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The Urgency of Regional Regulations on the Recognition and Protection of Indigenous Law Communities in Forest Designation Law in Central Kalimantan Province

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Abstract

Customary forests are forests located within the territories of Indigenous Law Communities. For these communities, customary forests represent their role in safeguarding the sustainability of their forests, which not only protects biodiversity but also preserves invaluable cultural values and ancestral traditions. The designation of customary forests requires a regional regulation to recognize the existence of the Indigenous Law Community, especially if located within state-designated forest areas. Moreover, if the customary forest lies within state forest zones, a regional regulation or a Governor's and/or Regent/Mayor's decree is necessary. The conditional recognition of Indigenous Communities suggests that the government has yet to make a strong commitment to formally respect and acknowledge their rights. To date, regulations governing indigenous communities and their traditional rights remain ambiguous and lack definitive protection. The requirements in Article 18B, paragraph (2), along with several statutory conditions related to Natural Resources, show that the state and government recognize and respect customary land rights in a declarative sense but fall short of enacting legal measures to protect and fulfill these rights. The national legal mechanisms remain largely unaddressed, particularly for safeguarding these rights in the event of violations, despite these rights being considered fundamental human rights. For Indigenous Communities, the process of obtaining customary forest designation is often lengthy. First, a regional regulation must establish the Indigenous Community. Next, the area proposed as customary forest is mapped according to the community's customary regulations. Finally, the ministry processes this request and returns the designation to the local Indigenous Community.

Keywords: *Customary, Forest, Indigenous Community.*

Introduction

The emergence of various issues within Indonesia's forestry sector is closely linked to missteps by the government in policy-making, which has led to forest ecosystem degradation and significant social impacts on communities living near forests. In addition to fostering the exploitation of natural resources, particularly in forestry development, these policies have created opportunities for regulations that often overlook the interests of forest-adjacent communities (Sarintan, Efratani Damanik, 2019).

The presentation of the Decree on the Designation of 15 Customary Forests in Gunung Mas Regency, Central Kalimantan Province, by Deputy Minister of Environment and Forestry Alue Dohong marks a significant achievement in commemorating the International Day of Indigenous Peoples, celebrated annually on August 9 (Ministry of Environment and Forestry, 2024). The Ministry of Environment and Forestry has designated 15 Customary Forests, covering an area of approximately 68,326 hectares, making Gunung Mas Regency the largest holder of Customary Forests in Indonesia. Customary forests are a key part of the National Forestry Program.

According to Article 1, point 1 of Government Regulation No. 23 of 2021 on Forestry Management, Social Forestry is defined as a sustainable forest management system implemented within state forest areas or Private/Customary Forests by Local Communities or Indigenous Communities as the primary actors. The objective is to enhance their welfare, environmental balance, and socio-cultural dynamics through forms such as Village Forests, Community Forests, Community Plantation Forests, Customary Forests, and forestry partnerships.

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Under Article 247 of Government Regulation No. 23 of 2021 on Forestry Management, which outlines further provisions on social forestry, Ministerial Regulation of the Ministry of Environment and Forestry No. 9 of 2021 on Social Forestry Management has been enacted. This regulation includes provisions related to customary forests, defining them as forests located within Indigenous Community territories, as specified in Article 3, Paragraph (1)(b).

The designation of Customary Forest status is conducted based on criteria outlined in Article 65, Paragraph (1) of the Ministerial Regulation of Environment and Forestry No. 9 of 2021, which include: 1) being located within Indigenous Territory; 2) comprising forested areas with clear boundaries and managed according to the Local Wisdom of the respective Indigenous Law Community (MHA); 3) originating from state forest areas or outside state forest areas; and 4) sustaining forest product collection activities by the Indigenous Community for their daily livelihood needs. In cases where Indigenous Territory is within state forest areas but lacks forest cover, it may be included in the Customary Forest designation map with a special legend to reflect its specific land use. Customary Forest management, whether originating from state forest areas or not, is to be undertaken by the Indigenous Community that meets the following requirements:

a. established by regional regulation if the Indigenous Community (MHA) is located within state forest areas; or

b. established by regional regulation or by a decree from the governor and/or regent/mayor according to their authority, if the Indigenous Community (MHA) is located outside state forest areas.

