

Legal Protection and Rights of Indigenous Peoples: Legal Certainty in Managing Natural Resources

Yuniar Rahmatiar

Fakultas Hukum, Universitas Buana Perjuangan, Karawang, Indonesia

Email: yuniar@ubpkarawang.ac.id

Article Info

Received: 2022-02-20

Revised: 2022-04-20

Accepted: 2023-12-20

Keywords:

Legal Protection, Customary Rights, Indigenous Peoples, Natural Resources, Baduy Tribe.

Abstract

Indigenous peoples possess traditional rights to natural resources within their territories, yet these rights are frequently overlooked or marginalized due to inadequate policies and regulations. This research aims to examine the legal protection of the Baduy tribe's rights in managing natural resources and to explore how legal certainty can be achieved in this regard. Utilizing a normative juridical approach, the study analyzes relevant laws and regulations pertaining to indigenous rights and state-provided legal protection. The findings reveal that the recognition and protection of customary law communities in Indonesia highlight the state's commitment to supporting social entities with autonomy over their lives. Despite the pressures of modern integration, indigenous peoples continue to uphold their identity, traditions, and customary rights. Legal acknowledgment of these rights is enshrined in the 1945 Constitution and various laws, including Law No. 5 of 1960 on Agrarian Affairs, Law No. 4 of 2009 on Mining, Law No. 41 of 1999 on Forestry, and Law No. 7 of 2004 on Water Resources. However, effective implementation is often hindered by regulations that do not adequately address customary rights. While Constitutional Court Decision No. 35 of 2012, which recognizes customary forests as belonging to indigenous communities, represents significant progress, challenges persist. The need for revisions to create more inclusive laws or regulations is pressing. For the Baduy tribe, Lebak Regency Regional Regulation (Perda) Number 32 of 2001 on the Protection of Ulayat Rights is a critical development. This regulation offers legal certainty and safeguards their traditional rights, including customary land and natural resources, and tackles issues like illegal logging and forest encroachment. By acknowledging local wisdom and customs, this regulation aims to preserve Baduy culture and enhance security and social stability in their area.

A. INTRODUCTION

The 1945 Constitution of the Republic of Indonesia officially recognizes and respects the rights of indigenous communities, highlighting their important role within the nation's legal and social systems (Putri, 2017). Article 18B, Paragraph (2) of the Constitution acknowledges and upholds the existence and traditional rights of customary law communities. This recognition is more than a ceremonial gesture; it reflects the state's commitment to preserving and valuing the rich cultural heritage, customs, and traditional laws that have developed throughout Indonesia (Pasaribu & Simamora, 2022). Additionally, this acknowledgment ensures that the rights of indigenous peoples are protected, as long as they align with societal progress and the principles of the Unitary State of the Republic of Indonesia (Rosyada et al., 2018).

Apart from that, the regulations regarding indigenous peoples in the 1945 Constitution show that there is constitutional protection for the traditional rights owned by indigenous peoples (Dewi et al, 2020). The state not only recognizes their existence but also ensures that these rights are protected and integrated into the national legal system, as long as they do not conflict with the principles of the Republic of Indonesia and applicable laws. This creates a balance between recognition of customary rights and the need to maintain the unity and integrity of the country (Thontowi, 2015). Thus, indigenous peoples are not only seen as part of Indonesian history and culture but also as an important element in the development and development of a country based on social justice and diversity.

With a very large forest area, Indonesia has a big responsibility in carrying out forest conservation and management to maintain the sustainability and balance of the natural ecosystem (Yamani, 2011). Indonesia's forests not only function as the world's lungs, absorbing carbon dioxide and producing oxygen, but also as a habitat for various unique species of flora and fauna. However, the economic potential generated from forest resources often becomes an attraction for local communities to exploit forests without considering the long-term impacts (Madonna, 2019). Communities living around forests often utilize forest resources to meet basic needs and improve economic welfare, such as through logging, hunting wild animals, or clearing land for agriculture. Unfortunately, this utilization pattern tends to be materialistic, where forests are seen solely as a source of economic value, without paying attention to the importance of maintaining ecosystem balance (Talumepa, 2020).

Utilization of forest resources should be carried out wisely and sustainably, so that it can provide optimal benefits for the prosperity of the people, both now and in the future. In this case, it is important to balance economic needs with environmental conservation, so that forests can still provide various vital ecosystem

services such as providing clean water, climate regulation, and preserving biodiversity (Santosa & Quina, 2014). Additionally, forest use must be conducted with respect for the rights of indigenous peoples, who have lived alongside forests for generations and possess valuable local knowledge and wisdom for managing them (Mina, 2016).

Law Number 41 of 1999 on Forestry, particularly Article 67 Paragraph (1), explicitly acknowledges and grants rights to customary law communities that are recognized as existing. These communities are entitled to collect forest products for daily needs, manage forests according to customary laws, and receive support to enhance their well-being (Salamat, 2016). This acknowledgment marks a significant advancement in integrating indigenous communities into natural resource management, allowing them to be both beneficiaries and active participants in forest conservation. Involving indigenous communities in forest management often leads to more sustainable practices, as their close relationship with the forest and reliance on its resources foster a commitment to its preservation (Hastarini & Luthfan, 2022).

