

The Rights of Customary Law Communities to Resources: The Relationship of Coexistence of State Law and Customary Law

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Abstract

This research aims to determine and analyze the relationship between state law and customary law regarding the rights of customary law communities to natural resources. The application of state law and customary law is a fact related to the lives of customary law communities and their areas of life which are inseparable from natural resources. Apart from constitutional recognition as stipulated in 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, various laws and regulations in the natural resources sector also provide space for regulation of customary law communities based on policies that tend to be centralized. The research method used is normative legal research with statutory, conceptual and factual approaches with qualitative prescriptive analysis. The research results found that customary law as a guideline for managing natural resources by customary law communities does not yet fully exist because the recognition of customary law communities is partial. In the perspective of John Griffith's theory of legal pluralism, the relationship between state law and customary law is categorized as weak legal pluralism because of the dominant right to control the state through state law. Integration of coexistence between customary law and state law can only be realized if there is a law that specifically regulates customary law communities so that it is no longer determined based on the sectoral ego of various laws that regulate natural resources.

Keywords: Customary Law; Customary Law Communities; Natural Resources; State Law.

1. INTRODUCTION

Important discourses on the management of natural resources and the existence of customary law communities are closely related to the protection of these entities because there are indications that there are still many violations of rights concerning the lives of customary law communities.¹ For customary law communities with their traditional rights including the right to manage natural resources it is important to defend their rights for their survival as recognized

1 Faiq Tobroni, "Menguatkan Hak Masyarakat Adat Atas Hutan Adat (Studi Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012)", *Jurnal Konstitusi* 10 no 3 (2013): 461-482, DOI: <https://doi.org/10.31078/jk1035>

under Constitution of the Republic of Indonesia 1945 Article 18B paragraph (2).² But on the other hand there is a contradiction when through the state's right to control according to Constitution of the Republic of Indonesia 1945 Article 33 paragraph (3) gave birth to a number of laws and regulations which in reality neglected the rights of indigenous and tribal peoples. This act of marginalization, for example, in the regulation of natural resources can be seen in the existence of permits for several types of investment by the government in customary areas which have been used by customary law communities for their survival. As happened in the conflict between the Cek Bocek Customary law Community and PT. Newmont Nusa Tenggara; Customary law Community in Murung Raya Regency, Central Kalimantan with the gold mining company PT. Indomuro; and exploitation of the Akejira Forest as a living space for the Tobelo Dalam Indigenous Community by 2 (two) giant nickel mining companies: PT. Weda Bay Nickel and PT. Indonesia Weda Bay Industrial Park.³

The fact that investment in natural resources in customary territories is based on state law is formed because the State is the sole interpreter of the right to control for reasons of public interest. Justification of legislative regulations (state laws) related to natural resources suppresses customary rights protected by customary law. There has been the elimination of local wisdom based on customary law by government domination through the legality of state law.⁴ Traditional territories that are objects of infrastructure such as road access, mining and plantations are vulnerable to giving rise to disputes.⁵

Problems in the Pubabu customary forest area, East Nusa Tenggara, for example, show the fact that customary law and state law can conflict with each other. So far, the Besipae traditional law community knows that the Pubabu forest, based on customary law, is where they live, but it turns out that the forest has been certified by the regional government. The conflict in Besipae started with the reluctance of the Besipae indigenous people to agree to an offer to extend their land-borrowing-use permit in the Pubabu forest area until they later had no area to live in.⁶ Establishment of Lore Lindu National Park in Dongi Dongi, Central Sulawesi Province. This also shows that ultimately what is enforced is the law of the country in that region. Local customary law communities who usually utilize the natural resources around them guided by their customary laws, can no longer do so.⁷

Most customary law communities in Indonesia live off rich natural resources using customary law rules passed down from generation to generation. However, in the name of development, statutory regulations are used and the government has and continues to transfer land ownership to private companies. The law that then applies to

2 Muh. Afif Mahfud, "A State's Right To Control And Legal Protection Towards Indigenous People's Right To Have A Land: Theories And Its Implementation," *Kanun Jurnal Ilmu Hukum* 19 no 1 (2017) :63-80.

