

Customary Rights as Commonwealth Rights of Customary Law Communities

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Abstract

The issue of customary land and customary rights arises everywhere because of the juridical aspect of proving the existence of customary land as a right from the alliance of customary law communities. Where when development will be carried out, the issue is land and more specifically customary land. This research aims to prove the existence of customary rights in a formal juridical manner or based on the traditions or habits of indigenous peoples which are one of the sources of formal law.

The method used in this study is normative juridical with a legislative, conceptual and case approach. This research seeks to prove that customary land and the rights attached to it are the rights of the community of customary law communities, both *de facto* and *de jure*.

Research shows that customary law societies have existed long before the state existed. In accordance with the principles of customary law, that proof of customary rights is in the form of transactions both formally and based on customary customs that apply in customary law societies. Formally, from the government, it is a form of juridical recognition, while the customs or traditions of the local community are special things that are based on the principle of customary law principles which are not written in nature.

Keywords: Customary Rights, Federal Rights, Customary Law Society

DOI: 10.7176/JLPG/154-03

Publication date: July 28th 2026

2. Introduction

The term customary land is used in general by the Indonesian people, in fact it originated from West Sumatra¹. The people of Maluku, especially in Central Maluku Regency, recognize it as the land of Petuanan. Land is a territory of control over land and other natural resources that are above the ground or underground. The territory of power is *de facto* and *de jure* controlled by community groups called indigenous peoples and customary law communities.

Ulayah land that is in the territory of the Commonwealth of customary law communities has various other rights, which are recognized as having their existence according to customary law, such as *dati* land, heirloom land, company land, *eigendom* land, postal land, and others.

The principle of recognition of customary land when associated with the national legal system often clashes. In terms of constitutionality, there is recognition of the existence of customary law communities with all rights that are an integral part of the customary law system in Indonesia.

The debate about the origin of customary land and the rights attached to it is always related to the aspect of juridical proof of its existence and who has the right to manage, control and own the customary land. In the reference to customary law, it is stated that customary rights are an old right, along with the formation of a community environment, both in the form of territory, villages, villages and various other mentions. The right contains the authority to regulate the designation, use, management, use and maintenance of the².

In Maluku, this right is known as the right of lordship³, which is the right of customary law community to a certain area that is managed regularly and sustainably from one generation to the next as a source of common life as a dynamic entity.

According to Article 3 of the Principal Law on Agrarian Affairs, it is stipulated that; Customary rights are the rights of joint/communal ownership of customary law communities that are managed by mutual cooperation used to meet the common needs of their respective citizens and the utilization does not conflict with the Law.

This communal right does not *de jure* not yet have a strong legal basis, because in reality there are still many customary rights or lordship rights that do not have juridical legitimacy. *De facto*, the customary law

¹ The term customary rights comes from the West Sumatra Region.

² Darwin Ginting: 2010, Land Ownership Law, Agribusiness Sector, The Right to Control the State in the Indonesian Land Law System, Chalia Indonesia, p. 56

³ Lihat Siwar Effendy; Ambon Lease Customary Law.

community controls the territory, and manages it, based on their respective local wisdom, so this is one of the empirical proofs that the land is a common right of the customary law community.

The tug-of-war about the nature of juridical evidence and de jure evidence turns out to hinder development when the territory of customary law communities will be used for development activities by both the government and the private sector.

Many cases are submitted to the court to obtain a fair judge's decision about the existence and status of customary land and who or which institution actually has the right to the land or customary area. What will be studied in this writing is what is the juridical meaning of customary land in customary law societies?

3. Research Methods

The method used in this study is normative legal research. The normative legal research method seeks to examine law based on the value of legal values, the principles of legal principles, the theory of legal theory and the concept of legal concepts in one organized and integrated system.

The approaches used are the legislative and legislative approach, the conceptual approach and the case approach¹. With the legislative approach, what is studied are various laws and regulations both at the international level and national and local levels related to the existence of customary rights. The conceptual approach is related to the various opinions of legal experts, especially in customary law which are intertwined. The case approach emphasizes the case cases that arise and is juridical evidence that there is recognition of the existence of customary rights as the rights of customary law communities.