The participation of indigenous peoples in the development and management of forest resources is crucial not only for environmental reasons but also as a collective exercise of human rights. These communities have the right to set priorities for their needs and interests, including in the context of forest management, which is vital to their way of life (Oktaviany et al., 2023). Their participation in forest management not only improves the welfare of indigenous communities, but also strengthens social justice and ensures that development is carried out in accordance with local needs and context. In this context, the state has the responsibility to ensure that the rights of indigenous peoples are respected and protected, as well as providing the necessary support so that they can manage forest resources sustainably (Nugroho, 2014).

One example of forest management that prioritizes environmental values for the welfare of the community is that carried out by the Baduy tribe. The Baduy live in an area that consists mostly of forests, and their survival depends largely on how they utilize this environment. In environmental management, they follow strict customary rules, which regulate the procedures for utilizing natural resources (Mustomi, 2017). These rules are not only obeyed seriously but are also designed to ensure the preservation of nature as a support for people's lives. By maintaining natural balance, the forests they manage remain fertile and able to provide prosperity for their community (Fitri, 2023).

The local wisdom adhered to by the Baduy people has proven effective in creating a balanced ecosystem in their region. Through respecting and complying with customary laws, they have succeeded in preserving the environment, which in turn supports their economic growth and prosperity (Murdiana et al, 2021). The

environmental management system implemented by the Baduy community shows that sustainable use of natural resources is not only possible but can also be an exemplary model. The balance between human needs and the nature conservation they implement ensures that forests remain a rich and productive source of life for current and future generations (Nurtresna et al, 2023).

The Baduy people, especially the Inner Baduy, strictly protect their environment from external cultural influences that could disrupt the balance of their interactions with forest resources, which are their main source of life (Sari, 2023). These traditional values have great potential to be used as a basis for drafting Regional Regulations (Perda) and national policies to support sustainable forestry development. Integrating local Baduy wisdom in these regulations not only helps preserve the local environment, but also contributes to global efforts to overcome climate change (Marfai, 2019). By using these values as a reference, Indonesia can strengthen its participation in global environmental protection, as well as enrich the national strategy for sustainable development.

B. METHODS

This research employs a normative juridical method, which centers on library research and the examination of legal data (Ali, 2021). This approach is well-suited for analyzing legal issues related to the protection and rights of the Baduy tribe in managing natural resources. The primary data sources are used only to support the research, with the main emphasis placed on secondary data obtained from various literature, journals, and legal documents. Additionally, the research incorporates a statutory approach, where all relevant laws and regulations are explored and analyzed (Ariawan, 2013). This normative juridical method enables a thorough investigation of legal provisions governing the rights of indigenous peoples, particularly the Baduy tribe, and assesses how legal certainty can aid in environmental preservation and natural resource management. With this approach, the research aims to provide a more comprehensive understanding of legal protection and its implementation in the context of custom and local wisdom, as well as how existing regulations can be improved to support environmental sustainability and the welfare of indigenous communities.

C. RESULTS AND DISCUSSION

Existence and Recognition of the Rights of Indigenous Peoples in Indonesia

Indigenous communities in Indonesia are social entities that have an autonomous nature in regulating various aspects of their lives, including law, politics and economics. As autonomous communities, indigenous communities

develop and implement these systems independently without interference from outside parties, such as the Village Community Resilience Institute (LKMD) in the context of village unity. This confirms that indigenous communities were born and developed organically from within the community itself, not the result of external construction. Their existence reflects an autonomy that in many cases functions as a deep cultural and social support, supporting the preservation of their traditional customs and way of life (Dahlan, 2018).

Despite legal recognition, indigenous peoples' lives are not entirely free from the pressures of integration into broader national frameworks. This integration often impacts their traditional ways of life and resource management, leading to conflicts between maintaining traditional autonomy and adapting to modernization. Early formulations regarding indigenous communities, based on the assumption that they were static and unaffected by change, were rigid. In contrast, contemporary approaches acknowledge the dynamic nature of indigenous communities operating within rapidly changing social and political environments. This adaptable approach is essential to protect indigenous rights amid ongoing global and national transformations.

Under Indonesian national legislation, the rights of communities to their customary territories, known as *ulayat* rights, are recognized and protected within the framework of customary law. In Indonesia, customary law communities are those governed by a system of customary law that ensures equality in several key areas. These include territorial similarities, referring to the geographical areas managed by indigenous peoples; genealogical similarities, which pertain to shared hereditary relationships or family lines; and territorial-genealogical combinations, where territory and ancestry are interlinked within the structure of indigenous communities (Marizal et al., 2022).

The diverse forms of indigenous communities in Indonesia highlight significant differences in how they organize and manage their customary rights. Each community's distinct characteristics, shaped by their geographic location, historical context, and local traditions, necessitate that recognition of customary rights accommodates this diversity. Regulations and policies must reflect and respect the specific needs and structures of each indigenous community to effectively protect their rights, support their traditional lifestyles, and ensure the sustainability of the resources they manage.

