



LEGAL PROTECTION OF INDIGENOUS LAW COMMUNITIES OVER CUSTOMARY FORESTS IN KERINCI REGENCY

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Abstract: The rights of the Indigenous Communities to natural resources, land, and forests have not been explicitly regulated in a single legislative act, yet the control of the Indigenous Law Communities (abbreviated as ILC) over customary forests is established. The customary forests in Kerinci Regency have been officially designated as customary forests based on the Minister of Environment and Forestry Decree, which the local ILC manages based on the Decree of the Regent of Kerinci. The control of customary forests requires recognizing and confirming the ILC through Regional Regulations based on Law No. 41 of 1999 on Forestry. The sustainability of the ILC, as the rightful holders of customary forest rights, can be threatened if not recognized by the Regional Government. The research method employed is empirical juridical. The research findings indicate that the customary forests in Kerinci Regency have been designated as customary forest areas or proprietary forests as stipulated in the Minister of Environment and Forestry's Decree, with the recognition of each ILC right holder's existence based on the Decree of the Regent of Kerinci. Although the Regent's Decree does not adequately explain the status, structure, and customary institutions managing the customary forests, it implicitly acknowledges the existence of the ILC entitled to them. As a region with the most significant number of customary forests in Jambi Province, it is expected that the Kerinci Regency Government can draft regulations concerning the ILC.

Keywords: Customary Forests; Indigenous Communities; Kerinci Regency; Legal Protection

1. Introduction

Indigenous Law Communities (abbreviated as ILC) are recognized as legal subjects comprising groups of people who have lived for generations in specific geographical areas, bound by cultural identity, ancestral lineage, and a solid connection to the land, territory, and natural resources within their customary regions. These communities are governed by a value system that determines their economic, political, social, and legal institutions. The state's restrictions on control over territories, as well as the rightful areas of the ILC, must be acknowledged and respected, as these rights have existed since before Indonesia's independence and are highly susceptible to conflict. Despite ILC possessing traditional rights, including rights to customary forests, these forests are not just prone, but are actively under threat due to state activities such as the designation of state forest areas and corporate activities encroaching on their customary lands.¹

The rights of Indigenous Law Communities, initially considered limited to local and national dimensions, have a global dimension as they are recognized in various provisions of International Conventions. The recognition of ILC in government programs is often neglected,

¹ Mulya Sarmono, "Terhadap Eksistensi Masyarakat Hukum Adat," *Jurnal Adhikari* 2, no. 4, April (2023): 468–478, <https://doi.org/10.53968/ja.v2i4.90>.



as they are deemed to hinder government initiatives, even though customary law is a material source that can be utilized in national development.² Citing a journal, Elita Rahmi, “especially land reform as the history of a national land law towards agrarian reform for the welfare and the prosperity of the people.” Specifically, agrarian reform is part of the history of national land law, moving towards agricultural reform for the welfare and prosperity of the people. The recognition of Indigenous Law Communities' (ILC) rights by the Indonesian state is mentioned in several laws. First, Article 3 of Law Number 5 of 1960 on Basic Agrarian Principles (UUPA) emphasizes the recognition of ILC, particularly their *ulayat* rights. Furthermore, the traditional rights of ILC are also recognized in various sectoral legislations, such as Law Number 41 of 1999 on Forestry (from now on, abbreviated as UU 41/1999). While ILC rights are regulated and acknowledged in legislation, they have yet to provide adequate legal protection, evidenced by the fact that *ulayat* rights are not recognized as one of the land rights in Article 16, paragraph (1) of the UUPA.³ However, with the Constitutional Court Decision Number 35/PUU-X/2012 regarding the judicial review of Law Number 41 of 1999 on Forestry, *ulayat* rights over the management of Customary Forests are no longer considered part of state forests.

