

## **Mukim as a Customary Law Community in Customary Forest Management in Aceh Besar**

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**Abstract:** Customary forests are forests that are located within the area of a Customary Law Community. In theory, only people who live in forest areas are able to maintain forest areas well because they have a reciprocal relationship that cannot be separated. These communities are often referred to as indigenous communities or customary law communities. Aceh Besar has a very large forest area. There are three forest areas that have been categorized as customary forest areas with three customary law communities that are included in the indicative customary forest map of the Indonesian Ministry of Environment and Forestry. This research examines: Efforts that can be made by customary law communities in Aceh Besar to obtain their rights to customary forests and how optimizing customary forest management can provide protection to customary law communities and customary forest areas in Aceh Besar. The results of the research show that currently three customary forest areas in Aceh Besar have been removed from the indicative customary forest map, this is because during the verification period the customary law communities (mukim) files were unable to provide evidence in the form of regional regulations in Aceh Besar which designated them as customary law communities recognized in accordance with the requirements. in the Minister of Environment and Forestry's regulations, so that the three mukims in Aceh Besar do not have legal rights to manage customary forests. Optimizing protection for forest areas and mukim in Aceh Besar is also not going well.

**Keywords:** Mukim, Customary Law Communities, Customary Forest, Aceh Besar

**Abstrak:** Hutan adat adalah hutan yang berada dalam kawasan masyarakat Hukum Adat. Secara teori hanya masyarakat yang tinggal dikawasan hutanlah yang mampu menjaga kawasan hutan dengan baik karena mempunyai hubungan timbal balik yang tidak dapat dipisahkan. Masyarakat ini sering disebut sebagai masyarakat adat atau masyarakat hukum adat. Aceh Besar mempunyai kawasan hutan yang sangat luas, terdapat tiga kawasan hutan yang pernah dikategorikan sebagai kawasan hutan adat dengan tiga masyarakat hukum adat yang masuk dalam peta indikatif hutan adat kementerian Lingkungan Hidup dan Kehutanan. Penelitian ini mengkaji upaya yang dapat dilakukan oleh masyarakat hukum adat di Aceh Besar agar mendapatkan haknya atas hutan adat dan Bagaimana optimalisasi pengelolaan hutan adat dapat memberikan perlindungan kepada masyarakat hukum adat dan kawasan hutan adat di Aceh Besar. Hasil penelitian menunjukkan kenyataan saat ini tiga kawasan hutan adat di Aceh Besar telah dihilangkan dalam peta indikatif hutan adat, hal tersebut karena pada masa verifikasi berkas (*mukim*) tidak dapat memberikan bukti berupa peraturan daerah Aceh Besar yang menunjuk mereka sebagai yang diakui sesuai persyaratan dalam peraturan menteri lingkungan hidup, sehingga tiga mukim di Aceh Besar tersebut tidak mendapatkan haknya secara hukum untuk mengelola hutan adat. Optimalisasi perlindungan kepada kawasan hutan dan *mukim* di Aceh Besar juga tidak berjalan dengan baik.

**Kata Kunci:** Mukim, Masyarakat Hukum Adat, Hutan Adat, Aceh Besar

## A. Introduction

Forests are a natural resource that is very important for humans. Healthy air, clean water, and solid soil directly and indirectly come from forests. In addition, forests also provide many resources that can be used for economic purposes. If used properly, it will greatly help the economy of the surrounding community living in forest areas. On the other hand, damaged forests will cause many difficulties.

Indonesia is one of the countries with the third-largest forests in the world. However, in recent years, Indonesia's forests have experienced a lot of deforestation, namely the conversion of forest areas into non-forested land permanently, for human activities. This certainly cannot be left alone. The existence of forests is very important for the balance of nature, so the existence of forests given by God Almighty must be maintained and protected.<sup>1</sup>

In the concept of a state, the first protection must be given by the state to the territory and its contents. Protection in a state of law is given in the form of regulations (statutory regulations), which are then implemented by the assigned state apparatus

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<sup>1</sup>Stuart E. Hamilton and Daniel Casey, "Creation of a High Spatio-Temporal Resolution Global Database of Continuous Mangrove Forest Cover for the 21st Century (CGMFC-21)," *Global Ecology and Biogeography* 25, no. 6 (2016); Muhammad Mutawalli et al., "The Conference of Parties-27 (COP-27) Agreement As an Instrument of State Policy in Handling Deforestation: A Comparative Study of Sweden and Indonesian Governments," *Law Reform: Jurnal Pembaharuan Hukum* 19, no. 1 (2023); G. D.P. Dewi and E. S. Sopaheluwakan, "Forest Fires and Environmental Governance in Indonesia," in *AIP Conference Proceedings*, vol. 2594, 2023; Flora & Fauna International, "Indonesia - Fauna & Flora International," Flora & Fauna International, 2023; Rikardo Simarmata, "The Enforceability of Formalised Customary Land Rights in Indonesia," *Australian Journal of Asian Law* 19, no. 2 (2019).

and by the entire community in the country.<sup>2</sup> As an effort to protect forests so that they remain protected, the Indonesian government, through the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.17/Menlhk/Setjen/Kum.1/8/2020 concerning Customary Forests and Rights Forests, has regulated the areas of Indonesian customary forests.

