, Kabupaten Pidie meliputi 14 Gampong dengan luas 7.271 hektar dengan batas-batas, sebelah utara berbatasan dengan Mukim Paloh dan Mukim Peudaya, sebelah selatan berbatasan dengan Mukim Andeue Lala dan Meutareum, sebelah timur berbatasan dengan Mukim Reubee dan Peudaya, dan sebelah barat berbatasan dengan Mukim Paloh.</p> <p>Wilayah Mukim Kunyet terdiri dari Gampong Geuleumpang Geuledieng, Mesjid Geuledieng, Blang Geuledieng, Cot Kunyet, Dayah Baroh, Mesjid Kunyet, Kambuek Nicah, Kambuek Payapi, Seunadeu Kunyet, dan Blang Gunci. Pemanfaatan lahan dalam wilayah mukim Kunyet terdiri dari: (a) pemukiman seluas 199 hektar; (b) persawahan seluas 552 hektar; (c) perkebunan seluas 2.414 hektar; dan (d) pemanfaatan hutan secara adat mukim Kunyet seluas 4.106 hektar.</p>
	SK Bupati Pidie No. 140/344/KEP.02/2016 tentang Penetapan Batas Wilayah Mukim Beungga Kecamatan Tangse Kabupaten Pidie	Keputusan Bupati Pidie Nomor: 140/344/KEP.02/2016 tentang Penetapan Batas Wilayah Mukim Beungga Kecamatan Tangse Kabupaten Pidie ini menetapkan batas wilayah mukim Beungga, Kecamatan Tangse meliputi enam Gampong dengan luas mencapai 18.307 hektar dengan batas-batas, sebelah utara berbatasan dengan Kecamatan Padang Tiji dan Mukim Keumala, sebelah selatan berbatasan dengan Mukim Blang Bungong, sebelah timur berbatasan dengan Kecamatan Tiro/Truseb dan Titeu, dan sebelah barat berbatasan dengan Kabupaten Aceh Besar.



		Wilayah Mukim Beungga terdiri dari Gampong Lhok Keutapang, Alue Calong, Pulo Ie, Beungga, Krueng Seukeuek, dan Blang Malo. Sementara pemanfaatan dalam wilayah Mukim Beungga terdiri dari; (a) pemukiman seluas 156 hektar; (b) persawahan seluas 394 hektar; (c) perkebunan seluas 6.769 hektar; dan (d) pemanfaatan hutan secara adat Mukim Beungga seluas 10.988 hektar.
	Qanun Mukim Kunyet No. 1 Tahun 2014 tentang Penguasaan dan Pengelolaan Hutan Adat Mukim	<p>Peruntukan kawasan hutan mukim terbagi atas fungsi: lindung seluas 500 Ha terletak di Alue Ie Ceuko, Alue Geulutong dan Alue Batee Puteh; produksi adalah hutan cadangan, seluas 1176 Ha; c. kebun rakyat seluas 2645 Ha. Masyarakat hukum adat wajib melindungi hutan adat yang berfungsi lindung. Perlindungan hutan adat berupa, larangan membuka lahan, larangan berburu satwa langka dan satwa yang dilindungi adat mukim, larangan menebang pohon, larangan usaha tambang, larangan meracun ikan, dan larangan membakar hutan.</p> <p>Qanun Mukim Kunyet Nomor 1 Tahun 2014 tanggal, 15 Desember 2014 M atau 22 Shafar 1436 H tentang Penguasaan dan Pengelolaan Hutan Adat Mukim, memperbolehkan masyarakat adat memungut hasil hutan dengan fungsi lindung berupa: a). memotong kayu untuk kepentingan rumah-rumah ibadah, sekolah, jembatan, pasar dan papan jenazah jika tidak tersedia di lahan produksi; b). memungut hasil hutan non kayu berupa rotan, damar, madu, ikan, gaharu dan ramuan obat-obatan; c). memburu kijang, rusa dan kancil dengan alat tradisional pada waktu-waktu tertentu yang dibenarkan adat; d). meneliti keadaan hutan, satwa dan tumbuhan. Sementara kawasan hutan produksi hanya diperuntukkan bagi warga mukim setempat, terletak di glee: Teungku Glee Dua; Kubu Ureung Syahid; Batee Reuteut; Cot Tembok sebelah barat; dan Alue Ie Ceukoe sebelah timur.</p>
	Qanun Mukim Lango No. 1 Tahun 2014 tentang Penguasaan dan Pengelolaan Hutan Adat Mukim dilaksanakan oleh pemerintahan mukim	<p>Seluruh wilayah hutan adat mukim dikuasai bersama oleh masyarakat adat mukim menurut Pasal 3, Qanun Mukim Lango Nomor 1 Tahun 2014 tanggal, 13 November 2014 M atau 20 Muharram 1436 H tentang Penguasaan dan Pengelolaan Hutan Adat Mukim dilaksanakan oleh pemerintahan mukim. Penguasaan berupa kewenangan mengatur, kewenangan menetapkan hubungan hukum (memberi izin), kewenangan memberikan persetujuan, kewenangan mengelola, kewenangan mengawasi dan kewenangan menegakkan adat. Imuem mukim dalam menyelenggarakan kewenangannya harus mendapat persetujuan musyawarah mukim. Musyawarah mukim, dihadiri oleh sekurang-kurangnya unsur imuem mukim, tuha peut mukim, imuem chik, lembaga adat mukim, para keuchik dan imuem meunasah dalam wilayah mukim.</p> <p>Pengelolaan hutan adat mukim berupa kawasan kebun rakyat, geulanggang, rawa-rawa, sungai dan ekowisata dilakukan sepenuhnya untuk kepentingan kesejahteraan warga mukim, penyelenggaraan pemerintahan, pembangunan, pembinaan masyarakat, pelayanan masyarakat mukim, penegakan syariat Islam dan penyelesaian perselisihan/sengketa. Pengelolaan kawasan-kawasan, dilakukan dengan persetujuan tuha peut mukim melalui musyawarah mukim. Persetujuan tuha peut mukim, agar berdayaguna untuk peningkatan pendapatan pemerintah mukim. Sementara itu, Rencana Induk Pengelolaan Hutan Adat Mukim disusun oleh pemerintahan mukim yang melibatkan majelis musyawarah mukim. Penyusunan rencana pengelolaan hutan adat mukim mengacu pada rencana kehutanan nasional, provinsi maupun kabupaten/kota dengan memperhatikan aspirasi, nilai budaya masyarakat setempat serta kondisi lingkungan. Penyusunan rencana pengelolaan, dilakukan dengan berpedoman pada ketentuan peraturan perundang-undangan yang berlaku.</p>