The recognition of the existence of indigenous communities is regulated in Article 67, paragraph (2) of Law No. 41 of 1999 and is established by Regional Regulations. Furthermore, the provisions regarding the recognition of customary forests are regulated in the Minister of Forestry Regulation No. 62/Menhut-II/2013 concerning Amendments to the Minister of Forestry Regulation No. P.44/Menhut-II/2012 on the Recognition of Forest Areas, which requires the issuance of Regional Regulations. In another sector, the Minister of Home Affairs, through Regulation No. 52/2014 on Guidelines for the Recognition and Protection of the Rights of Indigenous Law Communities, stipulates in Article 6, paragraph (2) that Regional Heads have the authority to recognize the existence of Indigenous law communities through a Regent/Mayor Decree.⁴

In Kerinci Regency, several customary forests have been recognized by the Regent through the issuance of Regent Decrees (SK) of Kerinci Regency. The recognition of Indigenous Law Communities (ILC) in Kerinci Regency is still limited to these Regent Decrees, which only specify the areas of customary forests managed by the local ILC. This approach differs from the regulation in Article 67 of Law No. 41 of 1999, which stipulates that Regional Regulations must establish the recognition of the existence of ILC. According to Article 37, paragraph (1) of the same law, it is clearly stated that the respective indigenous law communities utilize customary forests by their functions. The recognition and confirmation of customary forests in the Regent's Decrees of Kerinci Regency do not establish or clarify the recognition of ILC; they only mention the areas of customary forests. This can lead to ambiguity regarding the protection of customary forests by the ILC in the Kerinci Regency and does not guarantee legal certainty in

² Elita Rahmi, *Pembuktian Sertifikat Tanah & Kapita Selektia Hukum Agraria*, ed. Ardi Saputra Gulo (Jakarta: Pentas Grafika, 2021): 58 https://repository.unja.ac.id/17793/1/Pembuktian_Sertifikat_Tanah.pdf.

³ Sukirno, *Politik Hukum Pengakuan Hak Ulayat*, Cetakan-1 (Jakarta: Kencana, 2018).

⁴ F Hamdani, “Kajian Yuridis Kewenangan Pemerintah Daerah Dalam Pengakuan Dan Perlindungan Masyarakat Adat,” *Jurnal Education and Development* 8 (2020): 903–908, <http://journal.ipts.ac.id/index.php/ED/article/view/2052>.

the future. Based on the above explanation, the author is interested in conducting research titled "Protection of Indigenous Law Communities Over Customary Forests in Kerinci Regency."

2. Research Method

The research method used by the author is empirical legal research. Empirical legal research is a type of legal research that obtains data from primary sources or data collected directly from the community.⁵ Empirical research is based on field observations or direct observations regarding how the protection of Indigenous Law Communities (ILC) over customary forests is implemented in Kerinci Regency. The research uses a socio-legal approach, which views law not only as an authoritarian and purely applied discipline but also as empirical or based on legal realities.⁶ The types of data used include secondary data collected through examined legal documents related to the study. Second, primary data was obtained through field studies using observation techniques, in-depth interviews, and documentary studies.

3. Protection of Customary Forests in Kerinci Regency Based on Ministerial Decree

ILC, as a unique entity, has original rights. This characteristic means the right was created before any other rights were regulated. There is also a term in law to name this right. The term is a prima facie, which means the right existed before this country made its regulations. Incoming countries must not make regulations that conflict with those adopted by indigenous peoples. The determination of forest areas by the state is not a grant of rights but a form of recognition of the ILC's rights to customary forests, which have been controlled since before the state was formed. For this reason, fair laws are needed that lead to social welfare for all Indonesians.⁷

The territory of Kerinci Regency has more than 50% of its area designated as the Kerinci Seblat National Park, which is state forest land. Adjacent to this, some areas constitute communal land for the ILC living in Kerinci Regency in customary forests. Environmental law requires conscious and planned efforts to integrate environmental, social, and economic aspects into development strategies to ensure the welfare and quality of life for present and future generations. This is highlighted in the journal by Elita Rahmi, who states that it is essential to "ensure the integrity of the environment and the safety, capability and welfare and quality of life of present and future generations."⁸

The customary forest areas for the Indigenous Communities (ILC) in Kerinci Regency have long been a source of livelihood for the local ILC, who have diligently protected and preserved them. This is evident from the community's relationship with the forest, such as prohibitions against

⁵ Mukti Fajar & Yulianto Ahmad, *Dualisme Penelitian Hukum: Normative Dan Empiris* (Yogyakarta: Pustaka Pelajar, 2010). hlm. 154.