4. Results And Discussion

4.1. Characteristics or Signs of Customary Rights

Customary Rights as a common right of customary law communities have certain characteristics or signs, which distinguish them from other rights in the legal system in Indonesia. According to van Vollenhoven, the characteristics or signs of customary rights are as follows:

- a. The legal association and its members have the right to freely use, enjoy, and cultivate the land within the territory of the legal Federation.
- b. Persons who are not members of the legal association must first obtain permission from the head of the legal association and pay compensation
- c. In using land, members of the legal Federations do not pay, but for outsiders (foreigners) must pay income money (*recognitie/contributie*).
- d. The legal federation is responsible for the crime (murder) within the territory of its legal federation, if the perpetrator cannot be sued or is unknown.
- e. The Fellowship may not transfer (sell, give) for any length of time to anyone, except in certain and very special cases.
- f. The legal federation still has the right to interfere with the rights of individuals.²

What van Vollenhoven puts forward is something very important and interesting to study, because the characteristic characteristics inherent in the communion of customary law communities are an undeniable fact. This means that the characteristic is indeed a necessity that is controlled and owned by the legal alliance. Indeed, from the beginning, this customary law community alliance has the right of origin to the territory, both land and sea areas, including the space above it, which is called the customary area. The ownership area of the community of customary law communities, anthropologically, sociologically and juridically, has an inseparable relationship from the existence of the community that has inhabited it. A regular, for a long period of time and enjoy the fruits of the soil and crops that are in the area.

According to Imam Sudijat, the main characteristics of customary rights from customary law communities outside Java are clearly seen as follows:

- a. Only the legal alliance itself and its citizens have the right to freely use wild land in its territory.
- b. Outsiders can only use the land with the permission of the Federal ruler, without which it is considered to have committed a violation
- c. A federal citizen can benefit from the territory of ancient rights (customary rights) with a retraction only for the needs of his own wife/family, if it is used for the benefit of others, he is considered a foreigner, so he must obtain permission first. Meanwhile, foreigners are only allowed to take advantage of the ancient rights with the permission of the head of the legal federation, accompanied by payment, tribute (*recognitie*) to the legal federation.
- d. The legal alliance is responsible for everything that happens in its territory, especially in the form

¹ Peter Mahmud Marzuki : 2007 Legal Research, prenada Media Group Jakarta, p.123

² van Vollenhoven, in Budi Riyanto; Customary Law in Indonesia, A Review of Law Number 41 of 1999, Concerning Forestry, Institution {engstudy of Forestry and Environmental Law Jn Baru Kemang Bogor 2004: 14.

of unlawful acts, which are delicate.

e. Ancient rights (customary rights) cannot be released, transferred, exiled forever¹.

The characteristics of customary rights can be described as follows:

- 1) Customary land ownership is carried out collectively, all members of customary law communities, not individuals
- 2) Customary rights are cultural heritage that is inherited from generation to generation
- 3) Customary rights are attached to certain areas that have been part of the lives of indigenous peoples for a long time
- 4) Customary land in general cannot be sold or transferred to outsiders. This aims to preserve the soil and prevent exploitation².

Examples of customary rights in Indonesia include:

- a) Bedouin Community in Banten
- b) Dayak community in Kalimantan
- c) Minangkabau People in West Sumatra
- d) The Nageko community in East Nusa Tenggara³.

In Maluku, the customary law community calls it the term right of ownership. The right of lordship is the right of the Commonwealth of customary law communities that have been controlled and managed continuously for the sake of common life.

In the land of the lords or *ha katas* of the land of the lordship, there are a number of other rights that are inherent in accordance with the applicable customary law rules. Customary law communities have a number of instruments that can be used as a measure that *Petuanan* land or *Ulayat* land is a symbol of fellowship and togetherness and is a land that is cultivated together for sustainable living.