In the regulation, the meaning of customary forest is a forest located within the territory of a customary law community. Article 1, paragraph (7) in the same regulation states that the customary law community unit has the right to own the customary forest.<sup>3</sup> The regulation of customary forests aims for customary forest holders to receive legal recognition, a form of protection, and incentives for their hard work from the government because they have managed their forests sustainably according to space and time. This objective is interpreted as a regulation that contains two dimensions, first, the dimension of economic protection for the customary law community unit, and second, as protection of the forest area so that it remains sustainable.

Customary Law Communities are defined as groups of people who have lived in a particular geographical area for generations due to ties to ancestral origins, strong relationships with the environment, and a value system that determines economic, political, social, and legal institutions.<sup>4</sup> The Customary Law Community, in order to obtain their rights, namely customary forests, is required to carry out the stages as explained in the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.17/Menlhk/Setjen/Kum.1/8/2020 concerning Customary Forests and Rights Forests, namely:

1. The existence of customary law communities
2. Customary law communities submit an application to the Regent/Mayor to be recognized as customary law communities, along with a proposal for the customary forest
3. The Regent/Mayor prepares a regulation on the recognition of customary law communities and an application for submission of customary forest to the Ministry of Environment and Forestry
4. Verification/validation of the customary forest proposal by the Ministry of Environment and Forestry team
5. Decree on the determination of customary forest.

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<sup>2</sup>Aqilah Liandita Ungawali, "Pertanggung Jawaban Pidana Pelaku Penambangan Tanpa Izin Di Dalam Kawasan Hutan Dikaitkan Dengan Undang – Undang Nomor 18 Tahun 2013 Tentang Pencegahan Dan Pemberantasan Perusakan Hutan.," *Bandung Conference Series: Law Studies* 2, no. 1 (2022); Swandari Paramita et al., "Vegetation Diversity of Hemaq Beniung Customary Forest, West Kutai, East Kalimantan," *Jurnal Penelitian Kehutanan Wallacea* 11, no. 2 (2022); Gesang Setyadi et al., "The Status and Diversity of Mangroves on the South Coast of Papua Island, Indonesia, and a Strategy for Sustainable Mangrove Management," *Asian Journal of Conservation Biology* 11, no. 1 (2022).

<sup>3</sup>Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.17/Menlhk/Setjen/Kum.1/8/2020 Concerning Customary Forests and Rights Forests, Article 2 (2)

<sup>4</sup>Donna Asteria et al., "Forest Conservation by the Indigenous Baduy Community in the Form of Customary Law," *Journal of Cultural Heritage Management and Sustainable Development* 14, no. 2 (2024).

The stages to obtain ownership and management rights of customary forests above are very difficult and complicated, so that indigenous people who do not understand prefer not to follow the flow of ratification and ownership. Moreover, many customary law communities that are subjects of customary forests are people who live on the edge of the forest, who usually have low education. Of the 1,090,755 hectares of the indicative area map of customary forests throughout Indonesia, only around 59,442 hectares of the area have been designated as customary forests by the Ministry of Environment and Forestry.<sup>5</sup> The rest is still missing. This phenomenon is very concerning because it is very much expected that when customary law communities have the right to manage customary forests, then there will be a positive impact, both for the economy of the forest area community and increased maintenance and protection of forest areas from irresponsible human exploitation.

In Indonesia, the customary forest map that has been determined by the government covers the entire province, including Aceh. So that specifically in Aceh Besar Regency, there are three settlements that have been determined in the customary forest indicative map, namely residential (Kemukiman) Gunung Biram, Kemukiman Lampanah, and Blang Mee Leupung. In fact, there is no Customary Law Community in Aceh Besar that has obtained its rights to ownership of customary forests.<sup>6</sup> Clearly, if faced with regulations related to customary forests and their realization in the Customary Law Community in Aceh Besar, then it will be found:

1. Aceh Besar has three settlements that have been designated on the indicative map of customary forests.
2. Management of customary forests in Aceh Besar is not in accordance with the objectives of customary forest management.
3. Indigenous communities have not received the right to manage customary forests in their areas.

Based on the facts above, this study is important to find out what efforts can be made by the Customary Law Community in Aceh Besar to obtain their rights to customary forests. This study is qualitative. Data were obtained through interviews and documents on customary forests. The approach used is the statute approach and case study. The steps of the approach during this search are the conceptual approach search. This search uses the steps of searching books or library research and searching for location places or field research. Data collection techniques are carried out according to the type of data needed. Then the data is analyzed and arranged systematically. The data obtained is then analyzed with the theory used so that valid and relevant data is found.

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<sup>5</sup>Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.17/Menlhk/Setjen/Kum.1/8/2020 Concerning Customary Forests and Rights Forests, Article 2 (2)

<sup>6</sup>M Adli Abdullah et al., "Analysis of Customary Land Conflict Resolution Strategies Based on Customary Law, Cultural Concepts, and Local Wisdom in Indonesia," *Journal of Law and Sustainable Development* 11, no. 11 (2023); Yulia Yulia and Herinawati Herinawati, "Customary Law Of The Forest In North Aceh Regency," *Diponegoro Law Review* 7, no. 2 (2022).

## **B. Customary Forests and Customary Law Communities**

Customary forests are forests located in the customary law community area. The term customary forest is something special because it involves the customary law community in its management.<sup>7</sup> By nature, the management of customary forests by customary law communities is something that cannot be ignored because, in the management, there is an element of protection; it is certain that only the community that owns the local area will carry out the best protection for its area.

