



RECOGNITION OF THE ORIGINAL RIGHTS OF CUSTOMARY LEGAL COMMUNITIES IN THE INDONESIAN NATIONAL LEGAL SYSTEM

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Abstract

The fundamental rights inherent in Indigenous legal communities are ancestral rights, which originate and evolve from the traditions, cultural values, and social structures of the communities themselves. These rights encompass rights to traditional land, leadership practices, institutions, and legal frameworks. However, in reality, this acknowledgment frequently lacks sufficient legal safeguards. To examine how the domestic legal framework offers recognition and protection for the ancestral rights of Indigenous legal communities and how effectively it is implemented. This study employs a normative legal analysis (juridical normative) that employs both statutory and conceptual approaches. The findings of this research indicate that the acknowledgment of the ancestral rights of indigenous legal communities has been incorporated into the national legal framework; however, its safeguarding remains insufficient at the execution level. Collaboration among the central government, regional authorities, and indigenous communities is essential to enhance this protection. The government must expedite the creation of enforcement regulations that secure the ancestral rights of Indigenous communities and enhance the capability of Indigenous institutions to collaborate with the government in overseeing Indigenous lands. Enhancing the ability of indigenous organizations to collaborate with the government to oversee indigenous lands.

Keywords: *Original Rights, Customary Law Communities, National Legal System.*

1. Introduction

1.1 Background

The government system of the Unitary State of the Republic of Indonesia (NKRI), as stipulated by the 1945 Constitution, allows regions the freedom to exercise regional autonomy, as each region is empowered to implement autonomy within its own area. (Haw Widjaja, 2003) Article 18 section (1) of the 1945 Constitution of the Republic of Indonesia declares that every region in Indonesia possesses its own local autonomy and administration. This indicates that every region has the power to manage its affairs. (Mujab, S., 2022). The capacity to manage domestic matters in that area. Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia does not mention villages. Furthermore, in Article 18 (1), the expression "divided into regions" indicates that alongside honoring the existence of autonomous regions, it also stresses that the relationship between central and regional governments possesses a hierarchical character. Agus Lanini, et al. 2018).

Even though villages are not explicitly mentioned in the second amendment to the 1945 Constitution of the Republic of Indonesia, like district, city, or provincial regional governments in Article 18, the acknowledgment of villages in the 1945 Constitution is still evident in two segments of Article 18B. The first segment states that the state acknowledges and honors regional government units that are unique or specific, as defined by law, while the second segment affirms the state's recognition and respect for customary law community units and their traditional rights, as long as these rights remain relevant and align with societal development and the principles of the Unitary State of the Republic of Indonesia, as stipulated by law. (Akhyar, 2023)

Throughout the history of Indonesian state administration, village regulations have undergone various alterations since the colonial period, particularly with the Regeeringsreglement, which served as a precursor to village governance. Since 1945, numerous laws and regulations have been established, such as Law No. 1 of 1945, which addresses the status of villages and the authority of regional national committees, alongside MPRS Decree No. III/MPRS/1960 regarding the frameworks of the initial phase



of intended universal development patterns 1961-1969, Law No. 5 of 1979 about village governance, Law No. 22 of 1999 about Regional Governance, Law No. 32 of 2004 about Regional Governance, and Law No. 6 of 2014 about villages.

Villages possess authority derived from their inherent rights, as specified in Article 19 of Law No. 6 of 2014 regarding Villages (Law Number 6 of 2014 regarding Villages). State Gazette of 2014 Number 7, Supplement to State Gazette Number 5495); additionally, Article 19 of Law No. 6 of 2014 regarding Villages clarifies that the execution of Village authority is founded on original rights and is governed by the Village. In this instance, the state should acknowledge and honor the cohesion of customary law communities along with their traditional rights, as long as they are still in existence.