Customary law communities have existed in Indonesia since before the country's independence, deeply influencing the archipelago's social and cultural fabric. Dutch customary law scholar Van Vollenhoven's research identified 19 customary law areas across the archipelago prior to Indonesia's independence.

These areas include Aceh; Gayo, Alas, Batak, and Nias; Minangkabau and Mentawai; South Sumatra and Enggano; Malay; Bangka and Belitung; Kalimantan; Minahasa; Gorontalo; Toraja; South Sulawesi; the Ternate Islands; Maluku; West Irian; the Timor Islands; Bali and Lombok; Central Java, East Java, and Madura; Solo and Yogyakarta; and West Java and Jakarta. Each region has its own unique customary law system, governing various aspects of community life, from land regulations to dispute resolution procedures (Syahbandir, 2010).

The 1945 Constitution of Indonesia also addresses the existence of customary law communities in Chapter VI. It acknowledges that there are over 250 *Zelfbestuurende landschappen* and *Volksgemeenschappen*, or autonomous customary law communities, within the country. Examples include villages in Java and Bali, Nagari in Minangkabau, and various hamlets and clans in Palembang. These communities are recognized for their unique original structures and their ability to preserve their traditions and customary legal systems over time. This acknowledgment highlights the significance of customary law as a vital component of the Indonesian legal system, providing a foundation for local identity and wisdom that remains pertinent in contemporary society. The constitutional recognition underscores respect for Indonesia's cultural and social diversity and offers a legal basis for safeguarding traditional practices that have been sustained for centuries (Susylawati, 2009).

In addition to constitutional protection, customary law communities in Indonesia receive further safeguarding through the human rights framework outlined in Article 28I of the 1945 Constitution. Article 18B Paragraph (2) explicitly states that the state recognizes and respects customary law community units and their traditional rights, provided these rights remain relevant and align with societal development and the principles of the Unitary State of the Republic of Indonesia. This recognition reflects the state's commitment to preserving the continuity of customary law communities amidst modernization and globalization challenges, ensuring that their traditional rights are respected and protected by national law.

Additionally, Article 28I of the 1945 Constitution reinforces this protection by framing the rights of customary law communities within the broader context of human rights, which cannot be diminished under any circumstances. This provision ensures that the traditional rights of indigenous peoples, such as managing natural resources and practicing their cultural traditions, are recognized as essential human rights that the state is obligated to uphold. Simultaneously, the state acknowledges genuine village autonomy, permitting customary law communities to govern and manage their own affairs according to their customary laws. This acknowledgment not only respects cultural heritage but also provides a means for indigenous peoples

to contribute to national development in a manner that aligns with their traditional identity and values.

Customary law communities are unique social entities and have structures and characteristics that differentiate them from other community groups. First, customary law communities consist of a group of citizens who have the same ancestry or genealogy, which means they share the same history and origins. They also live in a particular geographical area, where ties to the land and place become an integral part of their identity (Alting, 2011). Apart from that, this society has the same goal in life, namely maintaining and preserving the values and norms passed down from generation to generation. These values cover all aspects of life, from farming procedures to religious rituals, all of which are regulated by a customary law system that is obeyed and is binding on every member of society. This customary law system ensures that every individual in the community carries out their obligations in accordance with agreed norms and is led by traditional heads who have the authority to enforce these laws.

The presence of customary law communities is marked by a structured administrative system where traditional leaders oversee various community affairs, including the allocation of natural resources and the resolution of internal disputes. These communities typically have specialized institutions for handling conflicts, whether they occur within the community or between different communities, including those involving different ethnic groups (Dahlan, 2018). Despite having a robust structure and organized legal system, the constitutional rights of indigenous peoples—such as the right to life, work, education, health, housing, and social, political, and cultural rights—are often inadequately protected. This lack of certainty in safeguarding these rights can jeopardize the survival of customary law communities and undermine their ability to preserve their identities and traditions. Therefore, it is crucial for the government and society to ensure that the constitutional rights of indigenous peoples are recognized and effectively protected within the national legal framework.

Over fourteen national laws have provided strong guarantees for the recognition of traditional rights of Indigenous Peoples (MHA). These rights encompass not only natural resource rights, such as land, water, forests, and grazing areas but also cultural and intellectual rights. For instance, these rights include hereditary titles, ownership of sacred items, and Intellectual Property Rights (IPR) that protect traditional works and creations. Key laws reflecting this recognition include Law No. 5 of 1960 on Basic Agrarian Principles, which establishes land rights; Law No. 4 of 2009 on Mineral and Coal Mining, which governs mineral resource management; and Law No. 41 of 1999 on Forestry, which acknowledges

MHA rights in the management of customary forests.