The dynamics and relationship with the natural environment are indeed very close and strong so that it is difficult to separate, because the Fellowship area is seen as a source of sustainable life. So the system of control over land, sea and air is a constitutionally recognized unit. It is said that this is because *the founding fathers* were well aware that this nation was formed on the territory of the lords or customary peoples who had been formed for a long time.

This group of people previously lived in a nomadic manner, but along with the development of civilization and the awareness to live together regularly according to the prevailing customary government system, they formed a certain community with certain symbols or identities and rules based on customary habits that provided instructions for living regularly.

This customary habit is the foundation for the birth of customary law because it is obeyed and seen as a norm that governs the life of customary law communities.

4.2. Juridical Analysis of Customary Rights as Commonwealth Rights of Customary Law Communities

Customary rights as the rights of the Commonwealth of customary law communities are in fact an inseparable part of living together as an indigenous community. This community has existed long before the Republic of Indonesia was born or formed as an independent nation entity. In fact, this community is the embryo and an absolute requirement for the establishment of the Unitary State of the Republic of Indonesia⁴.

So it should be admitted that long before the state was formed, there was already a unity of indigenous peoples, and a society that has its own legal system, namely customary law which is unwritten. This community is an important entity that contributes or has a very large contribution to the formation of the Unitary State of the Republic of Indonesia⁵.

This group of indigenous peoples is a legal alliance, which is formed due to genealogical and territorial factors⁶. Genealogical factors, which are the links between their members, namely common descent, are called genealogical legal alliances. The territorial factor is a fact that the group of people inhabit a certain area (*teritoir*) and it may have been tens or even hundreds of years⁷.

If this group can be seen as the embryo of a state then this is in line with the historical theory or evolutionary or gradualist theory, which explains that the institutions of social institutions are not created

¹ Iman Soedijat : in Budi Riyanto : ibid 15.

² Lindunghutan.com/blog/characteristics-of-customary-rights-and-their-codoh, uploaded on June 25, 2026.

³ Ibid.

⁴ M.J. Saptanno, 2025, The Position of Customary Rights in the Legal System in Indonesia, Paper at Public Lecture at the Indonesian Christian University of Maluku Ambon

⁵ Ibid.

⁶ Nico Ngani, 2012, The Development of Customary Law in Indonesia, PT Buku Seru Jakarta, p. 15.

⁷ Ibid : pp. 15-16.

but grow evolutionarily according to human needs¹. As a social institution intended to meet the needs of human needs, the institution is not immune to the influence of place, time and the demands of the times².

If it is related to the teaching of Decree (beslissingenleer) by Ter Haar, which emphasizes two main things in customary law, namely:

- a. If the citizens of the community behave in a way that turns out to be based on the belief that the community wants it and can force it if it is neglected, then it can be called a legal statement from the community
- b. There is no reason to call anything else law, except for a statement containing the law, from Legal officials who have been appointed³.

Customary law communities have a number of rights, including customary rights or lordship rights, which are hereditary attached to the community and cannot be taken away by individuals, certain business groups, including the state, without going through an agreement based on applicable law.

In Indigenous peoples who are also seen as customary law communities, it turns out that the applicable law is an unwritten law but based on customary habits that are seen as good and obeyed by the individual and group of indigenous peoples.

The legal maneuver can be expressed in three forms, namely:

- a. As an abstract rule that includes the content of the codification of the laws of society that are already complex or in the form of an idea device formulated in the memory of the wise people in the society of primitive societies
- b. In the form of actual patterns of behavior from community members
- c. It is in the form of principles abstracted from the decisions of the holders of legal authority, when resolving disputes in society⁴.

If it is associated with certain rights, including customary rights or lordship rights, then the principle of legal principles, which are abstract and unwritten, has become a reference in the process of mastery based on certain rights. That right is called the customary or the right of lordship. These communal rights are controlled by the control at the State or Village level which has certain authority based on customary law.

Therefore, this customary right, which is a communal right of customary law communities, cannot be seen as something that does not have juridical legitimacy, but this right is something inherent in customary law community groups that are recognized nationally and internationally.