Indigenous legal communities are social entities possessing legal systems, governance, and principles that existed before the establishment of the Unitary State of the Republic of Indonesia. A core right inherent to indigenous legal communities is the right to ancestry, which originates and evolves from the customs, cultural values, and social structures of the indigenous group. These rights encompass the right to traditional land, traditional leadership processes, traditional organizations, and traditional legal frameworks. (Jawahir Thontowi, 2012)

Nonetheless, this acknowledgment frequently lacks sufficient legal safeguards. Numerous instances of tension arise between Indigenous groups and the government or corporations, especially concerning the management of natural resources and traditional territories. Despite various decisions by the Constitutional Court, including decision no. 35/PUU-X/2012 on Customary Forests, which have enhanced the legal status of indigenous communities, the execution at the regional regulation and policy levels is still lacking. This study is essential for examining how the national legal framework recognizes and safeguards the inherent rights of Indigenous legal communities, as well as the effectiveness of its enforcement.

1.2 Formulation Of The Problem

- 1) How Are the Original Rights of Indigenous Legal Communities Recognized?
- 2) How are the Original Rights of Indigenous Legal Communities Enforced in the National Legal System?

2. Research Methods

This research is a normative legal study (normative juridical) that focuses on written legal norms and legal principles governing the recognition and protection of the ancestral rights of Indigenous peoples. The statutory approach analyzes relevant laws and regulations. The conceptual approach understands the concepts of ancestral rights, Indigenous peoples, and recognition. (Flick, 2018)

2.1 Discussion

1. Recognition of the Original Rights of Indigenous Legal Communities

The constitution of an independent nation is essential and foundational to the state. Indonesia has continuously revised its Constitution to address the requirements of its populace. This is due to the fact that, as stated in the 1945 Constitution of the Republic of Indonesia, it acts as a primary regulation and ensures rights that cannot be easily exploited by those in authority. The second amendment to the Constitution clearly incorporates principles that acknowledge and honor the unity of Indigenous legal communities.

Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states, "The state recognizes and respects customary law communities and their traditional rights as long as they remain alive and in accordance with societal developments and the principles of the Unitary State of the Republic of Indonesia, as regulated by law." (Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia)



This clear implementation serves as a guarantee that the state must fully uphold the solidarity of customary law communities, allowing their existence in Indonesia, which is presently undergoing swift changes and development, with the goal of establishing a modern nation. Communities governed by customary law represent a vibrant source of diversity, making it entirely appropriate that their rights are explicitly protected in the Constitution.

In interpreting Article 18 B paragraph (2) of the 1945 Constitution, Jimly Asshiddiqie emphasizes that this clause must be understood as follows: (i) the state acknowledges the existence of customary law communities and their inherent rights; (ii) the recognized existence pertains to the customary law community units; (iii) these customary law communities are indeed active (still present); (iv) within their specific contexts (*lebensraum*); (v) this acknowledgment and appreciation are provided without neglecting standards of human dignity in line with the nation's developmental level; and (vi) this acknowledgment and appreciation should not undermine Indonesia's identity as a unitary state, the Republic of Indonesia. (Abdurrahman, 2007)

According to Ter Haar, a customary law community is a collective of an organized society residing in a specific region and possessing its own authority and wealth, including both visible and intangible assets. (Husen Alting, 2010)

Additionally, Kusumadi Pujosewojo states that customary law communities are those that develop naturally in a particular region, with their formation not dictated by a higher authority or other powers, characterized by strong solidarity among members, perceiving non-members as outsiders, and considering their territory as a resource of wealth that can be fully exploited only by their members. (Maria S.W Sumardjono, 2001)

The shape and organization of a legal community, which is a customary law association, have members connected through territorial and genealogical factors. Based on the interpretation presented by legal specialists of that era, the Dutch East Indies, as referred to by the legal community or alliance, signify that territorial law constitutes a stable and organized society, where its members are tied to a specific residential area, serving both as a physical dwelling and as a sacred space for ancestral spirit worship. (Hilman Hadikusuma, 2003).

Consequently, the constitution has incorporated assurances for the preservation of customary law communities in Article 18B, Section (2) and Article 28I, Section (3), as referenced above. Consequently, the state "acknowledges" and "honors" the presence of customary law communities, yet upon fulfilling these four legal conditions:

- a) provided they continue to exist,
- b) in line with the advancements of the era and society,
- c) following the principles of the unitary state of the Republic of Indonesia, and
- d) governed by the legislation.