Fundamentally, the unity of Indigenous Communities is established based on three basic principles: genealogical, territorial, and/or a combination of genealogical and territorial principles (Jimly Asshiddiqie, 2018). Some fundamental characteristics of Indigenous Communities include their status as a group of people, possessing collective wealth distinct from individual wealth, having defined territorial boundaries, and exercising specific authorities. Consequently, communal land rights or rights held by Indigenous Communities indicate a legal relationship between the legal community (rights holder) and a specific land/territory (object of rights). These communal land rights encompass the authority to (Sumardjono, Maria S, 2001):

1. regulate and manage land use (for settlement, cultivation, etc.), allocate resources (for the establishment of new settlements/fields, and so forth), and maintain the land;

2. regulate and establish the legal relationship between individuals and land (granting specific rights to particular subjects);

3. regulate and establish the legal relationships among individuals and legal acts concerning land (such as sale, inheritance, and others).

The criteria for determining the existence of rights held by Indigenous Communities consist of three elements: the presence of a specific Indigenous Community, the existence of specific rights of that community on their living environment and sources for their livelihood, and the existence of customary legal regulations regarding the management, control, and use of communal land that are upheld and observed by that Indigenous Community (Muhammad A. Rauf, 2021).

Referring to the above provisions, the designation of customary forests requires a regional regulation to first establish the existence of Indigenous Communities if located within forest areas. Additionally, a regional regulation or a decree from the governor and/or regent/mayor is necessary if the customary forest is situated within state forest areas. For example, the designation of customary forests in Central Kalimantan Province is relatively low, as customary forests currently exist in only three out of the thirteen regencies and one city in the province. Specifically, there are 15 customary forests in Gunung Mas Regency, one customary forest in Pulang Pisau Regency, and one customary forest in Lamandau Regency, namely the Kinipan Village Customary Forest, covering approximately 6,825 hectares. This situation is

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attributed to the fact that regulations regarding the Recognition and Protection of Indigenous Communities in Central Kalimantan Province are only present in four regencies: Gunung Mas, Pulang Pisau, and Katingan.

This study employs normative legal research, which refers to the legal norms found in legislation. The research is descriptive-normative, aiming to provide the most accurate information about individuals, conditions, or other phenomena. Normative legal research seeks to discover doctrines, rules, and legal principles to address legal issues. This study also includes an analysis of current legal issues (jurisdictional matters). The findings of this research are intended to guide how to formulate existing problems. Normative legal studies do not consider actual legal practices; rather, they focus solely on legal norms. The research questions addressed in this study are: 1) What is the urgency of regional regulations regarding the Recognition and Protection of Indigenous Communities in the designation of environmentally sustainable customary forests? and 2) How is the legal regulation of the designation of customary forests as a form of recognition and protection for Indigenous Communities in Central Kalimantan Province?.

Discussion

1. The Urgency of Regional Regulations on the Recognition and Protection of Indigenous Communities in the Designation of Environmentally Sustainable Customary Forests.

The 1945 Constitution of the Unitary State of the Republic of Indonesia recognizes the existence of Indigenous Communities as distinct legal subjects from other legal entities. The recognition of customary law is articulated in Article 18B, paragraph (2) of the 1945 Constitution, which states: "The state acknowledges and respects the unity of Indigenous Communities along with their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law."

The recognition of Indigenous Law Communities based on Article 18B, paragraph (2) of the 1945 Constitution serves as a guideline for acknowledging and legally protecting the existence of Indigenous Communities in Indonesia. This recognition implies that Indigenous Law Communities are acknowledged and protected as legal subjects along with their traditional rights. In practice, this acknowledgment is reflected in various governmental activities, particularly those related to the existence of Indigenous Communities, including their rights to utilize natural resources in forest management to optimize benefits from forests and forest areas for community welfare. In the context of resource management and utilization by Indigenous Communities, the role of the state in regulating such management is also significant, as stipulated in Article 33, paragraph (3) of the 1945 Constitution, which emphasizes that the earth, water, space, and natural resources contained therein are controlled by the state and utilized for the greatest prosperity of the people.

Furthermore, contextually, the provisions of Article 18B, paragraph (2) of the 1945 Constitution established the requirements for a community to be recognized as an Indigenous Community, namely: (a) as long as they are alive; (b) following societal development; (c) the principles of the Unitary State of the Republic of Indonesia; and (d) regulated by law.

According to Satjipto Rahardjo, as cited by Hendra Nurtjahyo and Fokky Fuad, four legal clauses serve as criteria for the existence of Indigenous Communities (Hendra Nurtjahyo & Fokky Fuad, 2010):

a. As long as they are alive;

b. Following societal development;

c. Following the principles of the Unitary State of the Republic of Indonesia;

d. Regulated by law.