Placing land access on the development agenda has become an inevitability and inevitability has also been a source of tremendous constabulation in recent decades of the era of global development that often places individual citizens to face exploitative regimes in the name of development⁵. International recognition through the United Nations Labour Organization (ILO) Convention No. 169 concerning the Recognition of Indigenous Nations and Indigenous Peoples in Independent States.

4.2.1. According to the ILO Convention:

Article 1: regulates that indigenous peoples living in an independent country whose social, cultural and economic conditions differ from other parts of society in the country and whose status is regulated in whole or in part by the customs and traditions of the indigenous people or by special laws and regulations.

Article 8 paragraph 1: in the application of laws and laws and regulations to the community concerned, appropriate respect must be paid to their customary and customary laws

Article 13 paragraph 1: In implementing the provisions of Part II of this Convention, the government shall respect the special interests and values of cultural and spiritual values prevailing among indigenous peoples and indigenous peoples with respect to their relationship to their lands or territories or both, if any, which they reside or use and in particular the collective aspect of these relationships.

International recognition is an indicator that the alliance called indigenous peoples and customary law communities is indeed an entity that has a strong legal standing.

Such a confession is not just a phrase without any basis and underlying meaning. Ontologically, the group of indigenous peoples and customary law communities is a community that exists and develops since they became a group of people geneologically and gathered together as a community because they feel belonging and feel the same and the same responsibility. Epistemologically, the alliance of customary law

¹ F. Isjwara : 1999, Introduction to Political Science, Putra A Bardin, Bandung : p.160

² Ibid.

³ Ter Haar in Soerjono Soekanto: 2014 : Introduction to Legal Research, University of Indonesia Press Jakarta : p. 128-129.

⁴ T.O. Ihromi: 1993 Anthropology and Law, Yayasan Obor Jakarta, p. 91-92.

⁵ Commission for Missing Persons and Victims of Violence (KontraS): 2015, Finding Land Rights in Human Rights Standards in Indonesia: p. 3.

communities is formed evolutionarily and has distinctive characteristics and characters.

The process of development and growth as an entity takes a long time and is in the dimension of sociological, anthropological and juridical dimensions which are a unit based on principles, principles and norms, certain norms.

Therefore, international recognition is a form of the process of forming civilization that is long and has historical, sociological values and juridical norms that deserve a place in every national legal system.

4.2.2. Constitution of the Republic of Indonesia in 1945.

Article 18 B paragraph (2) : regulates that; The State recognizes and respects the unity of the unity of customary law communities and 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 the Law.

The norms in the 1945 Constitution are the highest written basic norms, which cannot be denied. It is said that this is because juridically sociologically this customary law community group exists and is in the dynamics of state life that are inseparable from other local community groups.

Neglect of the existence of this customary law community group means neglect of the historical aspects that are the foundation of the plural Indonesian civilization.

MPR Decree Number XVII/MPR/1988, regulates the recognition and protection of indigenous peoples as part of human rights. Law Number 5 of 1967 concerning Forestry Staples, article 17 regulates that customary law communities have the right to collect forest products from customary forests to meet their living needs.

Law Number 41 of 1999 concerning Forestry also recognizes customary law communities and their rights to their customary territories. Law Number 11 of 1974 concerning Irrigation in article 3 paragraph (3) states that the implementation of the provisions on the right of control from the state over water still respects the rights owned by indigenous peoples. Law Number 10 of 1992 concerning Population and Family Planning, Article 41 regulates the identity of traditional communities including the right to customary land.

Law Number 24 of 1992 concerning Spatial Planning is mentioned in the explanation of spatial planning rights based on customary laws and applicable customs. Law No. 5 of 1994, concerning the International Convention on Biological Diversity, recognizes, protects and defends the practices of indigenous peoples (indigenous peoples)

Law Number 22 of 1999 concerning Regional Management, Article 93 paragraph (1) recognizes the existence of cultural conditions of local communities such as the country, huta, bori etc. Government Regulation Number 24 of 1997, concerning Land Registration stipulates that land history is based on the history of customary land.