Since these four conditions are specified in the Constitution, they can be regarded as constitutional prerequisites. Thus, communities governed by customary law possess constitutional rights explicitly assured by the Constitution of the Republic of Indonesia. Consequently, additional regulations in the law must align with the Constitution and must not be diminished in any manner. (Rikardo Simarmata, 2006)

The meaning of "village" has changed significantly throughout history, with shifts in governmental frameworks in Indonesia. Before the implementation of the 2014 Village Law, a village was generally defined in terms of geographical, demographic, and administrative factors, serving as the lowest government level below the sub-district. The 2014 Village Law introduced significant alterations to the definition of a village, providing it with a more self-governing status rooted in ancestral rights.

The 2014 Village Law defines a village in a way that signifies a conceptual shift intended to reclaim village sovereignty as a key player in development planning. This is not just a change in definition but also a core transformation in village philosophy and leadership. Villages have transitioned from mere



administrative units executing external policies to recognized entities with the authority to define their own development paths and models rooted in community initiatives, ancestral rights, and local knowledge. This transformation presents substantial opportunities for villages to gain independence, enhance democracy, and improve prosperity, while also requiring greater capacity, accountability, and active involvement from every part of village society.

The Village Law was created with the intention of fulfilling the constitutional requirement, specifically regulating customary law communities, as stated in Article 18B paragraph (2), to be organized within the government framework according to Article 18 paragraph (7). Nonetheless, the power of customary law community units to govern customary rights pertains to the stipulations of applicable sectoral laws and regulations. By merging the roles of self-governing communities with local self-administration, it is anticipated that customary law community units, previously within the village scope, will be structured into Villages and Customary Villages. Villages and Customary Villages essentially carry out nearly identical functions. The sole distinction lies in how ancestral rights are executed, especially in relation to safeguarding Traditional Villages, overseeing and managing customary lands, conducting peace hearings according to customs, ensuring peace and order within communities governed by customary law, and managing governance in line with the original framework.

Thus, the wording in Article 1 paragraph (1) of the Village Law does not make a distinction between regular villages and traditional villages, stating: "A village is a village and a traditional village or known by another name, hereafter referred to as a Village, is a legal community entity with territorial limits that possesses the authority to govern and manage public matters and the interests of the local populace founded on community initiatives, ancestral rights, and/or traditional rights acknowledged and honored within the governance framework of the Unitary State of the Republic of Indonesia." Examining the formulation in the a quo article reveals a definition that lacks clarity in relation to the Constitution's intent. The Village Law, in its considerations, refers to Article 18B paragraph (2), yet the definition does not explicitly mention communities following customary law. It solely refers to "legal communities." The term "legal communities" is indeed broader in meaning, and there is no specific category aimed at any distinct customary law community unit.

Conversely, the interpretation of the a quo law differentiates between villages and traditional villages, noting that villages, or those known by different names, exhibit traits that are generally applicable throughout Indonesia. In contrast, traditional villages, or those referred to by other titles, display characteristics that set them apart from general villages, mainly because of the significant impact of customs on the local governance system, resource management, and the socio-cultural dynamics of the village community. Traditional villages represent a heritage of local community governance systems, preserved through generations, acknowledged and supported by the leaders and residents of the customary village to promote local welfare and socio-cultural identity. Traditional villages hold primary ancestral rights over the ancestral rights of other villages, as they originated as indigenous communities within a larger community.

Legal policy aimed at fulfilling the constitutional rights of customary law communities, explicitly ensured in Article 18B paragraph (2) of the Constitution, which requires additional regulation by law, must clearly and specifically delineate the unity of customary law communities. Examining the goals of the a quo law reveals multiple aspects, including:

- 1) to acknowledge and honor the existence of villages and their diversity before and after the establishment of the Unitary State of the Republic of Indonesia;
- 2) to clarify the status and legal certainty of villages within the constitutional framework of the Republic of Indonesia to achieve justice for all Indonesian citizens
- 3) to maintain and promote the practices, heritage, and culture of rural communities
- 4) to promote initiatives, activities, and the involvement of village communities in enhancing village potential and resources for the collective good;
- 5) to create a competent, efficient, productive, transparent, and responsible village administration
- 6) to enhance public services for village inhabitants to expedite the achievement of overall well-being.