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However, this recognition imposes limitations or requirements for a community to be acknowledged as an Indigenous Community. The phrase "as long as they are alive" means that the Indigenous Community (MHA) must meet the criteria above. When an MHA no longer exists, it should not be revived. Similarly, due to the rapid changes in society and high mobility in Indonesia, individuals from external communities may integrate and become familiar with the Indigenous Community, but this does not make them part of the MHA. The phrase "following societal development" implies that change within society is inevitable, and people must evolve, particularly toward improvement. In the past decade, societal development has accelerated, marked by advancements in information technology that facilitate swift communication among communities, thus altering patterns of social relationships.

The phrase "under the principles of the Unitary State of the Republic of Indonesia" indicates that the existence of the MHA must not conflict with the principles of the Unitary State. Therefore, its legal, social, and cultural systems must not contradict the philosophy of Pancasila. Finally, the phrase "regulated by law" signifies that, to date, there is no specific legislation governing the recognition and protection of the rights of Indigenous Law Communities. However, there are several regulations on the acknowledgment and protection of the MHA.

Conditional recognition of Indigenous Communities in the history of the Republic of Indonesia began with the Basic Agrarian Law (UUPA), the Forestry Law, the Water Resources Law, the Plantation Law, and several other regulations. This conditional recognition indicates that the government has not yet demonstrated a sincere commitment to establishing provisions that respect and recognize the rights of Indigenous Communities. Regulations concerning Indigenous Communities and their customary rights remain unclear and ambiguous to this day. The requirements outlined in Article 18B, paragraph (2), along with a series of stipulations in various Natural Resource Laws, indicate that the state and government can only declaratively acknowledge and respect the customary rights of Indigenous Communities, but have not yet taken legal action to protect and fulfill these rights. Moreover, there has been no engagement with national law enforcement mechanisms in cases of violations of customary rights, which are already recognized as human rights.

The definition of Indigenous Communities is also found in the Minister of Home Affairs Regulation Number 52 of 2014 on Guidelines for the Recognition and Protection of Indigenous Communities. Article 1, number 1, and Article 1, number 2 states that Indigenous Communities are Indonesian citizens who possess distinct characteristics, living together harmoniously according to their customary laws, and having ties to their ancestral origins and/or shared places of residence. There is a strong relationship between the land and the environment, as well as a value system that determines the institutions of economy, politics, society, culture, and law, and that utilizes a specific area in a hereditary manner.

The Minister of Home Affairs Regulation Number 52 of 2014 on Guidelines for the Recognition and Protection of Indigenous Communities serves as a regulation that the government can utilize to provide recognition and protection for Indigenous Communities in Indonesia prior to the establishment of higher legal regulations, such as laws. Consequently, it is expected to facilitate the provision of recognition and protection for Indigenous Communities.

Based on Article 5, paragraphs (1) and (2) of the Minister of Home Affairs Regulation Number 52 of 2014 on Guidelines for the Recognition and Protection of Indigenous Communities, it states that:

> Paragraph (1) states that the Regent/Mayor, through the District Head or other designated officials, shall conduct identification as referred to in Article 3 a, involving Indigenous Law Communities or community groups.
>
> Paragraph (2) states that the identification referred to in paragraph (1) shall be carried out by paying attention to:
>
> a. History of Indigenous Communities;

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b. Customary Territories;

c. Customary Law;

d. Wealth and/or customary objects; and

e. Institutional/customary governance systems.

The Minister of Home Affairs Regulation Number 52 of 2014 serves as a guideline for regions in recognizing and protecting Indigenous Communities by conducting identification, verification, validation, and the establishment of Indigenous Communities. Article 2 states that the Governor and the Regent/Mayor shall recognize and protect Indigenous Law Communities.

In the above context, the Provincial, Regency, and Municipal Governments are required to establish an Indigenous Community Committee, while also providing guidance and oversight for the implementation of recognition and protection of Indigenous Communities within their respective regions. The funding for this initiative shall be sourced from the State Revenue and Expenditure Budget, the Provincial Revenue and Expenditure Budget, the Regency/Municipal Budget, and other legitimate and non-binding revenues following existing laws and regulations.