⁶ Depri Liber Sonata, "Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum," *Fiat Justisia Jurnal Ilmu Hukum*, Vol. 8, no. 1 (2014): 15–35.

⁷ Elita Rahmi, "Pembentukan Peradilan Khusus Lingkungan Dalam Rangka Pengembangan Penegakan Hukum Lingkungan Di Indonesia," *Prosiding Seminar Nasional "Perlindungan Sumber Daya Alam"*, 2017, 328.

⁸ Elita Rahmi, "Legal Certainty of Land Registration towards Sustainable National Development," *International Journal of Recent Technology and Engineering* 8, no. 2 Special Issue 9 (2019): 240–244, <https://doi.org/10.35940/ijrte.B1053.0982S919>.

deforestation, bans on opening land for exploratory cultivation, and the use of customary forests only under the conditions set by the traditional leaders. These leaders, holding titles according to their positions *sko nan tigo takah*,⁹ namely *sko Depati*, *sko Ninik Mamak*, and *sko Tenggana*, continue to pass down these regulations. These traditional leaders make all decisions about the rules for utilizing the customary forests.

Unlike other regions, the ILC in Kerinci Regency is divided into many traditional institutions. Each institution's traditional structure, corresponding to its respective territory, is called a federation.¹⁰ Therefore, the ILC in Kerinci has territorial divisions, some of which include forests and others that do not. With the establishment of the state, land areas, including forests, have been regulated through Legislation (PUU). Forest regulations are governed by Law No. 41/1999. Thus, the designation and function of forests must be based on this Law and its derivative rules.

The mechanism for protecting customary forest areas is regulated in the Minister of Environment and Forestry Regulation No. 9 of 2021 on Social Forestry Management (Permen-LHK 9/2021). As part of social forestry, customary forests must be officially recognized with a Ministerial Decree (SK Minister). The customary forests in Kerinci Regency that have been identified under this regulation are: 1) Nenek Limo Hiang Tinggi Nenek Empat Betung Kuning Muara Air Dua Customary Forest; 2) Tigo Luhah Permenti Yang Berenam Customary Forest; 3) Tigo Luhah Kemantan Customary Forest; 4) Hulu Air Lempur Lekuk Limo Puluh Tumbi Customary Forest; 5) Biang Sari Customary Forest; 6) Parbokalo Bungkan Yang Empat Customary Forest; 7) Bukit Kayu Sigi Customary Forest; 8) Bukit Gedang Customary Forest; 9) Bahung Batu Customary Forest; 10) Bukit Sembahyang dan Padun Gelanggang Customary Forest; 11) Bukit Tinggi Customary Forest; and 12) Lubuk Tinting dan Maliki Customary Forest. These twelve customary forests have been officially recognized and have received the Ministerial Decree from the Minister of Environment and Forestry.

Based on interviews with the traditional leaders managing the Bukit Tinggi customary forest located in Sungai Deras Village, East Air Hangat District, they explained that they have truly felt the benefits of the customary forest designation with the Ministerial Decree, such as clear regulations on boundaries and forest status that must be adhered to by all parties.¹¹ Additionally, other ILC managing customary forests have also felt the protection since the issuance of the Ministerial Decree. For instance, the ILC managing the Bukit Sembahyang and Padun Gelanggang customary forest noted that with legal protection through the Ministerial Decree, there are no longer instances of forest burning and illegal logging by the community, as villagers are directly involved in forest management.¹² Besides the protected customary forests, the ILC also directly benefits. This was also explained by the manager of the Biang Sari

⁹ Deria Sepdwiko, "Upacara Adat Kendu Hai Sko Pada Masyarakat Kerinci Provinsi Jambi," *Besaung : Jurnal Seni Desain Dan Budaya* 1, no. 1 (March 30, 2016): 49–55, <https://doi.org/10.36982/jsdb.v1i1.82>.