Furthermore, Law No. 7 of 2004 on Water Resources secures customary water rights, while Law No. 5 of 1990 on Conservation of Biological Natural Resources and Ecosystems safeguards MHA's rights in environmental conservation. Other legislation, such as Law No. 22 of 2001 on Oil and Natural Gas and Law No. 24 of 2003 on the Constitutional Court, also supports the recognition and protection of MHA's traditional rights across various legal and resource management areas. Recognized traditional rights of indigenous peoples include the right to manage and occupy customary land, herd livestock, utilize customary forests, fish in rivers or lakes, collect firewood, and hunt. These rights also encompass cultural aspects, such as rights related to art, painting, sculpture, and traditional beliefs. This legal recognition is crucial not only for maintaining the sustainability of indigenous peoples' livelihoods but also for preserving and respecting the cultural heritage they have upheld for centuries. Legal protection of these rights ensures that indigenous communities can continue their traditions and practices without facing threats from modernization that could jeopardize their cultural survival.

Legal Protection of the Rights of Indigenous Peoples in Managing Their Natural Resources

Law has a crucial role in maintaining order and stability in society. Its function is not only to set limits on behavior that must be obeyed by each individual, but also to protect society from actions that could disrupt public order. When individuals violate legal norms, they not only harm certain parties but also create broader disturbances in social balance. Therefore, the law acts as a protective mechanism that guarantees that everyone can live in a safe and orderly environment, free from threats and disturbances caused by violations of the law (Riyanto, 2020).

Apart from protecting society from individual actions, the law also functions as a check on government power. Abuse of authority by state officials can lead to injustice and damage public trust in state institutions. The law provides a control mechanism that regulates and limits government power, preventing abuse that could harm society. At the international level, law also plays a role in protecting countries from threats of aggression or subversion carried out by foreign governments. Thus, the law not only protects individuals from domestic threats but also protects state sovereignty from external threats, ensuring that both individuals and society at large can live in a peaceful and orderly state (Aprita, 2021).

Experts have proposed various concepts of legal protection, but they generally share the same objective: safeguarding the rights and interests of

individuals and society. According to Satjipto Raharjo (2020), legal protection involves efforts to uphold human rights that are infringed upon by others. This protection aims to ensure that individuals can fairly and equally enjoy the rights granted by law (Raharjo, 2020). The term "legal protection" is known as "legal protection theory" in English, "theorie van de wettelijke bescherming" in Dutch, and "theorie der rechtliche Schutz" in German. These concepts illustrate the role of law in protecting both individuals and society from actions that could disrupt social order, whether those actions are committed by other individuals, abuse of authority by state officials, or threats from foreign entities (Utrecht & Djindang, 1989).

This opinion is in line with the view of Matnuh (2017), who sees law as a tool for social engineering (law as a tool of social engineering). Pound argued that law must function to protect human interests by meeting the demands and needs that exist in society. Law, according to Pound, aims not only to regulate and discipline, but also to ensure that basic human interests are protected and fulfilled effectively (Said, 2010). Thus, legal protection is not only reactive to rights violations, but also proactive in creating a framework that supports social welfare and justice.

The protection of customary rights for customary law communities is a crucial aspect of human rights, recognized both internationally and nationally. On the international level, Article 17 Paragraph (1) of the Universal Declaration of Human Rights states, "Everyone has the right to own property alone as well as in association with others." This provision affirms the right to property ownership, whether individually or collectively, which is particularly relevant for indigenous peoples with communal ownership systems. Recognizing this right supports their ability to manage and control land and resources collectively. Customary land rights, encompassing traditional and communal ownership, are integral to human rights that must be upheld and protected.

In Indonesian national law, the protection of customary rights is outlined in Law Number 39 of 1999 on Human Rights. Article 6 Paragraph (1) of this law underscores the need to respect and protect the differences and needs of customary law communities by law, society, and the government. This provision highlights that the rights of indigenous peoples, including customary land rights, should be considered in the formulation and implementation of human rights policies and regulations. Ensuring these rights helps indigenous communities continue to practice and maintain their traditional systems, including the management of land and resources.

Additionally, Article 6 Paragraph (2) of Law No. 39 of 1999 stipulates that the cultural identity of customary law communities, including their rights to customary land, must be safeguarded while aligning with contemporary developments. This

provision demonstrates a commitment to preserving cultural diversity and traditional rights in the face of rapid social and economic changes. Consequently, customary rights are recognized not only as integral to the cultural identity of indigenous peoples but also as legally protected, allowing them to adapt to modern circumstances without losing their traditional essence and rights. This legal protection mandates that the Indonesian state ensures the recognition and safeguarding of indigenous peoples' rights to their lands and resources, protecting them from both external and internal threats. This includes addressing potential land disputes, preventing abuse of authority, and mitigating the impacts of modernization that could jeopardize customary rights.

The rights to natural resources held by customary law communities are inherent to their fundamental authority over specific areas. These rights, rooted in customary law, are not granted by external entities but are naturally acquired by the communities themselves. In other words, these rights are exclusive to members of the customary law community and cannot be accessed by outsiders. They encompass control and use of land, the environment, and all natural resources found on land, in the sea, and beneath the earth. Therefore, the rights to natural resources possessed by customary law communities are intrinsic to their existence. The scope of these rights includes the ability to use and exploit all resources within their customary territory, such as land, flora, fauna, minerals, and marine resources. This encompasses the full range of natural resources within their designated areas and reflects longstanding customary rights that remain valid within their legal framework. In essence, customary rights cover all aspects of natural resources within the boundaries controlled by these communities and are considered an integral part of their existence.