The recognition of Indigenous Communities (MHA) must be formalized in the form of a legal product through Regional Regulations (Perda) for those located within state forest areas. In contrast, MHA outside these areas may have their existence recognized through a Decree (SK) from the Regional Head. However, the creation of Regional Regulations entails significant costs, and the process of drafting such regulations can be lengthy until their approval. Among the 13 regencies and 1 city in Central Kalimantan Province, 4 regencies have already established Regional Regulations, while 9 regencies have yet to adopt regulations on the recognition and protection of Indigenous Communities. Nevertheless, the draft regulations regarding the recognition and protection of Indigenous Communities have been prepared with the facilitation of the Provincial Environmental and Forestry Office, with one regency, Kotawaringin Barat, yet to draft its regulation. Additionally, several regencies have mapped their Indigenous Communities, and their customary forests have been identified by the Environmental Office, as seen in Sukamara Regency, where 46 hectares of customary forest exist across 4 villages (Borneonews.co.id, 2024).

Based on the provisions of Article 63, Paragraph (1) of the Minister of Environment Regulation No. 9 of 2021 on Social Forestry Management, it states that Indigenous Communities (MHA) must meet the following conditions: a. established through regional regulations if the MHA is located within state forest areas; or b. established through regional regulations or decrees from the governor and/or regent/mayor, according to their authority, if the MHA is located outside state forest areas. (2) The regional regulations referred to in paragraph (1) letter a may include: a. regulations containing the substance of the procedures for recognizing the MHA; or b. regulations containing the substance of the establishment of affirmation, recognition, and protection of the MHA. (3) If the regional regulations only contain the substance of the regulations as referred to in paragraph (2) letter a, the existence of the MHA whose territory lies within state forest areas shall be followed up by the establishment of a committee by the regent/mayor to conduct identification and mapping of the Customary Territories, with the results to be formalized through a decree of MHA recognition by the regent/mayor. The authority to establish regional regulations as referred to in Article 63, paragraph (1) letter a above represents one manifestation of regional autonomy in managing regional household affairs or local government affairs. Regional regulations are strategic instruments aimed at achieving the objectives of decentralization. In the context of regional autonomy, regional regulations fundamentally maximize decentralization (Fadillah, Amin, et al, 2018).

Thus, it is evident that the primary requirement for recognizing customary forests is the existence of regional regulations that acknowledge the presence of local Indigenous Communities as implementers of Constitutional Court Decision Number: 35/PUU-X/2012. The establishment of regional regulations is a prerequisite that local governments must fulfill if they wish to designate customary forests in their regions. Furthermore, Article 64 stipulates that the affirmation of the existence of Indigenous Communities (MHA)

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is conducted based on the following criteria: a. MHA still exists in the form of a community association; b. there are managing institutions in the form of traditional authority apparatus; c. there are clearly defined boundaries of Customary Territories; d. some customary legal norms and sanctions are still observed, and e. the MHA continues to engage in the collection of forest products in the surrounding forest areas to meet their daily needs.

The phrase "regional regulations" in Minister of Environment Regulation No. 9 of 2021 concerning Social Forestry Management essentially addresses the complexities that have persisted. One such complexity is the variety of legal bases required to establish Indigenous Communities as mandated by different regulations. The effectiveness of regional regulations pertains to the alignment between what is stipulated in the regulations and their implementation. Implementation will be effective if it adheres to what is outlined in the regional regulations that have been established (Fadillah, Amin, et al, 2018).

The authority to establish regional regulations represents a manifestation of regional autonomy in managing local affairs or regional governance matters. Regional regulations serve as a strategic instrument for achieving decentralization objectives. In the context of regional autonomy, the existence of regional regulations fundamentally plays a role in promoting maximum decentralization(Reny, Rawasita, 2009). Thus, it is clear that the primary requirement for tecognitzong customary forests is the prior existence of regional regulations acknowledging the existence of local customary law communities. The establishment of regional regulations Indigenous Communities is a prerequisite that local governments must fulfill if they wish to designate customary forests in their regions.