¹⁰ Uli Kozok, *Kitab Undang-Undang Tanjung Tanah: Naskah Melayu Yang Tertua*, ed. Ninie Susanti Y & Waruno Mahdi Alih Hassan Djafar (Jakarta: Yayasan Obor Indonesia, 2006).

¹¹ Interview results with Sukirman, the Custodian and Traditional Chief of Sungai Deras Village, Manager of Bukit Tinggi Indigenous Forest, on May 17, 2024, at 9:45 AM WIB.

¹² Interview results with Nasrul, the Traditional Chief of Air Terjun Village, Manager of Bukit Sembahyang and Padun Gelanggang Indigenous Forests, on May 17, 2024, at 2:40 PM WIB.

customary forest in Pengasi Baru Village, who mentioned that the local community has benefited from partners like Walestra, which provides funding assistance for forest protection.¹³ The protection of customary forests based on the Ministerial Decree directly benefits the community, providing legal certainty for the customary forest areas and ensuring the future well-being of the local ILC.

3. 1 Protection of ILC in Customary Forests Through Regent Decrees

The protection of ILC in Kerinci Regency has been based on the Decree of the Regent of Kerinci, which essentially states that the customary forests mentioned in the decree belong to the respective ILC. The function of the Regent's Decree is essentially a form of recognition and affirmation of the ILC itself, based on the Minister of Home Affairs Regulation No. 52 of 2014 on Guidelines for Recognition and Protection of the Rights of Indigenous Communities (Permendagri 52/2014) in Article 6, Paragraph (2), which stipulates that the Regent/Mayor recognizes and protects indigenous communities based on the recommendations of the Indigenous Communities Committee through a Regional Head's Decree.

Suppose this rule is linked to the affirmation of customary forest areas. In that case, it can be considered inappropriate because it contradicts a higher norm, Law No. 41/1999, which requires the relevant ILC to be established through a Regional Regulation. However, regarding this contradiction, Jasardi Gunawan's journal states that although specific rules related to customary forests are further regulated by the Minister of Environment and Forestry Regulation, the particular recognition of ILC falls under Permendagri 52/2014, which directly instructs Regional Heads to recognize ILC through a Regent/Mayor's Decree.¹⁴ Therefore, the ILC in Kerinci Regency, although lacking a legal basis through , have their status as legal subjects affirmed by the Regent's Decree, which provides legal protection and has been followed by the recognition of their customary forests with the Minister of Environment and Forestry's Decree. The legal standing of ILC protection with just a Regent's Decree is also acknowledged in Constitutional Court Decision 35/2012, where the third petitioner in the lawsuit was the Indigenous Community Unit of Kasepuhan Csitu, proven by the Decree of the Regent of Lebak.

The validity of the Regent's Decree as a form of recognition of the existence of ILC, although not aligned with the theory of legal certainty, which essentially requires ILC to be affirmed based on Article 67 of Law No. 41/1999, is still acceptable in Constitutional Court Decision 35/2012. Hence, the value of legal certainty is not absolute; as Radbruch's theory suggests, three values must be considered besides legal certainty, namely justice and utility. These three values strive for harmony without one dominating the others.¹⁵ Thus, the recognition of ILC

¹³ Interview results with Iskandar, the Financial Officer of Pengasi Baru Village, Biang Sari Indigenous Forest Manager, on May 16, 2024, at 1:00 PM WIB.