- 7) To strengthen the socio-cultural resilience of rural communities and develop village communities that can uphold social cohesion as a component of national resilience;
- 8) to promote the village economy and tackle national development deficiencies; and
- 9) to empower village communities as active participants in their development.

In light of this goal, it is evident that the focus of the Village Law was not to tackle the existence of customary law communities. The points stated above do not refer to anything concerning customary law. Only a handful of points carry a subtly implied significance for customary law communities, specifically points one–three, which recognize and honor current villages. As mentioned earlier, the term village in this context pertains to villages as a whole, including the hamlets. The second point ensures legal clarity for villages within the state framework. This is entirely logical, since the constitution clearly affirms that citizens possess the right to legal certainty. In contrast, point three highlights the importance of maintaining and promoting customs, traditions, and culture.

Consequently, the wording in Article 1 paragraph (1) of the Village Law makes no distinction between ordinary villages and traditional villages, stating: "A village is a village, and traditional village or referred to by another name, hereinafter known as a Village, is a legal community entity that possesses territorial boundaries and has the authority to manage and govern affairs and the interests of the local community based on community initiatives, ancestral rights, and/or traditional rights that are acknowledged and respected within the governmental framework of the Unitary State of the Republic of Indonesia."

Rules about villages, alongside Law Number 6 of 2014 on Villages, Minister of Villages Regulation Number 1 of 2015 on Guidelines for Authority Based on Original Rights and Local Village Scale Authority, and Government Regulation Number 43 of 2014 on Implementing Regulations of Law Number 6 of 2014 regarding Villages. (Firmansyah, F., 2023) Pasal 34 (1) Article 34 (1) Village authority based on original rights, as referred to in Article 33 letter a, consists of at least:

- a) establishment of community organizations
- b) Establishment of traditional systems and legal frameworks
- c) administration of village treasury land; and
- d) evolution of the functions of local communities.

Article 35 The exercise of authority rooted in original rights by traditional villages encompasses at least the following:

- a) Organizing the systems of institutions and organizations within Indigenous communities
- b) traditional legal frameworks.
- c) possession of customary rights
- d) administration of traditional village treasury lands;
- e) administration of traditional lands;
- f) accords with the existence of native village communities.
- g) appointing the roles of traditional village chiefs and traditional village representatives; and
- h) duration of service for traditional village leaders.

In relation to the appointment of village officials, as outlined in district/city regulations, the rights of origin and socio-cultural values of the community should be considered. (Romli, D., et all. 2022) Developing rural areas should consider the rights of origin and local governance at the village level, while also integrating peace and social justice by mitigating social and environmental effects that could harm some or all villages within these rural regions. (Prabowo, A., & Handayani, T. A., 2024)

Additionally, upon reviewing the overall description of the Law on Villages, it indicates that villages or those referred to by alternative names have been present before the establishment of the Unitary State of the Republic of Indonesia. In the explanation of Article 18 of the 1945 Constitution of the Republic of Indonesia (prior to the amendment), it is stated that "Within the territory of Indonesia, there are about 250 'Zelfbesturende landschappen' and 'Volksgemeenschappen', including villages in Java and Bali, Nagari in Minangkabau, as well as hamlets and clans in Palembang, among others." These regions



possess unique structures and can thus be deemed distinct. The Republic of Indonesia acknowledges the status of these special regions, and all legislation regarding these areas considers their original rights. Hence, their presence must be acknowledged, and their continued existence ensured within the Unitary State of the Republic of Indonesia (NKRI). (Ardiyansyah, A., & Nazaruddin, N., 2024)

In earlier times, villages were frequently viewed as "extensions" or "administrative units" of district/city authorities, with authority leaning toward centralization and village governments in a leading position as enforcers of top-down policies. (Sugandi, S. M. S., & Nurdin, M. N. I., 2024). The 2014 Village Law significantly transformed the village framework. Article 1, number 1 of the 2014 Village Law (Regulation of the Minister of Villages Number 1 of 2015 regarding Guidelines for Authority Based on Original Rights and Local Village-Scale Authority) describes it as follows: "A village is a legal community entity with defined territorial limits that has the authority to manage and oversee governmental affairs and the needs of the local populace based on community initiatives, ancestral rights, and/or traditional rights acknowledged and upheld within the governance framework of the Unitary State of the Republic of Indonesia."