3 Ria Maya Sari, "Potensi Perampasan Wilayah Masyarakat Hukum Adat Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja". *Mulawarman Law Review* 6 no 1 (2023): 1-14. <https://doi.org/10.30872/mulrev.v6i1.506>.

4 I Ketut Kasta Arya Wijaya, "Qua Vadis Legal Politics of Natural Resource Management in Indonesia," *Jurnal Hukum Prasada* 3 no.1 (2015): 64-75.

5 I Nyoman Prabu Buana Rumiarta, et al., "Human Rights of Indigenous People in Indonesia: A Constitutional Approach," *Journal East Asia & International Law* 15 no.2 (2022): 395-402. DOI : <http://dx.doi.org/10.14330/jeail.2022.15.2.10>

6 Muhammad Akbar et al., "The Progressive Legal Perspective of Legal Justice in Customary Dispute Resolution Related to Natural Resources". *Jurnal IUS Kajian Hukum Dan Keadilan*, 11 no.2 (2023): 225-236. <https://doi.org/10.29303/ius.v11i2.1252>

7 Agus Lanini et al., "The Formation of Customary Law Related to the Use of Natural Resources in the Lore Lindu Region". *Fiat Justisia: Jurnal Ilmu Hukum* 12 no. 91-181:(2018) 3. <https://doi.org/10.25041/fiatjustisia.v12no3.1331>.

the territory of customary law communities is state law.⁸ Research on the relationship between customary law and state law is increasingly being carried out considering that to date, conflicts have always arisen and will continue to arise if natural resource management only refers to positive legal provisions issued by the state and often ignores the provisions of customary law. Research to find out and analyze the relationship between customary law and state law in order to find a new answer on how to realize harmonious coexistence between the two legal systems which have so far inevitably intersected in the management of natural resources.

The relationship between customary law and state law in several previous studies has actually been carried out by previous researchers, such as those carried out by: Matuankotta & Holle (2022) which analyzes the role of customary law and state law in direct contact in traditional areas in Maluku in forest management. The novelty in Matuantakota's research is that customary law is known to still be able to guide the management of local natural resources.⁹ Further research discussing the Customary Law of the Forest in the North Aceh Recency, by Yulia and Herinawati (2022).¹⁰ Further research was conducted by Harly (2023). Sustainable Forest Management from the Perspective of Customary Law in Indonesia: A Case Study in the Bayan Community.¹¹ From this research, it has not specifically discussed the relationship between customary law and state law in natural resource management in the area of life of indigenous peoples.

The research method is normative juridical, which means that all problems are studied with reference to legal review, both normatively and based on legal science doctrine. This research focuses on the issue of law as a system of norms used to provide prescriptive justification about a legal event. The types of approaches are the statutory approach, the conceptual approach and the factual approach. Collecting legal materials is carried out through document study techniques by collecting and understanding the contents of each piece of information obtained from legal materials. Review the literature on legal materials, namely relevant laws and regulations regarding natural resources and study the data contained in books, articles, official documents. The stage is to inventory and analyze to be correlated into an integral article.

2. ANALYSIS AND DISCUSSION

2.1. The existence of customary law in regulating natural resource management based on state law

Natural resources for customary law communities, are not merely economic goods, but are an integral part of their lives as historical and spiritual relations which are strongly maintained. If these natural resources are disturbed or alienated by the state or third parties, then what will be threatened is not only the economic life of the customary

⁸ Lanini, et.al. "The Formation," 7

⁹ Jenny Kristina Matuankotta and Eric Stanley Holle, "State Recognition and Respect for the Rights of Customary Law Communities in the Maluku Islands Region in the Exploitation of Forest Resources," *SASI* 28 no.1 (2022): 107-123. DOI: <https://doi.org/10.47268/sasi.v28i1.852>.