The existence of customary rights and rights to natural resources continues to be advocated by indigenous community organizations in Indonesia, such as the Indigenous Peoples Alliance of the Archipelago (AMAN). AMAN views these rights as a crucial foundation for granting sovereignty to customary law communities over their territories. According to AMAN, these rights entitle customary law communities to regulate and manage their territory and its natural resources. They also argue that if an area changes function or is controlled by another party, it constitutes unilateral appropriation, and the area should still be recognized as belonging to the customary law communities.

A notable example of this advocacy is AMAN's legal challenge to Law No. 41 of 1999 on Forestry, which led to a successful judicial review by the Constitutional Court. Through Decision No. 35/PUU-X/2012, the Court reaffirmed the recognition and protection of customary law communities' rights, reinforcing their authority

over natural resource management and utilization. This decision highlights the legal commitment to uphold and protect traditional rights within the national legal framework.

The insufficient legal protection for indigenous peoples under the 1999 Forestry Law presents a significant concern that could jeopardize their rights. Article 50 of this law prohibits various activities within forest areas unless authorized by official permits. Activities such as occupying, using, or managing forest areas, cutting down trees, harvesting forest products, and even letting livestock roam in these areas without proper authorization are deemed illegal. Strict enforcement of this provision, without accounting for the customary rights of indigenous communities, could criminalize traditional practices that have been part of their culture for generations. As a result, indigenous peoples who depend on forests for their livelihoods and engage in customary activities could be unfairly prosecuted, despite their actions being protected under constitutional rights.

Moreover, Article 50 imposes severe penalties, including both imprisonment and substantial fines. Applying these sanctions to indigenous peoples, who might unknowingly violate the law due to lack of awareness or because they are following traditional practices, could lead to unjust outcomes. In this scenario, the law could become a burden rather than a protective measure for these communities. Therefore, it is essential to clarify and harmonize legal protections for indigenous peoples in forestry laws and other regulations, ensuring their rights to customary lands and resources are properly recognized and safeguarded. Policymakers and the government should consider revising existing laws or introducing new, more inclusive regulations to better protect indigenous rights within the national legal framework.

The Constitutional Court Decision No. 35 of 2012 has profoundly influenced the recognition and protection of customary law communities' rights in Indonesia. This landmark decision fundamentally altered the legal status of customary forests by recognizing them as part of the customary territories owned by these communities, rather than state forests. This shift acknowledges that customary law communities have full legal rights over their customary territories, thus reinforcing their position in defending their long-standing rights to land and natural resources.

Another key aspect of this decision was the annulment of Article 67 of the Forestry Law, which had previously only offered conditional recognition of indigenous peoples' rights. The Constitutional Court's ruling emphasizes that the acknowledgment of indigenous communities should be based on robust legal frameworks rather than conditional or temporary provisions. While regional regulations (perda) remain relevant, the Court highlighted the need for a

comprehensive, national law that provides firm and inclusive recognition and protection of customary law communities' rights. This decision underscores the need for further legislative action to ensure that the rights of indigenous peoples are fully protected and implemented within the national legal system.

Protection and Legal Certainty for the Rights of the Baduy Tribal Community in Utilizing Their Natural Resources

The Baduy tribe, which is part of the Sundanese ethnicity, lives in the interior of Lebak Regency, Banten Province, especially at the foot of Mount Kendeng. This tribe is divided into two main groups, namely Baduy-Inner and Baduy-Outer. Inner Baduy are known for living a very closed life and upholding customs, while Outer Baduy are more open to outside influences. The Baduy-In people, also called 'urang Kanekes', live in Kanekes Village, about 40 kilometers from the city of Rangkasbitung. They strictly guard their traditions, including prohibiting their children from attending school, because formal education is considered a threat to the sanctity of their traditions and identity. In addition, marriage with people outside the Baduy tribe is prohibited, and those who violate this rule are considered to have left the community and lose their status as urang Kanekes.

This tightly guarded tradition reflects the Baduy tribe's efforts to maintain the uniqueness of their culture amidst modernization. Although the younger generation may be interested in the outside world, customs remain the main foundation of their lives. For the Baduy tribe, identity and traditions are priceless heritage, which must be maintained for the survival of their community which has existed for hundreds of years. The challenge of maintaining traditions amidst changing times continues to exist, but the Baduy tribe's commitment to custom shows their determination to maintain the purity of their culture and the uniqueness of their community.

Protection and recognition of the basic rights of the Baduy tribe has been an important concern for the government for a long time. The Baduy tribe, with its uniqueness and cultural richness, requires special protection so that their rights, especially those related to customary land, can be maintained. Customary land is land that has been managed for generations by indigenous peoples and is an integral part of their identity and lives. Without adequate protection, the Baduy community risks losing access and control over the land and natural resources on which their main livelihood depends. Realizing this, the Lebak Regency government, through the Regent, took important steps by ratifying Regional Regulation (Perda) Number 32 of 2001 concerning Protection of the Customary Rights of the Baduy Community. This regulation provides a legal umbrella that provides guarantees for the customary rights owned by the Baduy indigenous

community, as well as strengthening their position in defending their traditional rights amidst ongoing social and economic changes.