Numerous essential aspects of this definition set it apart from the earlier general perception, including: (Beni Kurnia Illahi, et al., 2023)

- 1) Legal Community Cohesion: Focusing on the village as a "legal community unit" suggests that it possesses a robust legal identity rather than being merely an administrative entity. This highlights the village's independent legal status.
- 2) Defining Territorial Limits: The presence of defined territorial limits highlights the village's identity and authority.
- 3) Power to Control and Oversee Government Matters: This is the essence of village independence and autonomy. Villages are granted extensive power to self-govern rather than just carrying out directives from higher authorities.
- 4) Local Community Interests: This authority should reflect the interests of the village community exclusively, rather than those of outsiders.
- 5) Grounded in Community Initiatives: This represents the core of a self-governing community. Villages should take action according to the initiatives and needs that emerge from their communities rather than waiting for instructions.
- 6) Original Rights and/or Cultural Rights: This is the most groundbreaking acknowledgment of all. The Village Law acknowledges and honors the traditional rights and origins of villages that existed long before this nation was established. This encompasses traditional laws, conventional governance structures, and indigenous knowledge inherited across generations. This acknowledgment sets villages apart from sub-districts, which are solely administrative units.
- 7) Acknowledged and Valued within the Unitary State of the Republic of Indonesia (NKRI): Despite being autonomous and rooted in ancestral rights, villages exist within the structure of the Unitary State of the Republic of Indonesia (NKRI). This highlights that village autonomy is not independent sovereignty, but rather autonomy within the structure of the Unitary State of the Republic of Indonesia.

Original Rights refer to fundamental rights that are a vibrant heritage and stem from either the village's initiative or that of its community, reflecting the evolution of communal life, which includes customary organizations, institutions, practices of customary law, village-owned land, and social agreements within the village community. (B, Ter Haar. 1994)

The 2014 Village Law revitalized the democratization of village administration and reinforced community governance. Through the acknowledgment of ancestral rights, the enhancement of Village Deliberations, the advancement of transparency and accountability, and fiscal decentralization via Village Funds, village communities are now more empowered to shape their own future. Despite ongoing implementation challenges, the essence of the 2014 Village Law is to position villages at the forefront of inclusive, participatory, and sustainable development, with authority and decision-making residing in the village community. The application of the community governance model in Indonesian



villages, although fully backed by the Village Law, has not been evenly or optimally executed. Certain villages have effectively applied community governance principles, while numerous others continue to encounter obstacles. (Alfan Miko et al., 2021)

2. Enforcement of the Protection of the Original Rights of Indigenous Legal Communities in the National Legal System

The effectiveness and success of legal enforcement must consider three legal factors, as described by Friedman: (a) legal structure, which refers to the legal institutions that underpin the legal system, including legal forms, institutions, instruments, and their processes and performance. (b) Legal substance, which pertains to the law's content, emphasizes that it should focus on achieving justice and be applicable within society. (c) Legal culture, linked to the professionalism of law enforcers in executing their responsibilities and public awareness of adherence to the law. (Lutfil Ansori, 2017)

Regarding Constitutional Court Decision No. 35/PUU-X/2012 concerning Customary Forests, to carry out the constitutional mandate in the forestry sector as one of the existing natural resource riches, the government drafted Law Number 41 of 1999 concerning Forestry (hereinafter referred to as the Forestry Law). Article 3 of the Forestry Law indicates that "The purpose of forestry implementation is to ensure the maximum prosperity of the population in a fair and sustainable way. However, for over a decade since its inception, the Forestry Law has served as a mechanism for the state to seize the rights of indigenous legal communities over their traditional forest lands, which are subsequently designated state forests.