2. Legal Regulation of the Designation of Customary Forests as a Form of Recognition and Protection of Customary Communities Based on Environmental Sustainability

Before the Constitutional Court Decision No. 35/PUU-X/2012, which affirmed that customary forests are owned by indigenous communities, the regulatory principles of Law No. 41 of 1999 on Forestry were as follows: First, there are two types of forests, namely state forests and rights forests, where rights forests are defined as forests located on land encumbered by land rights (see: Article 1, number 5 of Law No. 41 of 1999), while state forests are those located on land not encumbered by land rights (see: Article 1, number 4 of Law No. 41 of 1999). Second, "customary forests" were defined as state forests located within the territory of indigenous communities (see: Article 1, number 5 of Law No. 41 of 1999 prior to the Constitutional Court Decision No. 35/PUU-X/2012). Therefore, although the existence of customary forests as forests associated with the existence of indigenous communities was regulated by Law No. 41, the term "customary forest" implied that indigenous communities did not actually have full authority over this type of forest. Through the Constitutional Court Decision No. 35/PUU-X/2012, the above principles were amended to establish new regulatory principles in Law No. 41 of 1999 on the existence of customary forests as follows:

a. First, what is now referred to as "customary forests" is distinct from state forests. This refers to the Constitutional Court's opinion, which states that in accordance with the provisions of Article 18B paragraph (2) of the 1945 Constitution, indigenous communities are legal subjects with the capacity to hold rights (and obligations); therefore, customary law communities should possess rights to the forests (Constitutional Court Decision No. 35/PUU-X/2012).

b. Second, since Law No. 41 of 1999 recognizes only two types of forests, namely state forests and customary rights forests, and based on the first principle that customary law communities should also possess rights to forests, the Constitutional Court's opinion indicates that what is referred to as customary forests is considered part of customary rights forests and not part of state forests (Constitutional Court Decision No. 35/PUU-X/2012, pp. 173, 179, 181).

c. Third, what is referred to as "customary forests" following the Constitutional Court Decision No. 35/PUU-X/2012 is now defined as "forests located within the territory of indigenous communities" (Constitutional Court Decision No. 35/PUU-X/2012, p. 185).

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d. Fourth, customary forests, defined as forests owned by a indigenous community, will be recognized if the existence of that community is acknowledged. For a indigenous community to be recognized, it must fulfill the criteria for recognition as stipulated by the 1945 Constitution, namely that the community is indeed still alive, aligns with societal developments, and adheres to the principles of the Unitary State of the Republic of Indonesia (Constitutional Court Decision No. 35/PUU-X/2012, pp. 185-186). This modifies the previous principle, where a indigenous community had to meet the condition of not contradicting national interests in order to be recognized. Referring to the new regulatory principles concerning customary forests post-Constitutional Court Decision No. 35/PUU-X/2012, it is evident that indigenous communities now have established rights to these forests, which are subsequently referred to as customary forests. Thus, the rights of indigenous communities over these forests have been explicitly recognized by Law No. 41 of 1999 following the Constitutional Court Decision No. 35/PUU-X/2012.

The Constitutional Court Decision No. 35/PUU-X/2012 represents a significant legal breakthrough by the judges of the Constitutional Court aimed at providing, first, recognition of indigenous communities and their customary territories, as this decision further affirms that indigenous communities are legal subjects and owners of rights over their customary territories. Second, Article 67 of Law No. 41 of 1999 on Forestry reinforces conditional recognition for indigenous communities. The Constitutional Court views the recognition of indigenous communities through regional regulations as still relevant and not unconstitutional, as long as there is no specific law on indigenous communities.

According to the provisions of Article 67, paragraphs (1) and (2) of Law No. 41 of 1999 on Forestry: Paragraph (1) states that "the existence of indigenous communities, in reality, meets the following criteria: a. The community still exists in the form of a *paguyuban* (social organization); b. There is an institutional framework in the form of customary authorities; c. There is a clearly defined customary legal territory; d. There are customary institutions and legal frameworks, particularly customary courts, that are still adhered to; e. The community engages in the harvesting of forest products in their surrounding forest areas to meet their daily needs." Paragraph (2) stipulates that the recognition of the existence and dissolution of indigenous communities, as referred to in paragraph (1), is established by regional regulation.

Furthermore, Article 63, paragraph (1), letter (t) of Law No. 32 of 2009 on Environmental Protection and Management states that, in the protection and management of the environment, the government has the duty and authority to establish policies regarding the procedures for recognizing the existence of customary law communities, local wisdom, and the rights of indigenous communities related to environmental protection and management.