	Qanun Mukim Beungga No. 1 Tahun 2014 tentang Pengelolaan Sumberdaya Alam	<p>Pemanfaatan sumberdaya alam oleh masyarakat yang semakin meningkat mendorong penguatan nilai ekonomi dibandingkan dengan nilai ekologi dan nilai sosialnya. Kondisi itu berpotensi menimbulkan konflik kepentingan antar masyarakat, antar gampong dan berbagai pihak yang terkait dengan pemanfaatan sumberdaya alam. Pengembalian peran Lembaga Mukim dalam pembangunan, pengawasan fungsi ekologi dan pengelolaan sumberdaya alam. Qanun Mukim Beungga Nomor 01 Tahun 2014 tanggal, 17 Maret 2014 M atau 15 Jumadil Awal 1435 H tentang Pengelolaan Sumberdaya Alam ini memberikan perlindungan terhadap kepentingan kelompok masyarakat Mukim dengan menerapkan prinsip pengelolaan sumberdaya alam yang mampu menyelaraskan fungsi sosial, ekologi, dan fungsi ekonomi.</p> <p>Pemanfaatan dan pemungutan hasil hutan non-kayu harus mendapat ijin tertulis dari Imum Mukim. Perijinan diberikan kepada kepala keluarga dan badan usaha yang ada di wilayah Mukim untuk setiap hasil hutan non kayu yang dimanfaatkan dengan ketentuan: a) pengambilan sarang madu maksimal 70% dari ketersediaan sarang pada satu pohon untuk setiap pengambilan; b) pemanfaatan jernang berupa pengambilan buah dan hanya dibolehkan sepanjang memiliki nilai ekonomis; c) pemungutan batang rotan dan hanya dibolehkan yang memiliki ukuran panjang minimal 7 meter; dan d) pemanfaatan gaharu berupa pemanfaatan batang dan hanya diperbolehkan yang memiliki diameter diatas 20 cm.</p>



		<p>Dalam hal pembukaan lahan untuk perladangan, dituamakan pada kawasan tamah (hutan) muda dan diutamakan untuk Mukim. Sementara luas ladang maksimal yang dapat digarap oleh setiap kepala keluarga 2 hektar. Pembukaan ladang terlebih dahulu mendapatkan ijin tertulis dari Lembaga Mukim, sebagai berikut: a) 200meter dari batas kawasan hutan lindung; b) 200meter dari sumber mata air; c) 100meter dari pinggir sungai; d) 50meter dari pinggir alue (anak sungai); e) 2 kali kedalaman dari tepi jurang; f) radius 50meter dari lokasi kuburan atau situs-situs sejarah; dan g) terletak di bawah kemiringan 40%.</p>
	Perda Kabupaten Merangin No. 8 Tahun 2016 tentang Pengakuan dan Perlindungan Masyarakat Hukum Adat Marga Serampas	<p>Peraturan Daerah Kabupaten Merangin Nomor 8 Tahun 2016 tanggal, 17 Juli 2016 tentang Pengakuan dan Perlindungan Masyarakat Hukum Adat Marga Serampas ini bertujuan untuk; (a) menjamin dan memastikan terlaksananya penghormatan semua pihak terhadap keberadaan MHA Marga Serampas dan hak-haknya yang telah diakui dan dilindungi secara hukum; (b) memberikan layanan dalam rangka pemenuhan hak-hak MHA Marga Serampas; (c) memberikan kepastian hukum agar dapat hidup aman, tumbuh dan berkembang sesuai dengan harkat dan martabat serta terlindungi dari tindakan diskriminasi; (d) memberikan perlindungan dalam penyelenggaraan pemerintahan dan pembangunan; dan (e) memberikan kepastian terlaksananya tanggung jawab Pemerintah Kabupaten Merangin.</p> <p>Masyarakat Hukum Adat Marga Serampas memiliki tata cara sendiri dalam pemanfaatan tanah yang dikenal dengan istilah “Tanah ajun dan tanah arah”. Tanah ajun dan tanah arah adalah tata cara pemanfaatan tanah yang ditunjuk berdasarkan hukum adat sesuai dengan pembagian, peruntukan dan pemanfaatan tanah baik untuk produksi, lindung dan konservasi. Sementara Ulu aik adalah kawasan perlindungan sumber mata air yang berguna untuk pemenuhan kebutuhan sehari, dan “Ngarai” adalah kawasan perlindungan yang memiliki kelereng tinggi.</p> <p>Batas wilayah adat MHA Marga Serampas terbagi dalam dua bagian, yaitu Tembo Induk dan Tembo anak. Tembo Induk merupakan batas wilayah adat atau marga secara keseluruhan mencakup tiga wilayah depati, yakni Depati Pulang Jawa, Depati Singo Negro, dan Depati Karti Mudo Menggalo yang berada di bawah kekuasaan Depati Seri Bumi Putih Pemuncak Alam. Sementara Tembo anak merupakan batas wilayah adat yang dimiliki oleh dua desa, yakni wilayah desa yang termasuk dalam wilayah Depati Pulang Jawa dan Depati Karti Mudo Menggalo. Kedua Tembo Induk dan Tembo anak terdapat dalam wilayah administratif Desa Rantau Kremas, Renah Alai, Renah Kemumu, Tanjung Kasri, dan Desa Lubuk Mentilin, Kecamatan Sungai Tenang, Kabupaten Merangin.</p> <p>MHA Marga Serampas memiliki sistem sendiri dalam penguasaan dan pemanfaatan lahan berdasarkan tanah ajun dan tanah arah. Tanah ajun dan tanah arah merupakan pengaturan secara adat dalam pengelolaan dan pemanfaatan serta peruntukan ruang dan kekayaan alam serta budaya. Dalam pemanfaatan lahan, harus memperhatikan kawasan ulu aik dan ngarai sebagai kawasan perlindungan. MHA Marga Serampas dalam penguasaan dan pemanfaatan lahan terbagi menjadi lahan milik bersama atau komunal dan lahan milik pribadi. Lahan milik bersama atau komunal berdasarkan tataguna lahan meliputi Hutan Adat. Sementara lahan milik pribadi berdasarkan tataguna lahan meliputi lahan pemukiman, pekarangan, kebun, dan sawah. Lahan milik bersama atau hutan adat tidak boleh diubah status penguasaan dan pemanfaatannya sesuai dengan pengaturan tanah ajun dan tanah arah serta memperhatikan kawasan ulu aik dan Ngarai. Hutan adat mencakup seluruh sumber daya alam dan budaya yang di dalamnya terdapat tumbuhan, satwa liar, danau, mata air, dan kekayaan alam lainnya. Dalam penetapan hutan adat dilakukan melalui mekanisme tanah ajun dan tanah arah dan memperhatikan kawasan ulu aik dan Ngarai yang terdapat di Desa Rantau Kremas, Renah Alai, Renah Kemumu, Tanjung Kasri dan Desa Lubuk Mentilin, Kecamatan Sungai Tenang, Kabupaten Merangin, Provinsi Jambi.</p> <p>Berdasarkan Perda Kabupaten Merangin No. 8 Tahun 2016 ini, pada tanggal 28 Desember 2016, Kementerian Lingkungan Hidup dan Kehutanan menetapkan Hutan Adat Marga Serampas seluas ± 130 Ha di Desa Rantau Kermas, Kecamatan Jangkat melalui SK.6741/MENLHK-PSKL/KUM.1/12/2016</p>