Based on the Constitutional Court decision Number 35/PUU-X/2012 which was decided on May 16, 2013,<sup>8</sup> states that customary forests are forests located within the territory of customary law communities. This ruling provides a guarantee that when a community has been confirmed as a customary law community, all resources within its jurisdiction, including the assets of the customary law community, including customary forests if the customary community is located in a forest area. However, the most important thing about this regulation is the existence of a customary law community first.

Customary law communities are communities that live with local wisdom passed down from generation to generation to live in harmony with nature. The local wisdom they practice concerns all aspects of life that are integrated with all natural resources in their area.

According to Ter Haar, the characteristics of customary law communities are:

1. A unity of people who live in an orderly manner, settling in an area
2. Having rulers and tangible and intangible wealth,
3. where the members of the community experience a normal life in society.<sup>9</sup>

In managing wealth, customary law communities are bound by rules of life that have been mutually agreed upon and are accountable for their hereditary and responsible use. These regulations cover use and maintenance. Use implies that the wealth is truly used for the prosperity of the community, and maintenance means maintaining the wealth physically and socially.

The wealth of customary communities is wealth that is within the territory of the customary community, but currently, with the concept of a positivistic state, there

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<sup>7</sup>Suhaimi, Abdurrahman, and Ishak, "Existency Of Mawah (Product Share) Of Agricultural Land In A Traditional Law Society In Kuta Cot Glie Sub-District, Aceh Besar District," *Jurnal IUS Kajian Hukum Dan Keadilan* 9, no. 1 (2021); Muthia Septarina, "Tata Kelola Hutan Adat Pasca Putusan MK No 35/PUU-X/2012," *Al-Adl: Jurnal Hukum* 5, no. 10 (2013); Herman Hidayat et al., "Forests, Law and Customary Rights in Indonesia: Implications of a Decision of the Indonesian Constitutional Court in 2012," *Asia Pacific Viewpoint* 59, no. 3 (2018).

<sup>8</sup>Putusan MK No. 35/PUU-X/2012. Simamarta, *Menggeser Corak Negara* (Bogor: Pusat Penelitian dan Pengembangan Perubahan Iklim dan Kebijakan, 2013).

<sup>9</sup>Daniel S. Lev and M.B. Hooker, "Adat Law in Modern Indonesia.," *Pacific Affairs* 53, no. 1 (1980); David M. Engel and M. B. Hooker, "Adat Law in Modern Indonesia," *The American Journal of Comparative Law* 28, no. 2 (1980); Tsuyoshi Kato, "Adat Communities and the Village Law of 1979 in Indonesia," *Southeast Asia Program* 47, no. 47 (1989); Wimba Roofi Hutama and Ellyne Dwi Poespasari, "Legal Protection For Indigenous People In Land Dispute With Corporation," *PalArch's Journal of Archaeology of Egypt/Egyptology* 17, no. 4 (2020).

are several consequences that must be accepted and followed by customary communities. The concept of a state requires every citizen to submit to the rules made by the State. The State of Indonesia conceptualizes that all wealth in the State (*barakad*) belongs to the nation, whose control and use are regulated by the state.

One of those given the power to have *barakad* is the customary law community in the form of control of customary rights in its area. These customary rights can be in the form of control of forests or water according to the characteristics of a customary community from generation to generation.

For indigenous communities, the State has formalized them as customary law communities, so that not all indigenous communities are customary law communities, but there are also experts who equate indigenous communities with customary law communities or legal communities. If we distinguish between the meanings of indigenous peoples and customary law communities, then customary law communities have additional characteristics from traditional communities, both *de facto* and *de jure*. *De facto*, customary law communities have legal institutions that have a regional pattern, and there are institutions that enforce these institutions. *De jure*, customary law communities have recognition from the state in the form of regional regulations or regent/mayor decisions.

Recognition as a customary law community is very important because it concerns the assets that they can legally control. Control of customary forests for example. Customary forests are forests that are located in the area of a customary law community, but not necessarily because they are in the area of a customary law community, can be directly owned by the customary community. The state, through the Ministry of Environment and Forestry, determines that customary forests can be owned by a customary law community if they have been confirmed by the government as a customary forest of a customary law community based on a request from the customary law community itself, which has been approved by the local government.

The complicated legal process that must be taken by customary communities prevents many customary communities from getting their rights in managing customary forests, including customary communities in the Aceh Besar area.

### **C. Management of Customary Forests in Aceh Besar**

In 2018, the Aceh Government submitted several proposals for customary forests to the Ministry of Environment and Forestry (LHK), including 3 customary forests in Aceh Besar. Regarding the proposal, the Director General (Dirjen) of Social Forestry and Environmental Partnership (PSKL) of the Indonesian Ministry of Environment and Forestry, Bambang Supriyanto, said that "for Pidie Regency and Aceh Besar Regency, the proposed customary forests have been included in the Indicative Map of Customary Forests". Furthermore, the mukim, as customary law communities, are asked to prepare administrative requirements so that the Decree can be immediately determined as customary forests".