¹⁰ Yulia and Herinawati, "Customary Law of The Forest In The North Aceh Regency," *Diponegoro Law Review* 07 no. 02 (2022): 328-343. <https://doi.org/10.14710/dilrev.7.2.2022.328-343>

¹¹ Lalu Noval Banu Harly, "Sustainable Forest Management from the Perspective of Customary Law in Indonesia: A Case Study in the Bayan Community," *International Journal of Social Sciences and Humanities* 1 no. 1 (2023):32-42. <https://doi.org/10.55681/ijssh.v1i1.324>,

law communities, but also the entire structure of the customary law communities.¹² The rights of customary law communities known as ulayat rights indicate mastery over natural resources as a source of community livelihood as stipulated in the Basic Agrarian Regulations of Indonesia in Law Number 5 of 1960 the basic agrarian law article 3: “By bearing in mind the provisions in Articles 1 and 2 the implementation of customary rights and similar rights from customary law communities, as long as in fact they still exist, must be such that it is in accordance with national and state interests which are based on national unity and may not conflict with laws laws and other higher regulations.

In the constitutional scheme, customary law communities, on the one hand, are dealing with interests determined by the government through a number of arrangements that place the right to control the state as a priority. as well as a clear and firm meaning to be accepted by all parties. As a result, conflicts often occur between interests and authority in the management and utilization of natural resources, even with control rights, the government has sacrificed and eliminated the rights of traditional communities. The rights of indigenous peoples over natural resources that have been controlled since their ancestors are reduced and lost, as a result of restrictions on the right to control the state which is translated unilaterally by the government is one of the causes of the weak state recognition and protection of customary law communities¹³

Article 3 of Law Number 5 of 1960 concerning Basic Agrarian Regulations regulates that the implementation of customary rights or similar rights of customary law communities must be implemented as long as this practice continues. The provisions of this article give importance to the existence of customary law communities related to their living.¹⁴ The provisions in this Basic Agrarian Regulation actually normatively guarantee the synergy of state law and customary law. This means that the two have equality in the agrarian aspect with the provisions of state law and the traditional rights of customary law communities based on customary law.¹⁵

Mastery by the state in customary law areas also brings together the state legal system and customary law which each applies. The meeting of the two legal systems can be seen in the regulated recognition of indigenous peoples in a number of laws and regulations on natural resources and at the same time it is also seen that control extends to customary territories with permits issued by the state. These settings include the following :

First, Article 6 paragraph (1) letter f of Law Number 3 of 2020 Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining determines the determination of mining areas after being determined by the provincial regional government according to their authority and in consultation with the People’s Representative Council of the Republic Indonesia. **Second**, Article 4 paragraph (2) letter b of Law Number 41 of 1999 concerning Forestry stipulates that the state determines the status of certain areas as forest areas or forest areas as non-forest areas. **Third**, Article 12 paragraph (1) of Law no.

12 Fifik Wiryani, *Reformasi Hak Ulayat Pengaturan Hak-hak Masyarakat Adat dalam Pengelolaan Sumberdaya Alam*, (Malang: Setara Press, 2009), 2.

13 Husen Alting, “Penguasaan Tanah Masyarakat Hukum Adat (Suatu Kajian Terhadap Masyarakat Hukum Ternate),” *Jurnal Dinamika Hukum* 11 no.1 (2011): 87-98. <http://dx.doi.org/10.20884/1.jdh.2011.11.1.75>

14 Atmika Juresta Amira And Adhitya Nini Rizki Apriliana, “Customary Right On The Sea By International Law Of The Sea Perspective Related To The Law Number 5 OF 1960,” *Jurnal IUS Kajian Hukum Dan Keadilan*, 8 no.3, (2020): 618–629. <https://doi.org/10.29303/ius.v8i3.810>

15 Iwan Permadi et al, “Ensuring Indigenous People’s Rights Protection Through Normative Law in Land Acquisition for Indonesia’s New National Capacity, Nusantara.” *Jambura Law Review* 7 issue 01 (2025):30-54. DOI: <https://doi.org/10.33756/jlr.v7i1.24930>

39 of 2014 concerning Plantations stipulates that in the event that the land required for a Plantation Business is Ulayat Land of the Customary Law Community, the Plantation Business Actor must hold deliberations with the Customary Law Community holding the customary rights to obtain approval regarding the surrender of the land and the compensation.