	Regent Decree regarding the establishment of adat forests in Kerinci District	<p>Long before the Constitutional Court Decision 35 stating that adat forests were no longer part of state forest, Jambi Province, especially Kerinci District, for the first time in Indonesia had established adat forests. This can be seen through Regent Decree of KDH TK. II Kerinci No. 176 of 1992 on November 6, 1992 covering an area of 23 hectares located in Keluru Village, Keliling Danau Subdistrict located in the Other Use Area (APL). Next the Regent of Kerinci determined Adat Forest Nenek Limo Hiang, Nenek Empat Betung Kuning and Muaro Air Duo Sitinjau Laut District through Regent Decree of Kerinci TK II No. 226 of 1993 dated 7 December 1993 covering an area of 858.53 hectares. In 1994 it established the Hulu Air Lempur Adat</p>



		<p>Forest, Lekuk 50 Tumbi in Gunung Raya Subdistrict through TK. II Kerinci No. 96/1994 dated May 10, 1994 covering an area of 858.3 hectares.</p> <p>In 2011 and 2013, the Kerinci Regent consecutively established two Adat Forests, namely the Bukit Sembahyang and Padun Gelanggang Adat Forest, Air Terjun Village, Siulak Subdistrict through Regent Decree of Kerinci No. 522.21/Kep. 435/2011 on November 15, 2011 covering an area of 39.04 hectares and Bukit Tinggi Adat Forest of Sungai Deras Village, Air Hangat Timur Subdistrict through Regent Decree of Kerinci No. 522.21/Kep. 437/2011 on November 15, 2011 covering an area of 41.27 hectares. Whereas in 2013, the Tigo Luhah Permenti Yang Berenam, Adat Forest, Pungut Mudik Village, Air Hangat Timur Subdistrict was established through Regent Decree of Kerinci No. 522.21/Kep. 181/2013 dated July 25, 2013 covering an area of 252 Hectares and Adat Forest of Tigo Luhah Kemantan, Kemantan, Air Hangat Timur Subdistrict, covering an area of 426 hectares.</p> <p>Besides that, there are six potential locations of adat forests in Kerinci District, namely (1) Bukit Titing Adat Forest, Pungut Hilir Village, Air Hangat Timur Subdistrict, covering an area of 22 hectares; (2) Bukit Gedang Adat Forest, Pendung Hilir Village, Air Hangat District, covering an area of 103 hectares; (3) Bukit Sigi Adat Forest, Tanjung Genting Village, Gunung Kerinci Subdistrict covering an area of 12 hectares; (4) Padun Tinggi Adat Forest, Ujung Ladang Village, Gunung Kerinci Subdistrict covering an area of 5.17 hectares; (5) Tigo Luhah Permenti Yang Berenam Adat Forest, Sungai Medang Village, Air Hangat Timur Subdistrict covering an area of 53.44 hectares; and (6) Depati Nyato Adat Forest, Bintang Marak/Talang Kemuning Village, Bukit Kerman Subdistrict covering an area of 760 hectares.</p> <p>From the list of adat forests mentioned above, four of them have been determined by KLHK on December 28, 2016, namely (1) SK No.6737/MENLHK-PSKL/KUM.1/12/2016 establishing the Sembahyang Hill Adat Forest and Bukit Padun Gelanggang in Siulak Subdistrict, Air Terjun Village of ± 39 Hectares; (2) Decree No. 6738/MENLHK-PSKL/KUM.1/12/2016 stipulates the Bukit Tinggi Adat Forest in the Sungai Deras Village, Air Hangat Subdistrict with an area of ± 41 hectares; (3) Decree No.6739/MENLHK-PSKL/KUM.1/12/2016 stipulates the Tigo Luhah Permenti Adat Forest in the Air Hangat Subdistrict of Pungut Mudik Village of ± 276 hectares; and (4) SK No.6740/ MENLHK-PSKL/KUM.1/12/2016 Tigo Luhah Adat Forest of Kemantan in Air Hangat Timur Subdistrict covering an area of ± 452 hectares.</p> <p>Since 2012, adat forest has been listed in the Kerinci Regency Spatial Plan for 2012-2032 dated December 10, 2012 as stated in Article 33 concerning the allocation of rights forests in the form of ± 1,202 hectares of adat forests, consisting of: (1) Ulu Air Lempur Lekuk Limo Puluh Tumbi adat forest located in Lempur Village, Gunung Raya Subdistrict; (2) Nenek Limo Hiang Tinggi Nenek Empat Betung Kuning, located in Muara Air Dua Village, Sitingau Laut Subdistrict; (3) Temedak adat forest, located in Keluru Village, Keliling Danau Subdistrict; (4) Kaki bukit lengah adat forest in the Pungut Mudik Village, Air Hangat Timur Subdistrict; (5) Bukit Tinggi adat forests located in Sungai Deras Village, Air Hangat Timur Subdistrict; (6) Bukit Sembahyang adat forests and padun gelanggang are in Air Terjun Village of Siulak Subdistrict; (7) Bukit Sigi adat forest in Tanjung genting Village, Gunung Kerinci Subdistrict; (8) Kemantan adat forest located in the Kemantan Village, Air Hangat Timur Subdistrict; and (9) Bukit Teluh adat forests in Batang Merangin District</p>
	Regent Decree regarding the establishment of adat forests in Sarolangun District	<p>Not only Kerinci, since 1993 Sarolangun District has also established adat forest in Baru Village, Pangkalan Jambu District through Regent Decree of Sarolangun Bangko No. 225 of 1993 dated June 15, 1993 covering an area of 750 hectares which intersects with the Kerinci Seblat National Park (TNKS) area. In 2010 the Regent of Sarolangun again established adat forest through Regent Decree of Sarolangun No. 206 of 2010, dated April 21, 2010 concerning the Bukit Bulan "Inner Jo Pangulu" Adat Forests spread in 11 locations, namely (1) Rio Peniti Adat Forest, Lubuk Bedorong Subvillage, Lubuk Bedorong Village, Limun Subdistrict covering an area of 313 hectares; (2) Pangulu Lareh Adat Forest, Temalang Subvillage, Temalang Village covering an area of 128 hectares; (3) Pangulu Batuah Adat Forest, Meribung Subvillage, Meribung Village covering an area of 295 hectares; (4) Datuk Monti Adat Forests, Tinggi Subvillage, Meribung Village covering an area of 48 hectares; (5) Pangulu Sati Adat Forest, Sungai Beduri Subvillage, Meribung Village covering an area of 100 hectares; (6) Rimbo Larangan Adat Forest, Meribung Subvillage, Meribung Village with an area of 18 hectares; (7) Imbo Pseko Adat Forest, Napal Melintang Subvillage, Napal Melintang Village covering an area of 140 hectares; (8) Imbo Lembago Adat Forest, Napal Melintang Subvillage, Napal Melintang Village covering an area of 70 hectares; (9) Datuk Rajo Intan Adat Forest, Mersip Ulu Subvillage, Mersip Village covering an area of 80 hectares; (10) Datuk Menteri Sati Adat Forest, Mersip Tengah /Ulu Pangi Subvillage, Mersip Village covering an area of 78 hectares; and (11) Bukit Raya Adat Forests, Berkun Village covering an area of 98 hectares.</p>