¹⁴ Jasardi Gunawan, "Implementasi Permendagri No 52 Tahun 2014 Tentang Pedoman Pengakuan Dan Perlindungan Masyarakat Hukum Adat," *Jurnal IUS Kajian Hukum Dan Keadilan*, no. 52 (2018), <https://core.ac.uk/download/pdf/235205225.pdf>.

¹⁵ Elita Rahmi, "Penegakan Hukum Dan Fatwa Haram MUI Terhadap Kebakaran Hutan Dan Lahan Di Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 16, no. 01 (December 1, 2018): 57–70, <https://doi.org/10.30631/alrisalah.v16i01.336>.

with just a Regent's Decree can be evaluated from the perspectives of justice and utility, as there is acknowledgment from the Regent/Mayor that the ILC indeed exists.

4. Protection of ILC Over Customary Forests Through Regional Regulations

The Preamble to the Constitution of the Republic of Indonesia (UUD NRI 1945) mandates establishing the Indonesian state, among other things, to protect all Indonesian people, including ILC. This is further elaborated in the second amendment of the UUD NRI 1945, Article 18B, Paragraph (2), which states that the state recognizes and respects the units of Indigenous Communities as long as they are still alive and following the development of society and the principles of the Unitary State of the Republic of Indonesia, regulated by law. Based on the Decree of the People's Consultative Assembly (TAP MPR RI) No. IX of 2001 on Agrarian Reform and Natural Resource Management, and the Decree of the MPR RI No. V of 2003 clearly instructs the President and the House of Representatives (DPR) to formulate agrarian reform and natural resource management laws to function as *lex generalis* and establish an independent institution to resolve agricultural conflicts. This aims to ensure agrarian justice reaches farmers and the people of Indonesia (the poor and vulnerable groups), as mandated by the constitution and as a realization of sustainable development.¹⁶

The multi-dimensional national legal framework is essential for use as a tool for social engineering, as in Roscoe Pound's theory. On the other hand, the law also protects human interests, often referred to as a protection of human interest, and must act as a tool of social control.¹⁷ While the national law on ILC has yet to be established, local legislation, such as Regional Regulations () on customary law, can achieve security. Regional legal products in the form of , based on the hierarchy of rules and regulations, have a clear position and represent a form of preventive protection by the regional government, ensuring legal certainty for ILC and customary forests.

Various ILCs manage customary forests in Kerinci Regency, some consisting of village units united under a single adat system called *Depati*,¹⁸ while others are individual villages forming their own ILC. As explained by Zel Wandri, the Tigo Luhah Kemantan customary forest is managed by ILC from four villages that essentially create a single ILC unit.¹⁹ The structured adat institutions of each *Depati* are further clarified by Sukirman Mangku, who noted that their ILC structure is part of the *Rawang Depati*.²⁰ The lineage of the customary order in Kerinci can be further explored through *Tambo*,²¹ with many *Depati* names now recognized as ILC based on modern developments and usage in legal regulations. From a legal standpoint, many ILCs in Kerinci Regency are not yet recorded in the Regent's Decree, primarily because they do not

¹⁶ Elita Rahmi, Rustian Mushawirya, and Eko Nuriyatman, "Prospektif Omnibus Law Bidang Sumber Daya Alam Omnibus Law Prospective on Natural Resources," *Bina Hukum Lingkungan* 5, no. 2 (2021): 309–310.

¹⁷ Rahmi, Mushawirya, and Nuriyatman.

¹⁸ *Depati* as a traditional leader in a traditional institution in Kerinci. Muhammad Yusuf and Ghina Nabilah Effendi, "Eksistensi Pemangku Adat Dalam Pengambilan Keputusan Desa Di Kerinci," *Tanah Pilih* 1, no. 1 (2021): 11–19, <https://doi.org/10.30631/tpj.v1i1.672>.

¹⁹ Interview Results with Zel Wandri, Kepala Desa Kemantan Agung, Pengelola Hutan Adat Tigo Luhah Kemantan, On May 17, 2024, at 7:55 PM WIB

²⁰ Interview Results with Sukirman.