Regional Regulation Number 32 of 2001 includes various provisions that are very important for protecting the customary rights of the Baduy community. This regulation stipulates the confirmation of customary land rights owned by the Baduy community, including certain exceptions that protect their interests from outside parties. The boundaries of these customary rights are also explained in detail, including village boundaries and natural boundaries that mark their customary territory. Apart from that, this Regional Regulation also contains criminal provisions to take action against violations of customary rights, which shows the government's serious commitment to protecting the rights of the Baduy indigenous community. With this provision, the Baduy community has a strong legal basis to defend their rights, while ensuring that their customary rights are recognized and respected by all parties, both at the local and national levels. This regulation also includes investigative provisions and other provisions that ensure that any violation of the rights of the Baduy community can be prosecuted legally, providing them with appropriate protection within the applicable legal structure.

This Regional Regulation (Perda) was born as a response to various problems that are troubling the Baduy indigenous community and threatening their survival and cultural heritage. One of the main factors that led to the birth of this Regional Regulation was the rampant logging and illegal logging in Baduy customary areas or lands. This illegal activity not only damages the ecosystem which is an integral part of the life of the Baduy people, but also threatens the sustainability of natural resources which have been the main support for their lives. Illegal logging carried out by people from outside the Baduy community causes forest destruction which not only disrupts the balance of nature, but also affects the social and spiritual life of the Baduy people who are very dependent on the natural surroundings.

Apart from that, the theft of crops by outsiders is also a significant factor causing unrest among the Baduy community. The crops they have worked hard to grow are often taken illegally by outsiders, who do not respect the customary rights of these indigenous communities. This theft caused economic losses and a deep sense of injustice among the Baduy community. Even worse, there has been a shift in traditional territorial boundaries by people from outside the Baduy area, especially in border areas such as Sobang, Muncang, and Bojong Manik. They claim that the land they work on belongs to the state, without respecting customary rights which are recognized as customary by the Baduy community. This situation has increased tensions and conflicts between the Baduy community and immigrants, thus encouraging the regional government to immediately enact regional

regulations aimed at protecting the rights of the Baduy community and ensuring that their traditional territory is recognized and protected from interference by outside parties.

Regional Regulation (Perda) Number 32 of 2001, which was passed by the Regent of Lebak to protect the customary rights of the Baduy community, is based on a number of higher laws and regulations that provide the legal framework and foundation for its implementation. One of the main references for this Regional Regulation is Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, which provides basic guidance regarding rights to land and natural resources in Indonesia. This law emphasizes the importance of recognizing the customary rights of indigenous peoples as an integral part of the national agrarian system. By using this Law as a reference, the Regional Regulation emphasizes the recognition and protection of Baduy customary lands and territories as part of legitimate agrarian rights.

Apart from that, this Regional Regulation also refers to Law Number 23 of 1997 concerning Environmental Management, which emphasizes the importance of environmental preservation and ecosystem sustainability. This is very relevant considering that the Baduy people are very dependent on nature conservation to meet their daily living needs, so this Regional Regulation regulates wise and sustainable management of natural resources. Law Number 22 of 1999 concerning Regional Government is also an important reference in this Regional Regulation, because it provides autonomy to regional governments to regulate and protect indigenous communities in their territories, including the management and protection of the Baduy community's customary land. Furthermore, this Regional Regulation is supported by Law Number 23 of 2000 concerning the Establishment of Banten Province, which provides a juridical context for the administrative status of the Baduy region in Banten Province.

Not only does it refer to national laws, this Regional Regulation also refers to Lebak Regency Regional Regulations, such as Regional Regulation Number 6 of 1986 concerning the Appointment of Civil Servant Investigators (PPNS), which gives authority to government officials to enforce regulations and provide legal protection for the community. Baduy. Apart from that, Lebak Regency Regional Regulation Number 13 of 1990 concerning the Guidance and Development of Baduy Community Traditional Institutions is also the basis for strengthening this Regional Regulation, by emphasizing the importance of fostering and developing customs as part of efforts to preserve the culture and identity of the Baduy community. Thus, Regional Regulation Number 32 of 2001 is built on a solid legal foundation, both at the national and regional levels, to ensure that the customary and cultural rights of

the Baduy community are recognized, protected and preserved within the applicable legal framework.

With the ratification of Regional Regulation (Perda) Number 32 of 2001, the hope is that the Baduy tribe can enjoy more comprehensive protection for their rights, especially regarding the use of natural resources in their traditional territory. This regional regulation is designed to provide legal certainty which is often unclear, so that various forms of exploitation and violations committed by outside parties can be minimized. Through this Regional Regulation, the Baduy community's customary rights to land, forests and other natural resources are legally recognized and protected by law. Thus, this Regional Regulation becomes an important instrument in efforts to maintain environmental sustainability and the welfare of indigenous communities who are very dependent on these natural resources.