Government Regulation No. 6 of 1999 on Forest Control and Collection of Forest Products, recognizing the existence of customary law communities Presidential Instruction No. 1 of 1976 concerning Synchronization of the Implementation of Agrarian Tasks with the Forestry, Mining, Transmigration and Public Works Sectors, regulates the rights of indigenous peoples over land that is still controlled must be clarified first.

Presidential Decree Number 48 of 1999 concerning the Advisory Committee on Policies and Regulations in the context of the Implementation of Land Reform, stipulates that all land rights have social value and are not detrimental to the public interest.

The Decree of the Minister of Forestry Number 251/Kpts-II/1993, regulates the rights of customary law communities in collecting forest products. Decree of the Minister of Forestry Number 252 of 1993 Criteria and Indicators of Sustainable Forest Management, stipulates that forest management work areas must be free from land conflicts with Indigenous Peoples.

Decree of the Minister of Forestry Number 47 of 1998, granting rights to 16 indigenous peoples, as Special Purpose Areas (KDTI). The Decree of the Minister of Forestry and Plantations Number 677 of 1998, provides opportunities for local communities, including indigenous peoples, to carry out activities to utilize the forest through cooperative forums.

Decree of the Minister of Home Affairs Number 3 of 1997 concerning the Empowerment and Preservation and Development of Customs, Community Customs and Customary Institutions in the Regions, gives a number of rights to customary institutions.

Regulation of the Minister of Home Affairs Number 1998, Community Participation in Regional Spatial Planning, regulates the role of indigenous peoples in the process of planning, implementation and supervision, submitting objections and obtaining compensation for changes caused by spatial planning.

Regulation of the Minister of State for Agrarian Affairs/Head of BPN of 1999, dated 2 concerning Guidelines for Solving Customary Rights of Customary Law Communities, stipulates that customary rights in this form from customary law communities are the authority that according to customary law is

possessed by certain customary law communities over certain areas that are the living environment of their citizens to benefit from natural resources including land in the area, for its survival and life, which arises from the relationship externally and internally, hereditary and uninterrupted, between the customary law community and the area concerned.

4.2.3. Law No. 5 of 1960 concerning the Basic Regulations of Agrarian Principles

Article 3: stipulates that, bearing in mind the provisions in articles 1 and 2, the implementation of customary rights and similar rights of customary law communities, as long as there is still a reality, must be in such a way that it is in accordance with the national and state interests based on national unity and must not conflict with the Law and other higher regulations.

Based on this formulation, it should be emphasized that the customary rights of customary law communities are recognized nationally as long as they do not conflict with higher laws and regulations. The meaning is that the customary rights of the customary law community remain the rights of the community so that there should be no attempt to shift these rights from the customary law community. Customary rights are inherent in customary law communities as long as they do not contradict each other.

Therefore, do not oppose the existence of customary rights in the dynamics of customary law communities as long as these rights do not conflict with national and state interests. In fact, the state must protect the rights of the customary law community so that it benefits the interests both internally and externally.

So juridically, formally the Basic Agrarian Law still recognizes the existence of customary rights as the rights of customary law communities. This recognition becomes a strong juridical basis for customary law communities, so that customary rights remain an inseparable part of other rights in customary law communities.

Article 5: regulates that the agrarian law that applies to the earth, water and space is customary law. The formulation of this norm is a reflection of the recognition of the existence of customary law communities with their various dynamics related to land to the existence of water and space above land and water.

So the agrarian law that regulates the earth, water and space, also comes from customary law, which is an unwritten law, but contains the principle of protection and recognition of the existence of customary law communities and the rights inherent in including customary rights.

A normative unity of thought certainly provides legal certainty in order to maintain customary law communities and their rights are an inseparable part of the bond of unity in the Pancasila legal state.

Therefore, both the government and the private sector or any party, namely foreigners, must submit and comply with this national legal norm. This norm is clearly in favor of customary law community entities that have customary law as the basis for living together as a community recognized by the State and Government of the Republic of Indonesia

4.2.4. Law No. 32 of 2004 concerning Regional Government

Article 2 paragraph 9, stipulates that; The State recognizes and respects the unity of customary law communities and their traditional rights as long as they are alive and in accordance with the development and principles of the Unitary State of the Republic of Indonesia

4.2.5. Law No. 31 of 2004 concerning Fisheries

Article 6 paragraph 2, regulates that; Fisheries management for the sake of fishing and cultivation must consider local customs and/or wisdom and pay attention to community participation.