Based on the provisions of Article 63, paragraphs (1), (2), and (3), the division of duties and authorities is as follows:

a. The government establishes policies regarding the procedures for recognizing the existence of indigenous communities, local wisdom, and the rights of indigenous communities related to environmental protection and management.

b. The provincial government establishes policies regarding the procedures for recognizing the existence of indigenous law communities, local wisdom, and the rights of indigenous communities related to environmental protection and management at the provincial level.

c. The regency/city government implements policies regarding the procedures for recognizing the existence of indigenous law communities, local wisdom, and the rights of indigenous communities related to environmental protection and management at the regency or city level**;**

The Constitutional Court Decision No. 35/PUU-IX/2012 regarding customary forests clearly states that

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"customary forests are rights forests, owned by indigenous law communities. The procedure for obtaining them requires that the indigenous community first exists, that the community is recognized through regional regulations, and that the customary forest area lies within the community's territory. Following this, the status of the customary forest is requested from the Ministry of Environment and Forestry. Customary forests are managed through social forestry plans submitted to the Ministry of Environment and Forestry. However, based on the Minister of Environment and Forestry Regulation No. 9 of 2021 on Social Forestry Management, after verifying the request, management of traditional forests is provided. On the other hand, "customary forests are the substantive rights inherent to indigenous law communities, granted by the state through the Constitutional Court's decision and subsequently followed up by the Ministry of Environment and Forestry."

For indigenous communities, the process of obtaining customary forests can be quite prolonged. First, regional regulations must define the indigenous communities. Next, the area designated as a customary forest is mapped using the community's customary regulations. Finally, the ministry processes the request and returns it to the local indigenous community. Meanwhile, a village decree is often sufficient for farmer groups to submit requests for forest management, permanent partnerships, or community-managed forests (HKM); local norms do not need to be approved by groups. This stands in stark contrast to the Constitutional Court Decision No. 35/PUU-IX/2012 regarding customary forests. The essence of the Constitutional Court's ruling states that customary forests are now controlled by communities adhering to customary law, rather than being part of state forests. For indigenous communities, forests are everything; they permeate every aspect of life, from living spaces and recreational areas to sources of food, social interactions, and the preservation of cultural traditions and local knowledge. Even though communities have managed forests for generations, obtaining legal recognition requires formal legality from the state through a decree establishing the customary forest (HA) from the Ministry of Environment and Forestry (KLHK).

Customary forests for indigenous law communities represent a manifestation of their role in preserving the sustainability of these forests, which not only protects biodiversity but also preserves the valuable cultural values and ancestral traditions. In its implementation, the recognition of customary forests (HA) remains slow compared to other social forestry schemes. This delay is due to the requirement that the recognition of customary forests necessitates acknowledgment as an Indigenous Law Community (MHA) and the establishment of its customary territory (onlinejambi.com, 2022).

The existence of forests represents a potential natural resource that is beneficial for the country's foreign exchange. In addition, forests serve various functions that have a positive impact on the sustainability of human life. Alongside the rapid growth of the human population on Earth, the rate of population increase continues to rise over time (Endang, Suhendang, 2013). Indirectly, the functions of forests include: First, through their collection of trees, forests are capable of gathering the oxygen (O_2) necessary for human life and can also absorb carbon dioxide (CO_2) resulting from human activities, effectively acting as the lungs of the local area. When considering the forested areas in tropical regions, they can even serve as the lungs of the world. The cycles occurring within forests can significantly influence the climate of a region. This function can also be referred to as the climatological function. Second, forests act as reservoirs for water, absorbing rainwater and dew, which ultimately flows into rivers through springs located in the forest. With the presence of forests, abundant rainwater can be absorbed and stored in the soil, preventing waste. This function is known as the hydrological function. Third, forests serve as a place for the nourishment of plants, where nutrient cycles occur (nutrients as food for plants), and through surface runoff, they can distribute nutrients to surrounding areas (Rahajeng, Kusumaningtyas & Ivan, Chofyan, 2013).

Fourth, forests possess a diverse wealth of flora and fauna, making their role as areas that produce the embryos of various species critical for enhancing biodiversity. This function helps maintain the resilience of ecosystems within a given region. Fifth, forests contribute significantly to national revenue, particularly in industry; in addition to timber, they yield other products such as resin, copal, turpentine, eucalyptus, rattan, and medicinal plants. Sixth, forests can also generate income through tourism activities, adding aesthetic value to the landscapes they encompass. This function is referred to as the aesthetic function.

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Seventh, forests prevent erosion and landslides. The roots of trees act as anchors for soil particles, ensuring that rainwater does not fall directly onto the soil surface but instead lands on the leaves or is absorbed into the ground (Rahajeng, Kusumaningtyas & Ivan, Chofyan, 2013). Forest protection serves as the fundamental basis for policies regarding the utilization and conservation of forests in Indonesia. As a natural resource, forests are considered a gift from God Almighty and must be utilized for the welfare of the Indonesian people specifically and humanity in general (Ahmad, Redi, 2014).