		<p>vering an area of 98 hectares. In 2014, the Regent of Sarolangun established two adat forests through the Regent Decree of Sarolangun No 357/Bunhut/2014 concerning Inauguration of Mengkadai Subvillage Adat Forests in Temenggung Village, Limun Subdistrict, namely Imbo Adat Forest covering an area of 109 hectares and Imbo Larangan Sakti Adat Forest covering an area of 6 hectare. Following the Sarolangun Regent Decree No 356/Bunhut/2014 concerning the Inauguration of the Imbo Larangan Adat Forest Area, Muaro Mensio and Benteng Tinggi Subvillages in Panca Karya Village, Limun Subdistrict where there were four locations namely (1) Renah Aur adat forest covering an area of 150.83 hectares; (2) Lubuk Godang customary adat covering 32.85 hectares; (3) Lubuk Tingkok adat forest covering an area of 24.64 hectares; and (4) Sekampung adat forests covering an area of 9.17 hectares.</p> <p>Then in 2015 there were three adat forests through Regent Decree of Sarolangun No. 289 of 2015 concerning the Inauguration of Adat Forest Areas in Raden Anom Village covering an area of 641 hectares. Following the Regent Decree of Sarolangun Number 290 Year 2015 concerning the Inauguration of Adat Forest Areas in Muaro Pemuat Village covering an area of 69.41 hectares, and the Regent Decree of Sarolangun No. 291 of 2015 concerning the Inauguration of Adat Forest Areas in Demang Village covering an area of 132 hectares.</p>
	Regent Decree regarding the establishment of adat forests in Merangin District	<p>Similar to Sarolangun, Merangin District first established the Pangkalan Jambu Adat Forest, Baru Village of Pangkalan Jambu in 1993 through Decree of the Regent of KDH TK. II of Sarolangun Bangko No. 225 of 1993, June 15, 1993 covering an area of 750 hectares. Following next is the Rimbo Penghulu adat forest of Depati Gento, Pulau Tengah Village, Jangkat Subdistrict through Regent Decree of Merangin Number 95 of 2002 dated April 10, 2002 covering an area of 525 hectares. Next is the Bukit Tapanggang Adat Forest, Guguk Village, Renah District, the Promoter through Regent Decree Merangin No. 287 of 2003 covering an area of 690 hectares. Guguk Customary Forest, Guguk Village, Renah Pembarab Subdistrict through Regent Decree of Merangin Number 287 of 2003 dated June 2, 2003 covering an area of 690 hectares consisting of 602 in production forest areas and 88 hectares in area for other purposes (<i>APL</i>).</p> <p>In 2006, the District Head of Merangin established two adat forest locations through the Regent Decree of Merangin Number 36 of 2006 dated February 21, 2006, namely Imbo Pusako adat forest covering an area of 252.5 hectares, and Imbo Purabukalo adat forest, Batang Kibul Village, Tabir Ulu District covering an area of 275.5 hectares. Lastly, the Merangin Regent Decree Number 230/Dishutbun/2010 dated June 18, 2010 stipulated the Koto Bukit Pintu adat forest, Ngaol Village, West Tabir District covering an area of 278 hectares located on <i>APL</i>.</p>
	Regent Decree regarding the establishment of adat forests in Bungo District	<p>In 2002, Regent Decree of Bungo No. 1249 of 2002 dated July 16, 2002 stipulates adat forest in Batu Kerbau Subvillage, Pelepat District, namely 386 hectares of Kampung Batu Kerbau adat forest, 472 hectares of Kampung Belukar adat forest, 360 hectares of Lubuk Tebat Kampung adat forest, Kampung Batu protected forest Water buffalo covering 776 hectares, and 361 hectares of Kampung Belukar protected forest. In 2006, adat forest of Baru Pelepat Subvillage, Pelepat Subdistrict was established through Local Regulation of Bungo No. 3 of 2006, dated October 17, 2006 covering an area of 780 hectares.</p> <p>Furthermore, in 2009 and 2010, respectively, the Bukit Bujang Adat Forest in Senamat Ulu Subvillage, Bathin III Ulu Subdistrict is established through the Regent Decree of Bungo District No. 48/Hutbun of 2009 dated February 10, 2009 covering an area of 223.69 hectares, and Regent Decree of Bungo No. 528/Hutbun of 2010, on November 5, 2010 stipulated Rimbo Bulim Adat Forest of Bathin II Batang Uleh Community, Rambah Subvillage, Tebing Tinggi Uleh, Bukit Kemang &amp; Renah Jelmu Tanah Tumbuh Subdistrict covering an area of 40.68 hectares.</p>
<b>5) Kalimantan Region</b>		
	Regent Decree of Malinau No. 189 of 2015 concerning Recognition and Protection of Punan Long Adui as the Unity of MHA in Malinau District	<p>The issuance of the Regent Decree of Malinau No. 189 of 2015 marked the recognition and protection of the Punan Long Adui customary community as an adat community in Malinau District that has values, norms, customs, adat institutions and local wisdom that are recognized over generations along with the rights of Punan Long Adui Adat Community. Besides, local government of Malinau also recognized the customary area of 17,447.97 hectares as stated in the map in Appendix II of this Regent Decree, which is also the administrative area of Punan Long Adui Village with the following adat territorial boundaries: 1) North: the Punan Semolon adat territory, Mentarang Subdistrict, Setarap adat territory and the Punan Setarap adat territory, Malinau Selatan Hilir Subdistrict; 2) South: Long Adui adat territory, Malinau Selatan Hilir Subdistrict and Sengayan adat area, Malinau Selatan Hilir</p>