Constitutionally, customary law people's rights to land, including customary rights as communal rights, are recognized as their existence, because they still exist and are enjoyed by community fellowships to this day. The existence of customary rights or lordship rights is inherent in the customary law community, which has since originally controlled the territory and enjoyed it, both *de facto* and *de jure*.

If examined from the juridical aspect, it turns out that various laws and regulations recognize the existence of customary law communities and the rights inherent in the alliance or community, have very strong legal force, both internationally and nationally recognized, including customary law which is a law that lives in customary law communities.

The meaning is the recognition of its existence and the rights inherent in the community. In addition, there is respect for the existence of customary law communities and rights that already exist and are enjoyed for generations.

So when dealing with the customary law system that is not written in nature, what becomes a reference is the activities and principles that are the foundation of customary law as a form of proof and recognition of the existence of customary rights as communal rights.

If the state recognizes the existence of customary law societies and the rights inherent in these entities, then *de jure* or *de facto* this entity has strong legitimacy, in a democratic legal state. This means that

national law does not neratify communal rights, but must justify their existence as part of a legal system that provides freedom, recognition or legitimacy, to act in accordance with the scope of its existence.

A democratic legal system provides clear guarantees and directions for the existence of customary law communities as independent entities and have a strong bargaining position against other powers, which seek to castrate the rights inherent in the customary law community.

Related to this, the existence of customary rights is undoubted in the national legal system that recognizes customary law as the pinnacle of national law. So national law will grow and develop properly so that it makes a positive contribution to national development, highly dependent on the value of customary law which is the foundation of its formulation and formation.

Therefore, the principles of principles embraced by customary law must be interpreted as a strong framework in supporting the development of national law. The plural value must be combined or extracted to be used in the formulation of national law that guarantees the principle of legal principles that are just, have legal certainty and their usefulness. The principles of justice, certainty and usefulness can be found in various other forms that have indeed grown and developed in customary law societies.

4.3. Principles of Recognition and Proof of the Existence of Customary Rights as Communal Rights

Customary rights are communal rights and on top of them are various other rights that are inherent as a whole unit. Land and other natural resources contained in customary rights are an inseparable part and their arrangement, management and utilization are regulated in accordance with the customary laws applicable to the customary area.

The rules of customary law rules that are not written in nature are the basic reference and have binding power because they are based on customary habits that are recognized to be obeyed by customary law community groups. Compliance with the unwritten rules is based on the principle that it has happened repeatedly so that it is seen as a law that governs the entire life of customary law communities.

a. Principle of strong relationship with land and other natural resources.

Customary law communities always carry out various activities such as gardening, building houses, taking sand and gravel as building materials, both individually and in groups, giving shame to other community members outside the indigenous people to jointly manage natural resources¹. Customary law societies have a magical relational relationship with the natural environment. This is evidenced by the existence of the ceremonial procedures for the management of land and natural resources contained in it.

b. Principles of good and orderly natural resource management

If we talk about the system, it is related to the relationship between the sub-sub-systems on a regular basis to achieve a certain goal. The natural resource management system has also been built and arranged properly, and is followed and implemented by indigenous peoples

The Tananahu State Government and its people have a clear management system related to natural resource management, starting from planning, implementation, monitoring and evaluation as well as supervision of all natural resources, which have their lords (customary rights).

One of the systems built in order to restore soil is "Aong²", which is soil after being cultivated, it is left for some time so that it can recover again. So the process of relaxation of the soil, so that it can become fertile again, because the system is built naturally with the presence of nutrients as a fertility factor for the soil.

c. Principle of Recognition of Original Rights to Land and Crops

Rights contain the meaning of the ability to own and control a certain object, which is given by an institution that has certain authority or power.