The issue of the existence of customary law communities, including their rights, especially those related to natural resources, will always be a major issue because the customary law community law has not yet been enacted in Indonesia.¹⁶ There are various different perceptions used by law makers in viewing customary law communities. This is reflected in various sectoral regulations and in particular includes customary forest areas. The orientation that has so far revolved around state legal politics has seemed to move away from controlling the existence of customary law communities. That is why the issue of legal recognition and protection of customary law communities and their traditional rights continues to arise. Basically, in terms of internal legal protection, customary law communities have a concept of control and ownership of their natural resources that is communal, cultural and has a socio-religious character.¹⁷ Natural resource management with various sectoral regulations dominates and unwittingly negates management based on customary law.¹⁸

Customary law communities in several laws regarding natural resources, including those regulating agrarian affairs, forestry, plantations and others, are recognized for their existence. But dominated by norms which regulates and limits the rights of indigenous peoples natural resources, not the norm oriented towards recognition and protection indigenous peoples' rights. So the existing laws and regulations are not yet complete in favor of obeying constitutional mandate.¹⁹

There is ineffectiveness and inefficiency of legal policy regulations regarding the existence of customary law communities, resulting in neglect of their rights. This is a fact that is happening right now. The legal substance that is formed also influences the implementation of the fulfillment of the constitutional rights of customary law communities. According to Sumardjono, the public aspect of customary rights can be seen in the authority of customary law communities to regulate: (a) territories as living spaces which include their use, including their maintenance; (b) the legal relationship between customary law communities and their land; and (c) legal acts relating to customary law community land.²⁰

In essence, customary law communities with their traditional rights are: a legal society in which legal rights and legal obligations are contained reciprocity between the unity of the community and indigenous territories, and also with the state. The stronger

16 Jaquelin Vel, Yando Zakaria and Adrian Bedner, "Law Making Strategy For Change : Indonesia New Village Law", *Asian Journal Of Law And Society* 4 no.2 (2017): 447-471. <https://doi.org/10.1017/als.2017.21>

17 Made Oka Cahyadi Wiguna, "Pemikiran Hukum Progresif Untuk Perlindungan Hukum Dan Kesejahteraan Masyarakat Hukum Adat," *Jurnal Konstitusi* 11 no.37-112 : (2014) 1. <https://doi.org/10.31078/jk1816>.

18 Kartika Winkar Setya et al, " Fulfilling Communal Rights Through the Implementation of Second Principle of Pancasila towards the Regulation on Agrarian Reform." *Volkgeist: Jurnal Ilmu Hukum dan Konstitusi* VI 1 (2023): 89-102 DOI: 10.24090/volkgeist.v6i1.7868

19 Titis Anindyajati, "Legal Politics On The Role Of The Constitutional Court In Protecting The Existence Of The Adat Law Society In Indonesia," *Jurnal Masyarakat & Budaya* 19 no. 1 (2017): 1-14.

20 Candra Perbawati, Malicia Evendia, Ade Arif Firmansyah, and Yulia Neta. 2023. "Legal Discourse on Customary Forest Determination Progressive Law Based". *Fiat Justisia: Journal of Legal Studies* 17 no. 1 (2023) :17-30. <https://doi.org/10.25041/fiatjustisia.v17no1.2815>.

the relationship between customary law and state law among the living arrangements of customary law communities.²¹

The juridical definition of a customary law community is a group of people who are bound by their customary law as citizens of a legal association, because of the same place of residence or descent. In terms of territorial ties, customary law communities are technically legal subjects called ulayat rights. These rights are one of the traditional rights recognized over land and natural resources around their customary territory.²²

The unity of customary law communities is regulated according to the objectives and interests of the laws formed. So that there is a diversity of criteria from state law sectorally. This condition actually becomes ambiguous, two sides that have the potential to become disharmony where there will be conditions that seem to weaken indigenous peoples. The applicable space of customary law is not fully enforceable because state law regulates more dominance.