These administrative requirements refer to Article 6 paragraph (1) of the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number: P.32/Menlhk-Setjen/2015, namely:

- a. There are customary law communities or customary rights that have been recognized by the regional government through regional legal products.
- b. There are customary areas that are partly or entirely forested;
- c. A statement letter from the customary law community to determine their customary area as a customary forest.<sup>10</sup>

When preparing the administrative requirements, Customary Law Community in Aceh Besar was constrained by the absence of regional legal products in the form of Perda or Qanun of Aceh Besar Regency that recognized the indigenous community as Customary Law Community, so that there were main administrative requirements that could not be met by the indigenous community in Aceh Besar. This is in accordance with the results of an interview with the Head of Legal Affairs of the Aceh Besar Regent's Office, who did not know at all what indigenous legal communities and customary forests were. The researcher was forced to stop the interview because he did not get any information regarding concerns, legal products, or simply information about the existence of Community Law Customary in Aceh Besar.

Actually, if viewed from the legal provisions regarding the recognition of the existence of indigenous legal communities in Aceh, several regulations have recognized the existence of indigenous legal communities in Aceh, such as Law No. 11 of 2006 concerning the Aceh Government. Article 1 paragraph (19) states that Mukim is a legal community unit under a sub-district consisting of a combination of several gampongs that have certain territorial boundaries, led by an imeum mukim or other name, and is directly under the sub-district head. In addition, Article 1 paragraph (13) also states the same thing, that a mukim is a legal community unit. The legal community unit here can be equated with the customary legal community unit.

Mukim, as a customary law community according to the above regulations, can be accepted in the mindset or concept of Aceh Province, but to obtain state recognition, mukim as a legal community must first pass a test according to the characteristics, nature, and also the requirements that have been determined by the central government. Customary law communities have several main characteristics, namely they are a group of people, have their own wealth apart from individual wealth, have certain territorial boundaries and have certain authorities.<sup>11</sup> In addition, in more detail, the characteristics of customary law communities are:

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<sup>10</sup>Interview with Farhan, Head of Division of the Aceh Besar Regent's Office, May 18, 2022.

<sup>11</sup>Andreas Maria Damasus Ratuanak, Sulistyowati Irianto, and Ratih Lestari, "Customary Law or State Law: The Settlement of Marine Resource Disputes in The Kei Islands Community," *Indonesian Journal of Socio-Legal Studies* 2, no. 1 (2022); Anti Mayastuti, Jamal Wiwoho, and Hari Purwadi, "The Guarantees for the Fulfillment of the Constitutional Rights of Customary Law Community in Indonesia," *Res Militaris* 12, no. 2 (2022); Zefrizal Nurdin, "Legal Protection of Customary Rights under Legal Pluralism and Its Impact on the Minangkabau Society: An Empirical Study in the District of Lima Puluh Kota, West Sumatra," *Cogent Social Sciences* 8, no. 1 (2022).

- a. The existence of a Human Group, a group of people who come from the same genealogy, come from a community of community, help each other with strong bonds. Acting out as one.
- b. The Government Has the Authority to Make Regulations and Enforce the Enactment of Regulations. The Government here is the self-government of the customary law community, which has the authority to make regulations and enforce regulations to remain in effect.
- c. Separate Wealth. This means that the customary law community has personal wealth that is separate from their customary rights wealth.
- d. Having a Territory of Authority. In customary law communities, the territory of authority is something superior. Each customary law community has power over its own territory. So that it provides limitations for customary community leaders to regulate the territory within their territorial area. Power in customary law communities is fully held by the customary law community group itself.
- e. The Sense of Solidarity is Still High. In customary law communities, the sense of solidarity is still quite high. Because they are all still bound by one customary law, where this custom is what then becomes the seed and strength for everyone to uphold a sense of unity and solidarity.
- f. Group Wealth is Used as Widely as Possible for Community Wealth. The group wealth referred to here is customary rights found in its territorial area. This wealth is used together by fellow community members with previously determined provisions.
- g. Responsibility for Each Member's Wealth. Individuals or communities that are members of a customary law community have responsibility for the ownership of their respective assets. Each head is responsible for their personal assets, so of course, this is the broadest responsibility for the community to be able to manage their own assets. Customary law communities have the responsibility to maintain and manage the personal assets they own.
- h. Solid Society. Customary law communities tend to have a high sense of brotherhood. Upholding solidarity and also prioritizing resolution through the family. Mutual respect among fellow community members as well as solidarity among fellow members of the customary law community are a unity of the customary law community that cannot be separated.
- i. Meta-juridical in nature. In customary law communities, there are areas that limit power, where one customary law community only has territory within the boundaries of the area. This means that customary law in one community does not apply to other customary law communities. So that customary law is only binding on the community living in the area.<sup>12</sup>

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<sup>12</sup>Farida Patittingi, "New Paradigm in Natural Resources Management: Securing Indigenous Peoples Rights," *Hasanuddin Law Review* 6, no. 1 (2020); Luh Rina Apriani and Anna Erliyana, "DESA Adat Provincial Law: Existence Strengthening Or Power Flexing?," *Indonesia Law Review* 10, no. 1 (2020);



Meanwhile, the nature of customary law communities is constructed from 4 (four) general characteristics of customary communities, namely magical, religious, communal, concrete, and cash.