The State and the State Government, are customary institutions that have certain powers according to customs and customary law. So the right of origin is a hereditary right given by the previous generation to the next generation in a regular and sustainable manner.

Land and plants which are a complete unit, are enjoyed by the people of Tananahu, as a legacy of ancestors that have been well organized, based on the territory of soa in the Land of Tananahu.

Management and utilization of trees and long-lived plants such as sago, durian, langsats, enau, and so on, for the benefit of agriculture, plantations, the construction of residents' houses and

¹ The Tananahu Indigenous People collectively and individually with other communities have been processing sago plants in the Tanianahu land of the lords or customs, since ancient times until now.

² Aong is a system built and developed by indigenous peoples to restore the soil so that it can be fertile again by not cultivating it for a certain amount of time.

other buildings.

d. **Principle of respect for the environment and natural resources.**

The State Government and indigenous peoples highly appreciate nature and the environment in the country's stewardship area. This can be proven by the way or system of dividing the lordship area according to its potential and then giving responsibility to each soa and clan¹ or family to manage it in an orderly, measurable and sustainable manner until now.

To prove this, it can be seen from the way customary law communities divide areas *symmetrically* or according to their potential and designation, namely, sago hamlet wlayah that is arranged and maintained separately, community plantation areas or agricultural areas that are regulated separately, protected forest areas as buffers and so on, which are determined separately.

e. **Regulatory Principles on Environmental Protection**

The State Government and Indigenous Peoples of Indigenous Lands, continuously protect, care for and maintain the natural environment in the territory of the country where they are domiciled.

This is evidenced by the "*Sasi*" rule which was made with the aim of preserving natural resources, which are found in the territory of the Tananahu Country.

In addition to the rules or laws of "*Sasi*", it turns out that there are other customs that live and develop in the indigenous peoples of the country, such as the granting of land or land grants, the division of land jurisdiction by Soa Soa for certain clans, the sale of land and the transfer or giving of land to third parties, and so on.

The environmental management system is also implemented in a structured and sustainable manner based on the cultural values of the local indigenous people.

The management of Sago tree plants, for example, is not taken carelessly but based on certain age and size, so as to get maximum results. It is characterized by the characteristics of the sago tree and it is based on the local wisdom of indigenous peoples.

f. **The Principle of Having Legal as a Legal Subject in Performing Certain Legal Acts.**

In all the activities of the life of indigenous peoples, it turns out that there have been legal acts, with other parties who are outsiders, in the form of grants and buying and selling land on the land of the lord or customary land.

This gives a strong indication that indigenous peoples have ownership rights to land and other natural resources, which are in the territory of the Tananahu Customary Land.

In addition, there are other legal acts in the form of grants or grants to other parties for the land plot. An example that can be put forward is the granting of land from the Tananahu State Government to certain church congregations, in the context of the construction of their church buildings.

The legal act that occurs is proof that the owner of the partnership turns out to have the right to perform certain legal acts with other parties, and it is legal according to customary law and national law. It is said to be valid because there has been a transfer of rights from a legal alliance that has customary rights to another party. This legal event occurs both outside and inside, especially in the Alliance, the customary law community itself.

g. **Have Legal Standing in Making Agreements with Third Parties.**

An interesting case related to the principle of recognition of the existence of customary law communities is that which occurred in Tananahu Country, Elpaputih District, Central Maluku Regency

Based on the agreement between the Tananahu State Government dated September 20, 1983, there has been a handover of 100 hectares of customary land in the Tananahu State Plantation, to be used as the location of the Awaiya People's Core Plantation².

The existence of this agreement is juridically strong evidence that indigenous peoples have rights to the land of the lord or customary territory of the Tanaahu Country.

So based on positive law, it turns out that the Government of Indonesia through State-Owned Enterprises, juridically formally recognizes the existence of the Tananahu customary law community, with certain rights that are hereditary or based on the right of origin.

The rights of Petuanan or Customary Land which are currently used by the Government through PT Perkebunan Nasional 1 (PTPN 1) in the context of the Development of

¹ Clan rights can be in the form of rights to dati land, rights to perusah land or business proceeds on ualayat land, ha katas tanah babaliang (sale and purchase) rights to inherited land, etc.