2.2. The relationship between customary law and state law in regulating the rights of customary law communities to natural resources

The fact of the application of customary law and state law in Risdiana's research is visible in management Jurang Koak Traditional Forest and Park Mount Rinjani National Park can be concluded as an indirect intersection between customary law and state law. This means that the measure of territorial control by customary law communities uses customary law that has been passed down from generation to generation. Meanwhile, state law is used as the basis for managing the Mount Rinjani National Park.²³

Several arrangements in the natural resources sectoral law indicate the existence of recognition of customary law communities with their living space which at the same time in the case of a meeting of state law and customary law, of course, inevitably forms a pattern of relationship. If we look closely at the statement of acknowledgment of indigenous and tribal peoples, it means that their existence is integrated into the regulation of laws and regulations, but what appears to remain the centralism of state law is shown by the substance of the regulation which uses a more dominant approach to state law. It can be seen from the determination of mining areas, the determination of the status of forest areas which is not impossible so far in these areas customary law has usually been used as a guideline for the behavior of indigenous and tribal peoples. It is in this context that adaptation occurs between the two systems due to the fact that legal pluralism is adhered to.

According to Griffiths in Sulistyawati Irianto, weak legal pluralism is another form of legal centralism because even though it recognizes the existence of legal pluralism, state law is still seen as superior, while other laws are unified in a hierarchy under state law.²⁴ The paradigm of mastery and management of natural resources and the environment in Indonesia can be seen from the legal instruments used by the government to regulate. If examined critically, legal facts are found that the substance of state law products

21 Amrina Rosyada, et al, "Constitutional Protection Of Indigenous Community In Achieving Social Justice" *Kanun Jurnal Ilmu Hukum* 20, no. 1(2018): 122. <https://doi.org/10.24815/kanun.v20i1.10021>

22 Anne Gunadi, "The Embodiment of Customary Law as an Element of Legal Certainty in the Implementation of Customary Rights," *Indonesia Law Review* 9 no. 3 (2019): 259-277. DOI: 10.15742/ilrev.v9n3.585

23 Risdiana, "Legal Protection Of Forest Land Rights Managed By Indigenous Communities," *Jurnal IUS Kajian Hukum Dan Keadilan* V no. 2 (2017): 338-352.

24 Sulistyowati Irianto, "Sejarah Dan Perkembangan Pemikiran Pluralisme Hukum Dan Konsekuensi Metodologisnya" *Hukum dan Pembangunan* 4 XXXIII (2017): 485-502.

in the form of legislation regarding the management of natural resources tends to be centralized, sectoral in nature, repressive in nature, and prioritizes a security approach. Laws with such characteristics apart from not providing protection for the preservation and continuity of the functions of Natural Resources, also provide little room for the recognition and protection of access and rights of indigenous/local peoples. This has one of the implications for the loss of access of indigenous/local communities to rights in their territories and from a political point of view displacing or ignoring the fact of legal pluralism in the management of natural resources (the political of legal pluralism ignorance).²⁵ The problem of the relationship between customary law and state law can occur because of the dominant government approach in managing natural resources using state law, even if it enters customary territory.²⁶

Bernadinus Steni describes the relation between customary law and state law as a general relation, which can take the form of competition and cooperation. The intended competition is that customary law is in an equal position with state law, there is a dispute over claims to regulate or apply to a particular social area. For example, state law competes with customary law in land management. In the issue of certainty of rights, there is competition between historical control based on customary law and control based on state legal evidence such as certificates and permits. At certain times historical mastery gets priority, but at other times formal evidence is prioritized. Generally this competition occurs in areas that are being cleared for development purposes. Investors or outsiders tend to use state law while indigenous peoples tend to use customary law by presenting their own arguments.²⁷