Forest and forest area protection activities are essential and primary efforts aimed at preventing and mitigating damage to forests, forest areas, and forest products caused by human actions, livestock, fires, natural forces, pests, and diseases, while also safeguarding the rights of the state, communities, and individuals. Therefore, the purpose of forest protection is to (Supriadi, 2011):

1. To prevent and limit damage to forests, forest areas, and forest products caused by human activities, livestock, fires, natural forces, pests, and diseases, as well as invasive weeds;

2. To maintain and uphold the rights of the state, communities, and individuals regarding forests, forest areas, forest products, investments, and instruments related to forest management.

According to the provisions of Article 65 paragraph (1) of the Minister of Environment and Forestry Regulation No. 9 of 2021 on Social Forestry Management, the designation of the status of Customary Forest is determined by the following criteria: a. it is located within the Customary Area; b. it consists of forested areas with clear boundaries and is managed according to the local wisdom of the relevant indigenous Community; c. it originates from state forest areas or outside state forest areas; and d. there are still activities for harvesting forest products by the Indigenous Community in the surrounding forest areas to meet daily living needs. (2) In cases where the Customary Area is located within state forest areas and is not classified as forest, it may be included in the Customary Forest designation map with a specific legend in accordance with the land use/utilization conditions. The Customary Area referred to is customary land that includes land, water, and/or waters along with the natural resources above it, with specific boundaries, owned, utilized, and preserved through generations in a sustainable manner to meet the living needs of the community, acquired through inheritance from their ancestors or ownership claims in the form of communal land or Customary Forest.

Furthermore, Article 66 paragraph (1) states that the designation of the status of Customary Forest is carried out through an application to the Minister by the customary leader, with copies sent to: a. the regent/mayor; b. the provincial regional apparatus organization responsible for environmental and/or forestry matters; c. the district/city regional apparatus organization responsible for environmental matters; and d. the relevant technical implementation unit of the Ministry of Environment and Forestry. (2) The application referred to in paragraph (1) must be accompanied by the following requirements: a. the identity of the Indigenous Community (MHA) in the form of an identification card containing: 1. the name of the MHA; 2. the name of the MHA leader; and 3. the residential address of the MHA leader; b. a map of the Customary Area signed by the MHA leader; c. a regional regulation and/or decision from the governor/regent/mayor concerning the recognition of the MHA; and d. a statement signed by the MHA leader containing: 1. a confirmation that the proposed area is within the applicant's Customary Area; and 2. consent for the designation of the proposed Customary Forest function in accordance with the provisions of the prevailing laws and regulations.

Field verification is conducted to assess the consistency between the data and the facts on the ground, carried out by the Director General by forming an integrated team as regulated. This team consists of representatives from: a. the directorate general responsible for social forestry and environmental partnerships; b. the directorate general responsible for forestry planning; c. the relevant echelon I work unit within the Ministry of Environment and Forestry; d. the provincial regional apparatus organization responsible for environmental and/or forestry matters; e. the district/city regional apparatus organization responsible for environmental matters; f. the relevant technical implementation unit within the Ministry of Environment and Forestry; g. site-level area managers; h. the Working Group on Social Forestry (Pokja PPS) or non-governmental organizations; and/or i. universities/institutions/bodies specializing in

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environmental and/or forestry research. The integrated team is tasked with ensuring: a. the existence of the applicant and the validity of the documents for the designation of the Customary Forest status; b. the location and function of the proposed Customary Forest; c. the land cover conditions of the proposed Customary Forest; d. the presence of the proposed Customary Forest in the spatial planning of the province and district/city; and e. the feasibility of the area applied for to be designated as a Customary Forest.

Furthermore, in Article 70, based on the minutes and report of the field verification, the Director General, on behalf of the Minister, shall issue a decision on the designation of Customary Forest status within 14 (fourteen) working days. Then, in Article 71, paragraph (1), if field verification is conducted on an application that has not been completed with the regional regulation confirming the existence of the Indigenous Community (MHA) and/or the governor's/bupati's/mayor's decree regarding the confirmation of the MHA, but the Customary Territory has been established by the bupati/mayor, the Director General, on behalf of the Minister, shall establish the Indicative Customary Forest Area within 14 (fourteen) working days. This determination shall be conducted partially and shall constitute a principle approval for the designation of Customary Forest status. The Indicative Customary Forest Area can be designated as a Customary Forest after meeting the technical requirements. In Article 72, paragraph (1), if the Indicative Customary Forest Area as referred to in Article 71 is located: a. within the area of forest area use approval or business licensing for forest utilization, the holder of the approval or business license shall coordinate with the customary stakeholders; or b. outside the area of forest area use approval or business licensing for forest utilization, no new permits may be issued. Paragraph (2) Coordination as referred to in paragraph (1) letter a shall be conducted based on the principle of Local Wisdom.