²¹ Peninggalan nenek moyang yang menjelaskan silsilah dan adat istiadat, di jelaskan Sukirman.

have customary forests. Those recorded are the ILCs that applied to fulfill their rights over their customary forests.²² However, the protection and recognition of ILC as a Regent's Decree are obligations of the Regional Government as stipulated in Permendagri 52/2014 Article 2, which emphasizes that Governors and Regents/Mayors must recognize and protect ILC. Additionally, the Regional Government should form a committee for ILC identification, verification, validation, and determination.

The protection of ILC in the Kerinci Regency needs to be formalized through , considering the importance of accommodating the various ILC groups in the Kerinci Regency and providing preventive protection for their rights, especially for those with a Ministerial Decree designating their areas as customary forests, which must be protected and maintained for future generations to ensure that their rights to the customary forests remain intact and preserved. Furthermore, for ILCs that have customary forest areas but have not yet had their status formally recognized by the government, their rights can be protected. They can then propose the status of their areas as recognized customary forests. Considering the importance of forests for the continuity of Kerinci society, with over 50% of the area being forested, the community has long regarded the forest as a protector and coexists with it without causing harm; in the past, customary forests were called *imbo*.²³

As Elita Rahmi explains in her journal, protection should be seen as an effort to prevent unequal competition from exploitation by strong groups over weaker ones. Providing protection, which also means empowering ILC regarding their traditional rights, underscores the importance of wise and protective government policies to prevent the further weakening vulnerable communities when facing more vital entities.²⁴

The effort to protect the ILC by establishing is ideal for providing comprehensive protection to the ILC in the Kerinci Regency. Besides enabling the codification of ILC groups recognized through Regent's Decrees, can also document the ILCs that have existed and continue to exist today, ensuring the state legally protects their rights. It acknowledges and respects the customary dispute resolution methods within the community. The legal objectives of providing certainty, utility, and justice for forest protection in Kerinci Regency can be achieved if the regional government forms local legal products reaffirming the protection and recognition of ILC and their customary forests. This approach considers the law as a means to actively involve society in maintaining forest functions. Through the existing ILC in Kerinci Regency, which has customary rules for managing and conserving their forests, the local community will easily accept this approach and provide direct social and economic benefits.

5. Conclusion

Protection ILC over customary forests in Kerinci Regency can be safeguarded in three forms: first, the protection of customary forests that are officially recognized with the issuance of a Ministerial Decree by the Minister of Environment and Forestry (LHK) and the designation of

²² Interview Results with Nasrul

²³ It means "The forest is prohibited from being visited.". Interview Results with Sukirman, and Iskandar

²⁴ Elita Rahmi, "Tarik Menarik Antara Desentralisasi Dan Sentralisasi Kewenangan Pemerintah Daerah Dalam Urusan Pertanahan," *Jurnal Hukum* 16 (2009): 137–154.

these customary forests on the forest area map; second, the protection of the ILC itself, which is indirectly acknowledged through the Regent of Kerinci's Decree, stating that the ILC listed in the decree is recognized as having rights over the designated customary forests. Although Law No. 41/1999 on Forestry Article 67 requires recognition through Regional Regulations (), the Minister of Home Affairs Regulation No. 52/2014 mandates regional heads to recognize and protect ILC with a Regent/Mayor Decree; third, protection through Regional Regulations, which provide ideal and comprehensive security and legal certainty regarding the ownership rights over customary forests. The Forestry Law requires the relevant ILC to be established through Regional Regulations. Therefore, it is expected that the Kerinci Regency Government will begin drafting Regional Regulations concerning Kerinci ILC based on the identification, verification, and validation of the ILC that truly exist and are part of the cultural identity of Kerinci Regency that must be protected to ensure the sustainability of customary forests for future generations. This will protect the ILC and the customary forests that form an integral part of their environment.

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