These forests are then allocated to capital owners through various licensing processes under state authority, allowing exploitation without regard for the rights and local knowledge of the Indigenous legal communities, resulting in conflicts between the Indigenous legal communities and the entrepreneurs exploiting their customary forests. (Aslan Noor, 2006) Indigenous legal communities have consistently expressed their rejection of the Forestry Law's implementation, as evidenced by protests and formal complaints to state institutions, such as the National Commission on Human Rights and law enforcement. However, their resistance has been met with violence from both the state and the private sector. For indigenous legal communities, the Forestry Law creates ambiguity regarding their rights to their traditional lands. Indeed, the rights of indigenous legal groups to customary land are inherited. These rights are not conferred by the government to Indigenous communities; instead, they are inherent rights that originate from the development of civilization within their traditional lands. Regrettably, the state's assertions regarding forest regions are consistently deemed more legitimate than those of indigenous populations. Indeed, the rights of indigenous groups to customary lands, the majority of which are asserted as forest regions by the government, consistently precede state rights. (Vide Putusan MK No. 35/PUU-X/2012)

The Petitioners asserted that a customary law community possesses the right to self-determination, freely choose its political status, and independently seek its economic, social, and cultural advancement. The Court stated that the territory of the Unitary State of the Republic of Indonesia was initially a Dutch colony, which later transformed into an independent and sovereign state territory, and was established through agreements documented in the written agreement of the 1945 Constitution. The region of the Unitary State of the Republic of Indonesia extends from Sabang to Merauke. The viewpoint of the petitioners mentioned above may influence attempts to separate customary law communities to create a new state distinct from the Unitary State of the Republic of Indonesia (separatism). (Emalisa, 2005) The presence of these customary law communities does not align with the principle of avoiding conflict with national interests and the principles of the Unitary State of the Republic of Indonesia.

Although freedom exists, its restrictions are governed by the Law on Regional Autonomy and other regulations, remaining within the framework and boundaries of the Unitary State of the Republic of Indonesia. The Court's views on Article 4 paragraph (3) of the Forestry Law in Court Decision Number 34/PUU-IX/2011 are applicable *mutatis mutandis* to Article 4 paragraph (3) of the Forestry Law in the present case. Concerning the examination of the constitutionality of Article 4, paragraph (3) of the



Forestry Law, including the phrase "as long as in reality it still exists and its existence is recognized, and does not conflict with national interests," it is partially legally justified. (Emalisa, 2005)

Therefore, since the a quo article governs the classification of legal relationships between legal entities and forests, including the land housing those forests, customary forests must be explicitly recognized as one of the intended categories of forest land. Consequently, regulations concerning "category of rights forests" must encompass customary forests. Based on the aforementioned legal rationale, the Court determined that the stipulations of Article 5 paragraph (1) of the Forestry Law are conditionally unconstitutional and thus lack binding legal authority, unless understood to imply that "State forests as mentioned in paragraph (1) letter a do not encompass customary forests." Rights forests include customary forests and those owned by individuals or legal entities. In relation to state forests, owing to state oversight of forest areas, the government may grant management rights to villages for the benefit of their communities, and state forests can also empower communities. (Saldi Isra, et al., 2011)

In practice, the substance of village regulations in Tanah Datar and Agam Regencies is not specified in detail through regional laws or other superior norms. A challenge lies in the challenges of gathering and recognizing lists of authority in each village, particularly those rooted in ancestral rights, from both the perspective of village governance and the framework of customary law.

Fundamentally, the revised village law does not clearly define the authority held by villages. The village authority is described in vague terms and is quite general, encompassing aspects such as managing village resources, overseeing government matters, electing a village head, appointing the Village Consultative Body (BPD) and other officials, creating village regulations, defining the structure of village officials, overseeing government affairs, and managing village institutions.