According to the provisions of Article 74, paragraph (1), the Decision on the Designation of Customary Forest Status and Indicative Customary Forest Areas shall be established in: a. a map of Customary Forest status; and b. Indicative Customary Forest Areas. Paragraph (2) The map of Forest status and Indicative Customary Forest Areas shall be established periodically at least once every 6 (six) months and shall be cumulative. The Customary Territory that has been established in the Decision on the Designation of Customary Forest Status as referred to in Article 71 and/or Article 73, paragraph (6), shall be excluded from state forest. (2) The Customary Territory that has been excluded from state forest as referred to in paragraph (1) with forest criteria shall have its status designated as a Customary Forest. The Customary Territory that has been excluded from state forest as referred to in paragraph (1) shall be depicted on the map of the designation of Customary Forest status according to the conditions of land cover and use.

The existence of the social forestry program represents another step for customary law communities to manage their customary forests. Thus, if the customary forest has not yet been submitted to the Ministry of Environment and Forestry, the customary law community can still exercise management rights for a period of 35 years. The difference between the social forestry scheme for customary forests and the established customary forests lies in the duration; social forestry has a time limit, while customary forests do not, meaning they exist as long as the customary law community remains. Customary forests are managed through social forestry plans submitted to the Ministry of Environment and Forestry, as stipulated by Regulation of the Ministry of Environment and Forestry No. 9 of 2021 concerning the Management of Social Forestry. After the verification of the application, traditional forest management is provided. However, on the other hand, "customary forests are substantive rights inherent to customary law communities, granted by the state through Constitutional Court decisions and followed up by the Ministry of Environment and Forestry."

For indigenous communities, the process of obtaining customary forests can be quite prolonged. First, regional regulations define the customary law communities. Subsequently, the area designated as a customary forest is mapped using the community's customary regulations. Finally, the ministry processes the request and returns it to the local customary community. For example, the designation of a customary forest in one district in Central Kalimantan Province, namely Lamandau Regency, has seen proposals for customary forests submitted four times. The Kinipan Village Customary Forest has now been officially recognized through the Minister of Environment and Forestry Decree No. SK.4513/MENLHK-PSKL/PKTHA/PSL.1.5/2022, covering an area of approximately 6,825 hectares. Kinipan Village is inhabited by 198 families, consisting of 331 males and 312 females, the majority of whom are part of the

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Dayak Tomun indigenous community (Ministry of Environment dan Forestry, 2024).

Conclusion

The urgency of the Regional Regulation on the Recognition and Protection of Customary Law Communities in the Establishment of Customary Forests in Central Kalimantan Province underscores that without this regulation, the designation of customary forests cannot be carried out. In Central Kalimantan Province, there are still nine regencies that lack regional regulations regarding customary law communities, while several of these regencies have already identified customary forests. The legal framework for the designation of customary forests as a form of recognition and protection for customary law communities in Central Kalimantan Province refers to the Minister of Environment Regulation No. 9 of 2021 concerning the Management of Social Forestry. This includes the affirmation of customary law communities located within state forest areas, which is established through regional regulations. Outside state forest areas, this designation is established through regional regulations or gubernatorial and/or regent/mayoral decrees, in accordance with their respective authorities. The designation of customary forest status can occur either within state forest areas or outside of them.

There exist customary territories that include forests managed by customary law communities with clearly defined boundaries, traditionally passed down, where harvesting activities are still conducted by these communities to meet their daily needs. If the customary territory is located within a state forest area, it can be included in the customary forest designation map. The customary forest application can be submitted by customary leaders to the Minister of Environment and Forestry, followed by a field verification conducted by an integrated team formed by the Director General. The results of the field verification are documented in minutes and a report on the verification of the customary forest, which is then submitted to the Director General. Subsequently, the Director General, on behalf of the Minister, issues a decree on the designation of the customary forest within a timeframe of 14 working days.

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