		<p>Subdistrict; 3) East side: Solok Gong adat territory, Malinau Selatan Hilir Subdistrict, Lower South; 4) West: Punan Tebunrau adat area, Tubu Subdistrict.</p> <p>Land use in adat territories of the Punan Long Adiu adat community includes but is not limited to: 1) Production forest (<i>tanog jakah</i>) area of ± 5,752.95 hectares; 2) Protected forest (<i>tanog legaman</i>) covering an area of ± 7,041.25 hectares; 3) Gunung bintan (<i>tanog unchut krawing</i>) area of ± 1,821.36 hectares; 3) Tanah simpang (<i>melu tanog</i>) area of ± 748.68 hectares; 4) Farmland (<i>mena umoh unan lidaq</i>) area of ± 938.71 hectares; 5) Plantation land of eaglewood (<i>tanog lidaq lelah</i>) area of ± 490.59 hectares; 6) <i>Jakau</i> area (<i>balah</i>) area of ± 302.85 hectares; 7) Residential land (<i>tanog lun tukung</i>) area of ± 308.83 hectares; 8) Lake Sigong Kelawang (Tabau Sigong Kelawang) area of ± 9.75 hectares; 9) The Malinau River (<i>unge balinau</i>) area of ± 33.00 hectares.</p> <p>Determination of protected areas indicates a certain region intended to guarantee the existence, availability and sustainability of natural resources and biodiversity. Besides, the importance of protecting adat peoples in order to maintain traditional knowledge related to genetic resources is an inseparable part of genetic resources and is continuously inherited from the ancestors of adat and local communities to the next generation.</p> <p>Other arrangements regarding conservation are found in the fifth dictum where adat territorial management and settlement of disputes that occur between community members are carried out based on adat law of the Punan Long Adiu adat community with regard to the principles of social justice, gender equality, human rights and environmental preservation. Meanwhile, in the eighth dictum, natural resource management in adat territories of the Punan Long Adiu adat community is based on adat law and local wisdom.</p>
	Local Regulation of Malinau District Number 10 of 2012 concerning Recognition and Protection of the Rights of Indigenous Peoples in Malinau District	<p>Local Regulation of Malinau District No. 10 of 2012 regulates comprehensively everything related to the position of adat peoples, the rights of adat peoples, institutions that take care of adat peoples, processes and forms of legal recognition, dispute resolution and responsibilities of local governments within the Malinau District. This has a positive and supportive effect on conservation efforts to protect natural resources in Malinau.</p> <p>In Local Regulation of Malinau District Number 10 of 2012, the definition of adat Peoples in Malinau District is explained as a community group that has traditionally settled in certain geographical areas in Malinau District that have ties to the ancestral origins, has a strong relationship with land, territories and natural resources in their adat territories, as well as the existence of a value system that determines different economic, political, social and legal institutions, both partially and wholly from the general public. This definition affirms that the existence of adat peoples in Malinau is a unit with territorial land and natural resources in their adat territories.</p> <p>Furthermore, the definition of adat peoples' rights is communal or individuals' rights that are inherent and originated to adat peoples, which comes from their social and cultural systems, especially rights to land, territory and natural resources. Adat territory is a geographical and social unit that has traditionally been inhabited and managed by adat peoples to support their lives, inherited from their ancestors or obtained through agreements with other adat peoples.</p> <p>The principle of environmental sustainability is also one of the principles in the recognition and protection of the rights of adat peoples in Malinau District. The existence of an environmental sustainability principle is important for conservation in Malinau because the principle is the basis of a regulation.</p> <p>This Local Regulation of Malinau also regulates adat peoples in Malinau District as legal subjects who have inherent and originating rights. In its position as legal subject, adat peoples in Malinau District have the authority to carry out legal actions relating to their rights, including rights to land, territory and natural resources that are within their adat territories. The affirmation of adat peoples as legal subjects relating to the rights and obligations is inherent in adat peoples and mainly related to the rights to their adat territories.</p> <p>Furthermore, in their position as legal subjects, adat peoples in Malinau District have the right to: a. regulate communal life among adat peoples and between indigenous peoples and their environment; b. take care of their communal life based on adat law organized by adat institutions; c. manage and distribute resources among adat peoples by paying attention to the balance of functions and guarantee equality for beneficiaries; d. organize special customs, spirituality, traditions, and adat justice systems.</p>