Apart from that, this regional regulation is also expected to strengthen the bargaining position of the Baduy community in facing various external threats, such as illegal logging, forest encroachment and theft of agricultural products which are often carried out by irresponsible parties. With a clear legal basis, the Baduy community can more freely defend their rights without fear of losing access or control over their traditional territory. This regulation also provides them with legal tools that can be used to claim rights or take legal action against violations committed by outside parties. This will certainly increase security and social stability in the Baduy region, as well as reduce conflicts that may arise due to land or natural resource disputes.

Furthermore, this regional regulation not only functions as a means of protection, but also as a measure of recognition and respect for the local wisdom and customs of the Baduy community. By regulating the boundaries of customary rights and other provisions that respect the traditions of indigenous communities, this regional regulation helps preserve the culture and way of life of the Baduy people that has existed for centuries. With official recognition from the government, the identity and existence of the Baduy people as a unique traditional community can be maintained amidst the rapid flow of modernization and social change. This regional regulation, in the end, is a symbol of the regional government's commitment to supporting the sustainability of local culture while ensuring that indigenous communities remain an integral part of the development of their region

D. CONCLUSION

The existence and recognition of the rights of customary law communities in Indonesia reflects the state's commitment to protecting social entities that have

autonomy in managing aspects of their lives, including law, politics and economics, which are formed organically from the community itself. Despite facing challenges of integration into modern nation-state structures, indigenous peoples still maintain their identity, traditions and customary rights which are recognized by national law, including in the 1945 Constitution and various sectoral laws such as Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles, Law no. 4 of 2009 concerning Mineral and Coal Mining, and Law no. 41 of 1999 concerning Forestry, provides legal guarantees for customary rights to land, forests and natural resources. UU no. 7 of 2004 concerning Water Resources and Law no. 5 of 1990 concerning Conservation of Biological Natural Resources. Legal protection of the rights of indigenous peoples in managing natural resources in Indonesia is an important aspect of human rights that is recognized both internationally and nationally. Although the Constitution and several laws such as Law no. 39 of 1999 concerning Human Rights provides the basis for protection, effective implementation is still hampered by regulations that are not sensitive to customary rights, such as Law no. 41 of 1999 concerning Forestry. Constitutional Court Decision No. 35 of 2012 was an important milestone by recognizing customary forests as belonging to customary law communities, but challenges still exist in aligning the law with the real needs of indigenous communities. Therefore, revision of new laws or regulations that are inclusive and sensitive to the interests of indigenous peoples is urgently needed to ensure that their rights to land and natural resources are well protected within the national legal framework. In the Baduy tribal community, the existence of Lebak Regency Regional Regulation (Perda) Number 32 of 2001 concerning Protection of the Customary Rights of the Baduy Community is a significant step to protect the rights of the Baduy tribal community, especially in relation to their customary land and natural resources. This regional regulation aims to provide legal certainty and protection of the traditional rights of the Baduy people from external threats such as illegal logging, forest encroachment and theft of agricultural products. By referring to various relevant national laws and regional regulations, this Regional Regulation strengthens the bargaining position of the Baduy community and recognizes the importance of their local wisdom and customs. The hope is that this regional regulation will not only preserve the culture and identity of the Baduy people but also increase security and social stability in their region.

REFERENCES

Ali, Z. (2021). *Metode penelitian hukum*. Sinar Grafika.

- Alting, H. (2011). Penguasaan tanah masyarakat hukum adat (suatu kajian terhadap masyarakat hukum adat Ternate). *Jurnal Dinamika Hukum*, 11(1), 87-98.
- Aprita, S Raharjo, S. (2020). Perlindungan Hukum Bagi Rakyat Indonesia. *Ban: Citra Aditya Bakti..* (2021). *Sosiologi Hukum*. Prenada Media.
- Ariawan, I. G. K. (2013). Metode Penelitian Hukum Normatif. *Kertha Widya*, 1(1).
- Dahlan, M. (2018). Rekognisi hak masyarakat hukum adat dalam Konstitusi. *Undang: Jurnal Hukum*, 1(2), 187-217.
- Dahlan, M. (2018). Rekognisi hak masyarakat hukum adat dalam Konstitusi. *Undang: Jurnal Hukum*, 1(2), 187-217.
- Dewi, S. H. S., Handayani, I. G. A. K. R., & Najicha, F. U. (2020). Kedudukan Dan Perlindungan Masyarakat Adat Dalam Mendiami Hutan Adat. *Jurnal Legislatif*, 79-92.
- Fitri, M. R. (2023). Keselarasan Kehidupan Masyarakat Baduy Untuk Pencapaian Sdgs. *Prosiding Konferensi Nasional Sosiologi (PKNS)*, 1(2), 245-250.
- Hastarini, A., & Luthfan, G. F. F. (2022). Kedudukan Hukum Masyarakat Adat Dalam Memperoleh Hak Atas Tanah di Indonesia. *Jurnal Hukum Sasana*, 8(2), 243-264.
- Madonna, E. A. (2019). Penerapan Hak Masyarakat Hukum Adat Dalam Pengelolaan Hutan Di Indonesia. *Bina Hukum Lingkungan*, 3(2), 264-278.
- Marfai, M. A. (2019). *Pengantar etika lingkungan dan Kearifan lokal*. Ugm Press.
- Marizal, M., Indrianingrum, A. P., & Nugroho, H. R. (2022). Dinamika Pemanfaatan Tanah Ulayat Masyarakat Hukum Adat Untuk Kepentingan Umum di Indonesia. *Widya Pranata Hukum: Jurnal Kajian dan Penelitian Hukum*, 4(2), 191-205.
- Matnuh, H. (2017, November). Law as a tool of social engineering. In *1st International Conference on Social Sciences Education-" Multicultural Transformation in Education, Social Sciences and Wetland Environment"(ICSSE 2017)* (pp. 118-120). Atlantis Press.
- Mina, R. (2016). Desentralisasi perlindungan dan pengelolaan lingkungan hidup sebagai alternatif menyelesaikan permasalahan lingkungan hidup. *Arena Hukum*, 9(2), 149-165.
- Murdiana, E., Sudiono, T., & Putri, D. E. (2021). Kesadaran Hukum Masyarakat Baduy Banten Pada Pikukuh Adat, Dan Moderasi Hukum. *Istinbath: Jurnal Hukum*, 18(1), 124-141.
- Mustomi, O. (2017). Perubahan tatanan budaya hukum pada masyarakat adat Suku Baduy Provinsi Banten. *Jurnal Penelitian Hukum e-ISSN*, 2579, 8561.
- Nugroho, W. (2014). Konsistensi Negara Atas Doktrin Welfare State Dalam Pengelolaan Sumber Daya Hutan Oleh Masyarakat Adat. *Jurnal Hukum Lingkungan Indonesia*, 1(2), 22-49.