Villages have power over planning and development matters. In this context, villages will strategize, execute, oversee, and enhance growth within their areas, manage and utilize local resources for the benefit of the community, and secure sources of income for the village. For traditional villages, their jurisdiction encompasses governance and community issues based on customary law, in alignment with legal regulations. Additionally, it is recommended that the jurisdiction of traditional villages comprises:

- a. Regulate and implement a government system based on local customary laws.
- b. Regulate and manage natural resources controlled by customary law, including village treasury land, customary land, customary forests, and other natural resources.
- c. Implement local customary laws.
- d. Preserving local socio-cultural values.
- e. Natural resources are managed and preserved under customary law.
- f. Resolve customary disputes based on local customary law within their territory, in accordance with human rights principles.

Concerning the village's authority tied to origin rights, the author recommends that the regional government reassess the origin rights manageable by the village by formulating guidelines and compiling a list of village authorities rooted in these rights through regulations set by the regent/mayor, while addressing all requirements of the "adat salingka nagari." Village communities require capacity building for the development of village regulations, and legal assistance for the community remains crucial. In relation to the administration of village assets within the village government, well-defined regulations and boundaries are required to clearly determine which assets belong to the village government's context. This simplifies the identification of village rules rooted in ancestral rights.

To strengthen societal roles and develop a legal culture, it is essential to govern the ancestral rights. Nonetheless, the issue resides in the government setting: if ancestral rights are given precedence, the author anticipates that it might lead to discord in governance. Regional Governments are required to establish regulations or legal frameworks in the form of Regional Regulations concerning the necessity for clarification and assessment of village regulations within the area, ensuring that the village regulations crafted by the Village Government do not contradict higher laws and do not harm public interest. This indicates that prior to the Village Government issuing its Regulation, it must secure



legality or consent from the Regional Government, specifically the Regent/Mayor. Leader of the Legal Department of the Local Regional Secretariat.

Disputes arising among the inhabitants of Galeosong Kota village and neighboring communities frequently occur because individuals from outside the village park their boats on the shores of Galeosong Kota village, despite regulations stating that the village holds the authority to defend and safeguard its original rights, which in this context refers to village treasury land. (Islamiani Azis dan Abd. Rais Asmar, 2021). As stated by Abd. Kabir, the village leader in Galesong Kota Village, identified two factors leading to the disorderly parking of boats. Daeng Tasa, a local from Galesong Kota Village, explained that the disorganized boat parking happens because other boat parking spots are occupied, leading non-resident fishermen to utilize the vacant areas. Daeng Malli, a resident of Galesong Kota Village, reported a dispute involving fishermen from Galesong Kota Village and those from Jeneponto who anchored their boats in the coastal zone of Galesong Kota Village, resulting in the local fishermen lacking a place to park their boats. Consequently, Daeng Malli wishes for the village authorities to promptly establish regulations to prevent future conflicts among fishermen. (Islamiani Azis dan Abd. Rais Asmar, 2021)

Laws or guidelines are established to promote harmony in the community and avoid disputes among local inhabitants. In this situation, not only local authorities are engaged. The community has a greater impact on resolving the boat parking challenges. They are more connected to the community and can oversee vessel monitoring procedures firsthand. It is essential to create regulations concerning village treasury land to provide local communities with greater guidance and a legal foundation. This aims to stop random actions by local authorities and unfair treatment by external parties.

The application of the Village Authority based on Origin Rights in Galesong Village, Takalar Regency, indicates that while Origin Rights are covered under Village Law Article 19 letter A, Galesong Village has not specifically addressed Origin Rights concerning village treasury land. People park their boats arbitrarily because there have been no precise regulations regarding village treasury land.

The village authority derived from ancestral rights and local authority at the village level is governed by Banggai Regent Regulation No. 39 of 2015 regarding Village Authority Based on Origin Rights and Village-level Local Authority in Banggai Regency. The establishment of village authority in the village government is governed by Article 7 of Banggai Regent Regulation No. 39 of 2015, which states that the village authority based on traditional rights and local authority at the village level is defined in the village by the following processes:

- a. Selection of authority based on the list stipulated in the Regent's Regulation;
- b. Preparation of a draft Village Regulation concerning the determination of village authority;
- c. Discussion with the BPD; and
- d. Establishment of Village Regulations.