		<p>Adat peoples have the right over lands, territories and natural resources that they have or occupy for generations and/or obtained through other mechanisms. Rights to land, territory and natural resources include the right to own, use, develop and control based on hereditary ownership and/or other means. In addition to that, land rights can be communal/collective and/or individual ownership in accordance to the local adat law.</p> <p>Measures to protect adat territories are regulated in Article 8. Communal/collective land rights can't be transferred to other parties while individual land rights can only be transferred in accordance with the requirements and processes determined by adat law. The use of communal/collective and individual land within adat territories by other parties can only be done through a mechanism of joint decision making based on adat law.</p> <p>Therefore, if there is communal/collective land that will be utilized by other parties outside adat community, then the related adat community must conduct <i>musyawarah</i> first to make a decision whether the communal/collective land can be utilized by other parties outside them or not. Such <i>musyawarah</i> is also needed if the individual lands of members of adat peoples will be utilized by other parties outside their community. Even though the land is owned individually but control over the transition and changes in the status of individual land rights of members of adat peoples remains in the hand of adat <i>musyawarah</i>.</p> <p>If the land, territories and natural resources owned by the adat people for generations are taken over, controlled, used or destroyed by any party, then adat peoples have the right to obtain proper and fair restitution and compensation.</p> <p>In relation to the right to spirituality and culture, adat peoples have the right to adhere to and practice belief, ritual ceremonies inherited from their ancestors. Besides, adat peoples have the right to develop traditions, customs that include the right to maintain, protect and develop their cultural form in the past, present and future. "Traditional knowledge and intellectual property" include technology, cultivation, seeds, medicine, design, traditional games, performing arts, visual arts and literature.</p> <p>Whereas on the rights to the environment, adat peoples have the right to the restoration and protection of the environment which is damaged in adat territory. The recovery of the damaged environment in adat territories is carried out by taking into account the proposed environmental recovery activities that are pointed out by the affected adat peoples including considering the procedures for environmental restoration based on their local wisdom.</p> <p>Local Government established the Adat Community Management Agency in Malinau in order to ensure the ongoing recognition and protection of adat peoples' rights according to the procedures stipulated in this Regional Regulation. The agency accepts registration and verifies the existence of indigenous peoples, channels the aspirations of adat peoples to the district government in every planning, management and supervision of development programs to ensure budget availability and the protection and fulfillment of the rights of adat peoples.</p>
	Local Regulation of West Kutai District Number 6 of 2014 concerning Protection of Adat Forests, Historical Sites, Flora and Fauna, and Environmental Conservation in West Kutai District	<p>Local Regulation of West Kutai District Number 6 Year 2014 regulates 4 important points including: 1) Protection of adat forests; 2) Protection of historical sites; 3) Protection of flora and fauna; 4) Protection of environmental. The purpose and objective of protection of customary forests, historic sites, flora and fauna and environment is to ensure conservation and existence of adat forests, historical sites, flora and fauna and to maintain the values of history, science, education to improve people's welfare in general, especially within the West Kutai Regency.</p> <p>First, the management of adat forest protection is carried out by the Adat Chief and the local adat law community. The Regent through the Head of the Forestry Service conducts assistance and supervision over the protection of adat forests which are the responsibility of adat peoples. The management of adat forests includes activities such as: a) Anticipating, preventing and overcoming security disturbances and acting legally on the perpetrators of possession, use, destruction, disappearance and/or illegal sales of adat forests, adat forest areas and or their products; b) Anticipating, preventing and overcoming damage to adat forests from pests, diseases, fire and or livestock as well as adat law enforcement and/or state law for the perpetrators, either individual or legal entities of the spread/causes of pests, livestock diseases and fires either caused directly or indirectly; c) Anticipating, preventing and overcoming forest damage caused by natural disasters.</p> <p>Whereas things that are prohibited in order to protect adat forests, namely: a) Every person or legal entity is prohibited from carrying out actions/activities either directly or indirectly resulting in damage to adat forests along with the flora and fauna contained therein; b) Every person or legal entity is prohibited from utilizing flora and</p>