- Nurtresna, R., Marfu'atun, D. R., & Yusar, M. (2023). Tantangan Masyarakat Adat Baduy Banten Kidul Terhadap Perubahan Sosial Budaya. *Eksekusi: Jurnal Ilmu Hukum dan Administrasi Negara*, 1(2), 89-99.
- Oktaviany, S. A. T., Hadi, F., & Gandryani, F. (2023). Perlindungan Hak Tanah Adat Suku Paser Dalam Wilayah Ibu Kota Negara Baru Di Kalimantan Timur Berdasarkan Peraturan Daerah No 4 Tahun 2019. *Jurnal Ilmu Hukum Wijaya Putra*, 1(2), 160-172.
- Pasaribu, R. S., & Simamora, J. (2022). Pengakuan Dan Perlindungan Hukum Terhadap Keberadaan Masyarakat Hukum Adat Batak Toba. *Nommensen Journal of Legal Opinion*, 1-15.
- Putri, R. R. (2017). Konstitusi dan Masyarakat Hukum Adat: Meninjau Pengakuan dan Perlindungan Hak Ekonomi, Sosial, dan Budaya Masyarakat Hukum Adat dalam Undang-Undang Dasar Republik Indonesia 1945. *Padjadjaran Law Review*, 5.
- Riyanto, H. B. (2020). Pembaruan Hukum Nasional Era 4.0. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 9(2), 161.
- Rosyada, A., Warassih, E., & Herawati, R. (2018). Perlindungan konstitusional terhadap kesatuan masyarakat hukum adat dalam mewujudkan keadilan sosial. *Kanun Jurnal Ilmu Hukum*, 20(1), 1-22.
- Salamat, Y. (2016). Pengaturan Mengenai Hak Atas Tanah Masyarakat Hukum Adat (Studi Kasus Pengakuan Terhadap Hak Atas Tanah Masyarakat Hukum Adat Dayak Di Kalimantan Tengah). *Jurnal Legislasi Indonesia*, 13(04), 411-420.
- Santosa, M. A., & Quina, M. (2014). Gerakan Pembaruan Hukum Lingkungan Indonesia dan Perwujudan Tata Kelola Lingkungan yang Baik dalam Negara Demokrasi. *Jurnal Hukum Lingkungan Indonesia*, 1(1), 23-54.
- Sari, R. A. D. P. (2023). Perlindungan dan Kesejahteraan Masyarakat Adat dalam Memenuhi Hak-Haknya Berdasarkan Pasal 18B UUD 1945. *Jurnal Hukum dan HAM Wara Sains*, 2(11), 1006-1016.
- Susylawati, E. (2009). Eksistensi hukum adat dalam sistem hukum di Indonesia. *Al-Ihkam: Jurnal Hukum & Pranata Sosial*, 4(1), 124-140.
- Syahbandir, M. (2010). Kedudukan Hukum Adat dalam Sistem Hukum. *Kanun Jurnal Ilmu Hukum*, 12(1), 1-13.
- Talumepa, J. B. (2020). Kajian Hukum Terhadap Tata Kelola Hutan di Indonesia. *Lex Et Societatis*, 8(4).
- Thontowi, J. (2015). Pengaturan masyarakat hukum adat dan implementasi perlindungan hak-hak tradisional. *Pandecta Research Law Journal*, 10(1).
- Utrecht, E., & Djindang, M. (1989). Pengantar dalam Hukum Indonesia.
- Yamani, M. (2011). Strategi perlindungan hutan berbasis hukum lokal di enam komunitas adat daerah bengkulu. *Jurnal Hukum Ius Quia Iustum*, 18(2), 175-192.