- a. The magical nature of religion is interpreted as a mindset based on the community's belief in the existence of something sacred. Before society came into contact with the religious legal system, this religiosity was manifested in a way of thinking that was polytheistic, animistic, and belief in the supernatural. Society must maintain harmony between the real world and the inner world (the supernatural world). After society became familiar with the religious legal system, religious feelings were manifested in the form of belief in God (Allah). Society believes that every act, whatever its form, will always receive a reward and punishment from God according to the degree of change.
- b. The communal nature of society has the assumption that every individual member of society is an integral part of society as a whole. It is believed that individual interests must be appropriately adjusted to the interests of society because no individual is separate from society.
- c. Concrete nature is interpreted as a pattern that is so clear or real that every legal relationship that occurs in society is not carried out secretly or vaguely.
- d. The content handling means participation, especially in the fulfillment of achievements that are given immediately/immediately.<sup>13</sup>

The requirements referred to here are the requirements for the recognition of a community as a customary law community. These requirements are determined by the central government. In terms of recognition of indigenous communities for the recognition of customary forests, it is determined by the regulations of the Minister of Environment and Forestry.

Based on the regulations of the Ministry of Forestry and Environment, Mukim, as a customary law community in Aceh, including in Aceh Besar, of course, is not immediately recognized as MHA only based on Law No. 11 of 2006 concerning the Aceh government and other regional legal provisions. In a more technical form, a mukim as a customary law community must follow the rules of the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.17/Menlhk/Setjen/Kum.1/8/2020 concerning Customary Forests and Forest Rights to be recognized as a customary law community.

According to Nasai, one of the Imuem mukim (Mukim leaders) in Aceh Besar, the Aceh Besar government is very lacking in concern for indigenous communities,

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Sri Hajati et al., "Exchange Of Land: A Model Of Sustaining The Existence Of Land Under Adat Law," *Psychology and Education Journal* 58, no. 2 (2021).

<sup>13</sup>Dian Ekawaty Ismail, Avelia Rahmah Y. Mantali, and Mohamad Rivaldi Moha, "The Concept of Revitalizing Traditional Institutions in the Criminal Law System to Realize Restorative Justice," *Jambura Law Review* 5, no. 2 (2023); Elizabeth Mertz, "A New Social Constructionism for Sociolegal Studies," *Law & Society Review* 28, no. 5 (1994); Muhammad Ilham Arisaputra, "Kedudukan Hukum Tanah Adat Dalam Pengembangan Administrasi Pertanahan Di Indonesia: Studi Komparatif," *Amanna Gappa* Volume 27, no. 2 (2019).

even though by recognizing us as an indigenous legal community, the government will gain many benefits in terms of protecting forest and water areas.<sup>14</sup>

In line with Nasai's opinion, Zulfikar Arma also said that the Aceh Besar Regency government until early 2022 had not issued any legal products regarding recognition of customary law community, only in July 2022 did the Aceh Besar government issue Aceh Besar Regent Regulation Number 17 of 2022 concerning Procedures for Arranging Mukim Customary Areas and Mukim Wealth in Aceh Besar Regency.<sup>15</sup>

The failure to fulfill the administrative requirements for the determination of customary forests by customary law community in Aceh Besar caused the determination of customary forests in the indicative map of customary forests by the Ministry of Environment and Forestry to be removed, so that until now there is not a single customary forest that is legally recognized in the Aceh Besar area. It is very unfortunate that the Aceh Besar Regional Government does not care about the regulation and recognition of customary law community in Aceh Besar, because with the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number: P.32/Menlhk-Setjen/2015, it is very easy for customary law community to fulfill the requirements to manage customary forests, it only requires recognition from the Aceh Besar Regional Government that the three mukim who submitted the customary forest application as customary law community.

Due to the failure to fulfill the requirements for managing customary forests, the application submitted by the Indigenous Peoples in Aceh Besar was disqualified, so that, in order to obtain recognition as customary law community who have control over customary forests, customary law community in Aceh Besar must re-submit an application for customary forests to the Minister of Environment and Forestry with a new legal umbrella, namely the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.17/Menlhk/Setjen/Kum.1/8/2020 concerning Customary Forests and Forest Rights. This regulation regulates the flow of customary forest applications which are more difficult and have a long process, but the good news is that the Aceh Besar government has issued a regent's regulation for recognition of customary law communities, although it must be reviewed whether the regent's regulation can meet the requirements for customary forest applications based on the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.17/Menlhk/Setjen/Kum.1/8/2020 concerning Customary Forests and Forest Rights. The following is the flow of determining customary forests based on the latest regulation.

*First*, proposed by Customary law communities, as previously explained, are not just customary communities. This is regulated in articles 6 and 7.

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<sup>14</sup>Interview with Nasai, Mukim Lampanah, September 17, 2022

<sup>15</sup>interview with Zulfikar Arma, Chair of JKMA (Aceh Indigenous Community Network), July 21, 2022

Article 6:

- (1) Customary Forests, as referred to in Article 4, paragraph (2), are managed by customary law communities.
- (2) Confirmation of the existence and abolition of customary law communities as referred to in paragraph (1):
  - a. In the State Forest area, it is determined by regional regulations; or
  - b. Outside the Forest area, it is determined by regional regulations or decisions of the governor and/or regent/mayor according to their authority.
- (3) Confirmation of the existence and abolition of customary law communities through Regional Regulations, as referred to in paragraph (2), letter a, may be in the form of:
  - a. regional regulations containing the substance of the regulation of the procedures for recognizing MHA; or
  - b. regional regulations containing the substance of the determination of the confirmation, recognition, and protection of customary law communities.
- (4) In the case of regional regulations only containing regulatory substance as referred to in paragraph (3) letter a, the existence of MHA whose territory is in a State Forest area will be followed up with a decision to recognize MHA by the regent/mayor.