² Agreement made between the four Tananahu customary lands and the Company in the context of land management for the benefit of the Plantation in Liang Awaiya

the Coconut and Nutmeg Processing Industry, are actually part of the rights of Petuanan Negeri Adat or the customary law community of the Land of Tananahu.

h. Have a strong bargaining position with third parties.

Customary law communities have a strong bargaining position when dealing with certain parties who want to build cooperation with the state government or rulers who have juridical authority. This authority arises when there is negotiation, where in the context of the use of land resources for certain developments, such as roads, roads, bridges, agricultural plantations and so on.

4.4. Institutional Authority and Form of Recognition of Customary Rights

Talking about authority, it is related to the rules that govern a certain thing and are given to certain institutions or institutions according to the scope of their power. The scope of power depends on the level or institutional structure regulated by laws and regulations.

The King, Village Head, Sub-district Head, Village Head, Regent and Mayor and Governor and so on, are institutional elements that have authority according to the level and scope of their respective powers or authority.

Institutional authority is a form of legitimacy that has binding power, both inward and outward. This means that any decision taken has juridical force and becomes a strong basis related to certain rights.

Authority in the juridical sense is the ability given by laws and regulations to cause legal consequences¹. The ability to cause legal consequences also means having the authority / right to do something.² The authority of the Government is always related to a position³.

5. Closing

The juridical meaning of customary land in customary law societies is the recognition of its existence and the rights inherent in the community. In addition, there is respect for the existence of customary law communities and rights that already exist and are enjoyed for generations. So when dealing with the customary law system that is not written in nature, what becomes a reference is the activities and principles that are the foundation of customary law as a form of proof and recognition of the existence of customary rights as communal rights.

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Legislation

Constitution of the Republic of Indonesia in 1945

MPR Decree Number XVII/MPR/1988, regulates the recognition and protection of indigenous peoples as part of human rights.

¹ Indroharto: 1995, Government Actions According to Public Law and Civil Law, Institute for Research and Development of Administrative Law of Bogor-Jakarta: p. 27.

² Ibid : p. 28

³ Ibid : p. 31.

Law Number 5 of 1967 concerning Forestry Principles, article 17 regulates customary law communities.
Law No. 41 of 1999 concerning Forestry.
Law Number 10 of 1992 concerning Population and Family Planning,
Law No. 24 of 1992 concerning Spatial Planning
Law No. 5 of 1994, concerning the International Convention on Biological Diversity
Law Number 22 of 1999 concerning Regional Administration.
Government Regulation Number 24 of 1997, concerning Land Registration.
Government Regulation No. 6 of 1999 on Forest Control and Collection of Forest Products
Decree of the President of the Republic of Indonesia Number 48 of 1999 concerning the Assessment Team
The Decree of the Minister of Forestry Number 251/Kpts-II/1993, regulates the rights of customary law communities in collecting forest products.
Decree of the Minister of Forestry Number 252 of 1993 Criteria and Indicators of Sustainable Forest Management, stipulates that forest management work areas must be free from land conflicts with Indigenous Peoples.
Decree of the Minister of Forestry Number 47 of 1998, granting rights to 16 indigenous peoples, as Special Purpose Areas (KDTI). The Decree of the Minister of Forestry and Plantations Number 677 of 1998, provides opportunities for local communities, including indigenous peoples, to carry out activities to utilize the forest through cooperative forums.
Decree of the Minister of Home Affairs Number 3 of 1997 concerning the Empowerment and Preservation and Development of Customs, Community Customs and Customary Institutions in the Regions, gives a number of rights to customary institutions.
Regulation of the Minister of Home Affairs Number 1998, Community Participation in
Regional Spatial Planning, regulates the role of indigenous peoples in the process of planning, implementation and supervision, submitting objections and obtaining compensation for changes caused by spatial planning.
Regulation of the Minister of State for Agrarian Affairs/Head of BPN of 1999, 2nd concerning Guidelines for Solving Customary Rights Issues of Customary Law Communities,