		<p>fauna inside adat forest area without permission; c) Every person is prohibited from cutting down trees, burning and hunting in adat forest areas without permission from the local adat village institution and the approval of the Regent.</p> <p>Second, the protection of historical sites includes historical objects, historical buildings, historical structures, and historical areas. The Regent conducts supervision and assistance on the management and protection of those historical sites carried out by appointed officials according to their authority.</p> <p>Management and protection of historic sites is a measure to: a) Anticipate, prevent and overcome security disturbances and take legal action against the perpetrators of possession, use, destruction, and illegal sale of historical objects, historical buildings, historical structures and historical area; b) Anticipate, prevent and overcome damage to historical objects, historical buildings, historical structures and historical area caused by people or legal entities either directly or indirectly; c) Anticipate, prevent and overcome damage to historical sites caused by natural disasters; d) Maintain the nation's cultural heritage. Whereas disturbing, destructing, exterminating, changing the shape of historical sites within the West Kutai District are those included in the prohibition.</p> <p>Third, the implementation of protection of flora and fauna aims to conserve and maintain the population of flora and fauna within West Kutai District. Protected tree species within West Kutai District are <i>banggeris</i> trees, <i>tengkawang</i> trees, <i>ipir</i> trees, <i>jelemuq</i>, <i>terakiq</i>, <i>nyatog</i>, <i>gambir</i>, agatis trees, betel nut, black orchids and local fruits tree. While the protected species are orangutans, mahakam dolphins, rhinos, leopards, sun bears, bulls, deer, anteaters, partridges, proboscis monkeys, hornbills, Kalimantan peacocks, <i>trakuuq</i> birds, parrots, white storks, and <i>kalibarau</i> birds.</p> <p>Fourth, the implementation of environmental preservation aims to preserve, protect and guarantee environment conservation in the West Kutai District is a measure to realize an environmentally sound sustainable development. The implementation of environmental conservation is carried out as a measure to: a) Anticipate, prevent, cope with and take legal action of any person or legal entity who either directly or indirectly carrying out activities/actions that cause contamination and/or damage to the environment; b) Anticipate, prevent and overcome natural disasters, pests and/or diseases that can disrupt environment conservation.</p> <p>In order to preserve the environment, every person or legal entity is obliged to participate in carrying out environmental preservation, is obliged to maintain cleanliness in their respective environments, each <i>kelurahan</i> and <i>kampung</i> must have <i>lembo</i> or fruit gardens of at least 2 (two) hectares, and every person or legal entity must protect, maintain and preserve the existing <i>Lembo</i> around them.</p> <p>Whereas the prohibitions are prohibition of constructing buildings without permit in any forms along watershed of at least 150 m and watershed sub-regions of at least 150 m away from the river, prohibition of carrying out development activities, plantations, and other activities along Bengkalang River area without permit of at least 200 m to the left and 200 m to the right of the river bank and 4 hectares of the springs in the Bengkalang River, prohibition of conducting plantation, mining and other activities without permit in watershed area of at least 100 m and a watershed sub-area of at least 150 m from the river bank; prohibition of carrying out activities that can cause destruction of <i>lembo</i>, prohibition of carrying out activities of plantation, mining and other business activities without permit in the springs area of 300 m of the springs sub-area and at least 300 m of the springs, and prohibition of carrying out actions/ activities that result in fire and environmental pollution.</p>
	Local Regulation of West Kutai District Number 9 of 2014 concerning Determination of Hemaq Beniung Area, Kekau and Hemaq Pasoq Customary Forest as Adat Forest	<p>Through this regulation, the Hemaq Pasoq and Hemaq Beniung areas are designated as Hemaq Pasoq and Hemaq Beniung Adat Forests. Hemaq Beniung Adat Forest is located in Juaq Asa Village, Barong Tongkok District, West Kutai District. The area of the Hemaq Beniung Adat Forest is ± 48.85 hectares. Whereas Kekau Adat Forest is located in Muara Begai Village, Muara Lawa District, West Kutai District. The area of Kekau Adat Forest is ± 4,026 hectares.</p> <p>Adat Forest Management is carried out based on the functions of adat forests. Adat law communities in forest areas that have been designated as Adat Forests have the right and obligation to maintain and conserve the area. The conservation of adat forests by adat peoples is carried out based on the principles of preservation of forests functions and benefits for adat peoples.</p> <p>To conserve adat forests, adat law communities are prohibited from: a) Selling or transferring adat forests to other parties; b) Using some part or all of adat forest as guarantee or collateral to other parties; c) Hunting/capturing/killing any animal in the area of Hemaq Pasoq and Hemaq Beniung Adat Forests; d) Burning, farming in Hemaq Pasoq and Hemaq Beniung Adat Forests; e) Certifying Adat Forests as</p>