Article 7:

Confirmation of the existence of customary law communities as referred to in Article 6 is carried out with the following criteria:

- a. The customary law community is still in the form of an association;
- b. There is a management institution in the form of its customary ruler apparatus;
- c. There are clear boundaries of customary law areas;
- d. there are legal institutions and instruments, especially customary sanctions that are still obeyed; and
- e. There are still activities of collecting Forest products by customary law communities in the surrounding Forest area to fulfill daily living needs.

The above regulation orders the Aceh Besar government, in this case the Regent, together with the District People's Representative Council, to create regional regulations (in Aceh, called qanun) and/or Regent regulations for the confirmation of customary law communities. For the confirmation of customary forests, the legal product that becomes the legal umbrella depends on the existence of the customary forest, whether the forest is in a forest area or outside the forest area.

*Second*, after the local customary community has received recognition as customary law communities, they can submit an application to the Minister of Environment and Forestry to obtain the determination of the status of the customary

forest as customary law communities' rights forest, which is regulated in articles 8 and 9.

#### Article 8

- (1) Determination of Customary Forest status is carried out with the following criteria:
  - a. Located within the State Forest area or outside the State Forest area;
  - b. There is a Customary Area in the form of a Forest managed by MHA with clear boundaries that have been passed down from generation to generation; and
  - c. There are still activities of collecting Forest products by MHA in the surrounding Forest area to fulfill daily living needs.
- (2) In the case of a Customary Area located within the State Forest area and not in the form of a Forest, it can be included in the Customary Forest determination map with a special legend in accordance with the conditions of land use/utilization.

#### Article 9

- (1) Determination of Customary Forest status is carried out through an application to the Minister by the customary leader, with copies to:
  - a. the regent/mayor;
  - b. the provincial government regional apparatus organization in charge of the environment and/or forestry;
  - c. the district government regional apparatus organization in charge of the environment; and
  - d. The technical implementing unit related to the scope of the Ministry of Environment and Forestry.

Submission for the determination of customary forests as per the above rules must contain:

1. Application letter with the format and copy as determined in the regulation of the Minister of Environment and Forestry
2. Regional Regulation/Qanun containing regulations and/or statements regarding an MHA or Regional Regulation/Qanun containing regulations plus a supplementary Regent Regulation regarding the statement of an MHA
3. Results of the identification of customary forest areas and maps of customary forest areas
4. Statement letter in accordance with the format provided, that the customary forest being proposed is the applicant's customary forest area, and a statement agreeing to the determination of functions in accordance with laws and regulations.

*Third*, wait for the validation and verification time by the director general of the Ministry of Environment and Forestry for 3 days to see the completeness of the customary forest application documents. If the application is considered incomplete, the application files will be returned to the applicant to be completed. However, if the

application is declared administratively complete, the applicant must wait again for field verification. Field verification is carried out by a team formed and appointed by the directorate general. Which consists of the following elements:

- a. Directorate General;
- b. Directorate General of Forestry Planning and Environmental Management and Echelon I related to the scope of the Ministry of Environment and Forestry;
- c. provincial government regional apparatus organizations in charge of the environment and/or forestry;
- d. district government regional apparatus organizations in charge of the environment;
- e. technical implementing units within the scope of the Ministry of Environment and Forestry;
- f. area managers at the site level;
- g. PPS Working Group or non-governmental organizations; and/or
- h. universities/institutions/agencies in charge of environmental and/or forestry research.

The time required for field verification must be completed within 60 working days from the time of assignment. However, the verification team assignment time is not determined how long since the application file is declared administratively complete. The flow of submission of customary forests according to the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.17 / Menlhk / Setjen / Kum.1/8/2020 concerning Customary Forests and Rights Forests must be followed by the mukim in submitting applications for customary forests.

#### **D. Problems faced by the Aceh Besar Customary Law Community in Obtaining Legality for Customary Forests**

This study formulates several issues faced by customary law communities in Aceh Besar. First, there is no recognition that they are customary law communities. Based on the legal basis of the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.17/Menlhk/Setjen/Kum.1/8/2020 concerning Customary Forests and Rights Forests, it is mandatory for indigenous peoples to be confirmed as customary law communities with regional regulations (qanun) or regulations of the governor and/or regent/mayor depending on the location of the customary forest. This is based on Article 6, paragraph (2): Confirmation of the existence and abolition of customary law communities as referred to in paragraph (1):

- a. In the State Forest area, it is determined by regional regulations; or
- b. Outside the Forest area, it is determined by regional regulations or decisions of the governor and/or regent/mayor in accordance with their authority.

Referring to the Constitutional Court Decision Number 35/PUU-X/2012, customary forests must be removed from state forests and returned to customary law communities. So there are no more customary forests in state forests. However, to

remove customary forests from state forests, the customary forests must first have a clear position, area, and boundaries. To determine the position, it must be requested of the local government by the customary community that already has customary law community status, as instructed in the regulation of the Minister of Environment and Forestry.