According to these regulations, the procedures for managing the Village Authority Based on Local Rights and Authority at the village level in Banggai Regency can be summarized as follows:

- 1) The Village Government has the chance to conduct joint discussions with the Village Apparatus, including the Village Consultative Body (BPD), and engage the village community to evaluate the village's potential or select authorities according to the list specified in the regent's regulation.
- 2) The outcomes of the discussions, presented as a list of possible village concerns, were provided to the Regional Government for dialogue with the Evaluation Team.
- 3) The assessment findings are sent back to the Village Government and the BPD to formulate Village Regulations.
- 4) The Village Government/BPD prepares a draft of the Village Regulations and submits it to the Regional Government via the Village Government Division.
- 5) If a draft Village Regulation put forth by the Village Government and a proposal from the Village Consultative Body (BPD) regarding the same matter are to be addressed in the same deliberation period, the draft Village Regulation from the BPD shall take priority, while the draft from the Village Head will serve as a reference.



- 6) The Village Consultative Body's leadership submits the mutually agreed draft Village Regulations to the Village Head for enactment as Village Regulations within 7 (seven) days from the agreement date.
- 7) The village head stipulates the draft village regulations, signing them within 15 (fifteen) days after they are received from the head of the Village Consultative Body.
- 8) The signed Village Regulations are presented to the Village Secretary for an official announcement.

In Pulo Dua Village, located in the North Balantak District, Banggai Regency, the village authority, grounded in original rights and local governance, has never been established through a Village Regulation. This is despite the fact that the Village Regulation on Village Authority acts as a reference for the Village Government in formulating the Village Medium-Term Development Plan (RPJM), Village Work Plan (RKP), and Village Budget (APB). According to the research findings, village authority rooted in current village-level rights and local governance has not been officially established in village laws. Consequently, the formulation of the Village Medium-Term Development Plan (RPJM), Village Work Plan (RKP Desa), and Village Budget (APB Desa) follows Banggai Regent Regulation Number 39 of 2015 regarding Village Authority Based on Original Rights and Local Authority at the Village Level in Banggai Regency.

The Pulo Dua Village Government in North Balantak District allows the community to request and receive information from the Village Government and to monitor its authority in activities related to village government, village development, community development, and empowerment of the village community. Thus, the community is entitled to be informed about all types of village program activities. This showcases the Village Government's openness to the community. The Village Administration oversees all types of Village execution, while the community can monitor activities according to the guidelines set by the Village.

Village Authority Based on Original Rights The execution of authority grounded in ancestral rights in Pulo Dua Village, North Balantak District, as outlined in Law Number 6 of 2014 regarding Villages, has not been completely realized since this authority is absent. It solely addresses the resolution of land conflicts by customary law and marriage issues through customary law. The governance of village authority according to ancestral rights is detailed in Village Regulations, consisting of the following phases: selection of authority following the list outlined in the Regent's Regulation; Development of a draft Village Regulation related to the establishment of village authority, Consultation with the Village Consultative Body (BPD), and Adoption of Village Regulations. In Pulo Dua Village, located in the North Balantak District of Banggai Regency, the village authority stemming from ancestral rights has never been officially established through Village Regulation.

3. Conclusion

1. Conclusion

Indigenous legal communities are social entities possessing legal frameworks, governance, and principles that existed before the establishment of the Unitary State of Indonesia. Ancestral rights, which originate and evolve from the traditions, cultural principles, and social structures of the indigenous community, are among the essential rights inherent to indigenous legal communities. These rights encompass entitlements to traditional land, leadership methods, institutions, and legal frameworks. This verifies that the acknowledgment of the ancestral rights of Indigenous peoples is established within the national legal framework, yet its protection is still inadequate at the implementation stage. Collaboration among the central government, regional authorities, and Indigenous communities is essential to enhance safeguarding.

2. Recommendations

The government must accelerate the creation of regulations that ensure the ancestral rights of Indigenous communities and bolster the capacity of Indigenous institutions as collaborators with the government in overseeing Indigenous territories.



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