		<p>individual or group property; f) Carrying out logging in Adat Forest area without permission from the Bupati or appointed official, except for the purpose of adat ceremonies that can be done by obtaining permission from the local adat institution; g) Conduct activities for personal gain; h) Utilizing adat forests beyond the interests of adat peoples and local governments; i) Giving permission to use adat forest areas without the permission of the Regent or appointed official; j) Cooperating with third parties and/or other parties for the management of adat forest area without the permission of the Bupati or appointed official; k) If the location of Hemaq Pasoq and Hemaq Beniung Adat Forests is included in the mining, plantation or agricultural area, area which belongs to individuals or companies or any legal entity, then the location of Hemaq Pasoq or Hemaq Beniung Adat Forest must be enclosed. k) If the location of Hemaq Pasoq and Hemaq Beniung Adat Forest is included in the mining, plantation or agricultural work area, which belongs to individuals, companies or any legal entity, then the location of Hemaq Pasoq or Hemaq Beniung Customary Forest must be enclosed.</p> <p>The Forestry Service of West Kutai District was given the task of supervising and facilitation of Hemaq Pasoq and Hemaq Beniung Adat Forests. Criminal sanctions will be given to every person or legal entity that conducts destructive, disrupting activities and use adat forest land for personal or groups interests are threatened with a maximum of 6 (six) months imprisonment or a maximum fine of Rp50,000,000 (fifty million rupiah).</p>
	Provincial Regulation of East Kalimantan No. 07 of 2009 concerning the Management of Coastal, Marine and Small Islands Resources	<p>In the initial section, this regulation includes sustainable principle as one of the principles. The objectives of managing coastal areas, marine and small islands are to: a) create a system and mechanism for managing coastal resources to guarantee the use in rational manner, sustainable and environmentally sound; b) to create of a balance between the benefits of coastal resources to improve the welfare of coastal communities; c) to maintain the sustainability of coastal ecosystems functions so that they can continue to support sustainable development; d) to create community compliance toward the law of coastal areas management; and e) to protect coastal areas from the negative impact due to the activities within and outside the province.</p> <p>In planning of coastal areas, marine and small islands management, a Strategic Plan (RS) is established that is valid for 20 (twenty) years and can be reviewed every five years. After the Strategic Plan is established, a Zoning Plan (RZ) guided by the Strategic Plan is prepared. RZ consists of: a) conservation zone; b) general use zone; c) special zones; and d) lines/lanes.</p> <p>The management of coastal area in this <i>Perda</i> is also regulated in a separate Article. The Local Government establishes a coastal area in urban areas and rural areas by following these provisions: a) protection against earthquakes and/or tsunamis; b) protection from coastal erosion, intrusion and abrasion; c) protection of artificial resources from the dangers of storms, floods and other natural disasters; d) protection of coastal ecosystems; e) arrangement of space for sewerage and dirty water; and f. protection of public access rights.</p> <p>Chapter 8 of this <i>Perda</i> regulates conservation. Conservation is carried out with the aim of: a) maintaining the sustainability of coastal ecosystems; b) protecting the migration path of fish and other marine biota; c) protecting habitat of marine biota; and d) protecting traditional cultural sites. Conservation areas that have characteristics as ecosystem unity are carried out with the aim of protecting: a) fish resources; b) migration routes of whales and rare species; c) fish spawning sites; d) certain areas regulated by adat law; and e) coastal ecosystems that are unique and/or vulnerable to change.</p> <p>The Conservation Area is divided into 3 (three) zones, namely: a) Core Zone; b) Buffer Zone; and c) Limited Use Zone. Local Government establishes coastal conservation areas, fisheries reserves and the establishment of the KKLD. KKLD is carried out with the aim of: a) ensuring the continuity of ecosystem functions; b) ensuring sustainable use and development of fisheries resources; c) providing guarantee of the use of coastal area for education, research, aquaculture, and tourism; and d) protect the existence of local wisdom locations and/or traditional marine rights.</p> <p>This <i>Perda</i> also regulates environmental guarantees. Responsible businesses stakeholders and/or activities of coastal areas, marine and small islands are obliged to provide environmental guarantees that are given to local governments that are used for environmental recovery and restoration.</p> <p>Monitoring of the planning and implementation of coastal, marine and small island areas management is carried out in a coordinated manner by relevant agencies, together with community and coastal management organizations. Community</p>



		monitoring is carried out through the submission of reports and/or complaints to the authorities
	Regent Decree of Paser No. 413.3/KEP-268/2018 concerning Recognition and Protection of Mului Adat Law Communities in Paser Regency	Regent Decree of Paser Number 413.3/KEP-268/2018 dated April 24, 2018 concerning Recognition and Protection of Mului Adat Law Communities in Paser District. Regent Decree No. 413.3/KEP-268/2018 stipulates adat territories of the Mului Adat Law Community which are included in the annex map with a scale of 1: 50,000 covering an area of 7,803 hectares. In addition to that, this Regent Decree is the implementing of Article 5 paragraph (4) Regent Regulation of Paser Number 63 of 2017 dated 20 December 2017 concerning Guidelines for Identification, Verification and Determination of Adat Law Communities in Paser District and Regent Decree of Paser Number 189.1/KEP-460/2017 dated August 23, 2017 concerning the Establishment of a Committee for Adat Law Communities in Paser District.