Ironically, until now, there has not been a single legal product issued by the Aceh Besar government regarding the procedures or confirmation of indigenous peoples as indigenous legal communities in accordance with the Minister of Environment and Forestry's regulation. Recently, the Aceh Besar district government issued Aceh Besar Regent Regulation No. 17 of 2022 concerning Procedures for Arranging Mukim Customary Areas and Mukim Wealth in Aceh Besar District.

In the considerations of the Qanun, it is acknowledged that the mukim is an MHA. Point a states: "That Mukim is a customary law community that has customary territorial boundaries and assets that are authorized to regulate and manage the interests of the customary law community based on recognized and respected ancestral rights and that still live and develop in the midst of the community." However, in Article 1, paragraph (5) of the same qanun, mukim is referred to as a legal community unit. Article 1 paragraph (5) "Mukim is a legal community unit under a sub-district consisting of a combination of several villages that have certain territorial boundaries led by the Imeum mukim or another name, and is positioned directly under the sub-district head. There is an inconsistency between the two provisions above. In the consideration of point a, Mukim is referred to as a customary law community, but in article 1, paragraph (5), it is referred to as a legal community. Although the term legal community is always associated with customary law community, it is very important that there are no inconsistent terms in a regulation. In addition, Article 1, paragraph (5) states that the position of Mukim is under the sub-district head. This is very inappropriate considering the duties and functions of Mukim as customary law communities, which are very different from the nature and functions of the sub-district head.

Mukim has duties as stated in Article 8 of Aceh Qanun Number 10 of 2008 concerning Customary Institutions, Mukim or other institutions have duties:

- a. to provide community development;
- b. to carry out customary activities;
- c. to resolve disputes;
- d. to assist in improving the implementation of Islamic law;
- e. to assist in the administration of government; and
- f. to assist in the implementation of development. and has characteristics in accordance with Article 3. Customary institutions are autonomous and independent as partners of the Aceh Government and the district/city government, according to their levels.

Furthermore, in Article 4, to carry out its functions as referred to in Article 2, paragraph (1), customary institutions are authorized to:

- a. maintain security, peace, harmony, and public order;
- b. assist the Government in implementing development;
- c. develop and encourage community participation;
- d. maintain the existence of customary values and customs that do not conflict with Islamic law;
- e. Implement customary provisions;
- f. resolve social problems in society;
- g. reconcile disputes that arise in society; and
- h. Enforce the law

Meanwhile, the Sub-district Head serves as a government administrator, development and community coordinator in his area, in the sense of coordinating government, development, and community activities as well as possible so that they can be implemented and run in the community.

To carry out the tasks as intended, the sub-district Head has the following functions: Organizing community empowerment activities; Organizing efforts to organize public order and security; Organizing the implementation and enforcement of laws and regulations; Organizing the maintenance of public service infrastructure and facilities; Organizing the implementation of government activities at the sub-district level; Guidance on the implementation of village government; Implementation of community services that are within the scope of his duties and/or that cannot yet be implemented by the village government; Management of secretarial affairs; Implementation of other tasks assigned by the Mayor according to his field of duties and functions;

Reporting and accountability for the implementation of his duties and functions to the Mayor through the City Regional Secretary, according to the established standards. If it is stated that the Mukim is below the sub-district head, then there will be a relationship between superiors and subordinates. This is very detrimental to the Mukim as a customary law community.

*Second*, the understanding of rights is very low. Based on the results of an interview with one of the Imeum Mukim, they do not know what efforts can be taken to obtain their rights to manage customary forests. They also do not know the government's responsibilities to them, so they do not try to obtain their rights as customary law communities.

*Third*, there is no theoretical and technical guidance for indigenous peoples from the Aceh Besar government regarding how to obtain their rights as customary law communities and as managers of customary forests. *Fourth*, the Aceh Besar government seems to be less concerned with the existence of customary law communities, as evidenced by the failure to issue a Regional Regulation concerning the inauguration of customary law communities in Aceh Besar. The Regent's Regulation promulgated last July can be said to be very late and does not comply with the wishes

contained in the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.17/Menlhk/Setjen/Kum.1/8/2020.

#### **E. Efforts of Indigenous Peoples to Obtain Their Rights to Customary Forests**

Efforts that can be taken by indigenous peoples in Aceh Besar Regency to obtain their rights as managers of customary forests by following the flow of the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.17/Menlhk/Setjen/Kum.1/8/2020 concerning Customary Forests and Rights Forests, namely:

- a. Mukim Submit an application as a customary law community to the Aceh Besar government.
- b. Recognition can be in the form of a regional regulation containing the recognition, determination, confirmation, and protection of the customary law community. This recognition is necessary because the regent's regulation issued by the Regent of Aceh Besar, namely the Aceh Besar Regent Regulation No. 17 of 2022 concerning Procedures for Arranging the Customary Areas of Mukim and Mukim's Wealth in Aceh Besar Regency is only in the form of recognition of Mukim as MHA, not confirmation or determination of certain Mukim as MHA. Mukim in submitting an application for confirmation as a customary law community must complete the files according to the format of Attachment 1 of the Aceh Besar Regent's Regulation below.
- c. After receiving the determination as customary law community, the mukim can then submit an application for ownership of customary forests to the Ministry of Environment and Forestry based on the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.17/Menlhk/Setjen/Kum.1/8/2020 concerning Customary Forests and Rights Forests.

#### **F. Optimization of Customary Forest Management for Community and Forest Area Protection in Aceh Besar**

The concept of optimization which comes from the word optimal, which means the best or highest. Optimizing means making the best or highest. While optimization is the process of optimizing something, in other words, the process of making something the best or highest.<sup>16</sup> Optimization means trying optimally for the best results. Optimal is related to the criteria for the results achieved. Optimization is also interpreted as a measure that causes the achievement of goals. In general, optimization is the search for the best value from what is available from several functions given in a

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<sup>16</sup>Bambang Wiyono, "Kedudukan Hutan Adat Pasca Putusan Mahkamah Konstitusi Nomor 35/Puu-Ix/2012 Dan Hubungannya Dengan Pengelolaan Hutan Di Indonesia," *Aktualita (Jurnal Hukum)* 1, no. 1 (2018); Taqwaddin, "Penguasaan Atas Pengelolaan Hutan Adat Oleh Masyarakat Hukum Adat (Mukim) Di Provinsi Aceh," *Disertasi*, 2010; Muki T Wicaksono and Malik Malik, "Konteks Politik Hukum Di Balik Percepatan Penetapan Hutan Adat: Catatan Ke Arah Transisi 2019," *Jurnal Hukum Lingkungan Indonesia* 4, no. 2 (2018).



context. Referring to this definition, optimization of customary forest management is only achieved if:

1. The right target for customary forest management device. The management device referred to here is the customary law community, namely Mukim, which is given authority by law as the party considered most appropriate to manage customary forests.

The reason why the customary law community is most appropriate to manage customary forests is because of the characteristics of the customary law community, such as:

- a. Community is a hereditary community with a high emotional bond to the land where they live and were born. The land has an inseparable spiritual bond. The responsibility to maintain the land where they live gives birth to rules that are carried out from generation to generation and are always respected. This is what gives rise to the term that the community that has a forest area is the one that has a high concern for the forest.
  - b. Having natural resources that are utilized for their lives. Utilization of natural resources for life includes the security of clothing, shelter, and food. Clothing is security for basic human needs in the form of clothing, food is security for basic human needs related to food and drink, while shelter is security for human needs related to a place to live. The need for security in food, shelter, and water is what gives rise to the responsibility to maintain the surrounding environment in order to ensure a sustainable life from generation to generation to meet these needs, so that the relationship between the customary law community mukim and their environment is very close.
  - c. Having the power to regulate and have a unique judiciary to protect the community and its environment. The rules in the community develop gradually from generation to generation and are highly respected. The three characteristics above must be possessed by the MHA referred to in the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.17/Menlhk/Setjen/Kum.1/8/2020 concerning Customary Forests and Rights Forests. To find out whether a forest area community deserves to be called an MHA, identification and verification by an authorized institution is needed so that the granting of customary forest management rights is in accordance with the objectives.
2. The purpose of granting an object of management is as expected. According to the provisions of the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.17/Menlhk/Setjen/Kum.1/8/2020 concerning Customary Forests and Rights Forests. The purpose of the Regulation of Customary Forests and Rights Forests is so that the holders of Customary Forests and Rights Forests receive recognition, protection, and incentives from the Government in managing their Forests sustainably according to space and time.

The main goal is to manage the forest so that preservation means remaining in its original state, where the function of the forest is maintained according to its authenticity. To know that this goal has been achieved, it does require proof, but how can it be proven if the power has never been given. According to Nasai, Imuem Mukim Lampanah, their goal in gaining recognition of customary forests is to maintain their benefits without damaging the forest, which damages the area where they live. They do not know at all about the problem of getting incentives due to forest conservation. Realizing that the two factors of optimizing Customary Forest Management for the Protection of Communities and Forest Areas are very important to be implemented immediately. If the process of determining customary communities is carried out according to the instructions of the law, it can be ascertained that the goal of protecting customary forests and customary law communities will be achieved perfectly. The reality that occurs with customary forests and customary law community in Aceh Besar, optimization in the management of customary forests has not been achieved at all, because not a single customary community (Mukim) has been confirmed as customary law community so that they cannot apply to own and control customary forests to the Ministry of Environment and Forestry. So it is certain that the goal of protecting customary forests and improving the welfare of the customary law community has not been achieved at all.

## **G. Conclusion**

Aceh Besar is one of the districts that has a large forest area. Some of the forests are in the mukim area, which is recognized as MHA. The recognition of Mukim as MHA is based on Law Number 11 of 2006 concerning the Government of Aceh, which states that Mukim is a customary law community located in the Aceh region. However, the recognition of mukim as customary law communities is not in accordance with the procedure for determining MHA according to the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.17 / Menlhk / Setjen/Kum.1/8/2020 concerning Customary Forests and Forest Rights. The absence of a regional regulation/qanun in Aceh Besar that indicates three mukim as customary law communities caused three mukim in Aceh Besar to be disqualified from the appointment of customary forests by the Minister of Environment and Forestry in 2018, so that their efforts to obtain their rights to customary forests were not implemented. The three mukims in Aceh Besar had to start from scratch to try to get those rights again. Therefore, it requires great effort and good cooperation between the mukim and the Aceh Besar government to realize the optimization of customary forest management to provide protection to customary law communities and customary forest areas.

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