When linked to a broader spectrum of ideal legal politics as formulated in Satjipto Rahardjo's thought and developed by Rachmad Safa'at, law should apply (*iure constituendo*). There are several fundamental questions raised in the study of legal politics, namely: (a) the goals to be achieved with the existing legal system, (b) what methods and which ones are best used to achieve these goals. This includes the issue of choosing between written law or unwritten law, between centralization and decentralization, (c) when the law needs to be changed and in what ways the change should be carried out, and (d) can an established pattern be formulated that will can decide on the process of choosing the goals and the means of achieving the goals, including the process for updating the law efficiently: by total changes or by part-by-part changes.²⁸

State recognition (state law) of customary law which overshadows the traditional rights of indigenous and tribal peoples explained by Nurjaya that there is a relation between state law and customary law which is accommodated in Indonesia's basic agrarian regulations, meaning that it has been officially reconciled in state agrarian law but restrictions must still follow legal rules. the state forms an unequal position pattern between customary law and state law. The phenomenon of legal pluralism in legal development policies, drafting legal instruments, and in legal implementation in

25 I Nyoman Nurjaya, *Pengelolaan Sumber Daya Alam dalam Perspektif Antropologi Hukum*, (Malang: UM Pres 2006), 16.

26 I Gusti Agung Mas Rwa Jayantiari et al, "Forming Legal Culture in Customary Forest Management: Local Wisdom Approach of Customary Law Communities," *Udayana Journal Law And Culture* 8 no.1(2024): 67-82. DOI : <https://doi.org/10.24843/UJLC.2024.v08.i01.p04>

27 Bernadinus Steni, "Hukum Progresif, Pluralisme hukum dan Gerakan Masyarakat Adat" in Myrna A. Safitri, *Satjipto Rahardjo dan Hukum Progresif Urgensi dan Kritik*, (Jakarta: Epistema Institute, 2011), 270.

28 Rachmad Safa'at, "Politik Hukum dan Hak-Hak Masyarakat Adat Terhadap Akses Sumber Daya Alam" In Rachmad Safa'at, *Relasi Negara dan Masyarakat Adat Perebutan Kuasa atas Hak Pengelolaan Sumberdaya Alam* (Malang-Jawa Timur, 2015), 31.

the last three decades, tends to be neglected. The fact that legal pluralism, especially those governing the management of natural resources, normatively overrides the rights of customary law communities.²⁹

The reality that occurs with the pattern of adaptation relations in the form of recognition with restrictions in its dynamics is driven through the mechanism of reviewing several sectoral laws on natural resources to the Constitutional Court. Fajar Laksono Suroso said that although various laws and regulations have accommodated customary law community units, it does not mean that there are no problems related to the recognition, respect and protection of indigenous peoples. Even at the statutory level there is a tendency for violations of the rights of indigenous and tribal peoples. This means that the enactment of norms in certain laws actually violates the constitutional rights of indigenous and tribal peoples. If then from a certain point of view, state regulation through law appears as a form of state restriction on the rights of indigenous and tribal peoples, then against this possibility, the 1945 Constitution has provided a constitutional institution to restore the rights of indigenous peoples who have been violated, namely through a review mechanism. law against the 1945 Constitution in the Constitutional Court.³⁰

There is a problem that occurs when making regulations to regulate the rights of customary law community units which should be seen as having original rights, as entities that have uniqueness. an original right that was created by itself before there was an arrangement of other rights is called a *prima facie*, which means that the right existed before this country made its regulations. So that the regulations made by the visiting country are not allowed to make regulations that conflict with the regulations adopted by indigenous peoples.³¹ In the context of being a state, indigenous peoples with their customary law have entered into national arrangements with a pattern of following the provisions seen from the enactment of written law, namely state law.³² Conditions caused by constitutional recognition that contain elements of requirements so as to affect the applicability of customary law which depends on the recognition of the existence of customary law communities with state legal instruments.³³

The lives of customary law communities are organized based on customary law with the principle of balance in order to maintain their lives and not for economic goals. However, state law through sectoral regulations and investment in customary areas are made based on contracts but positions customary law communities and investors are not equal. Even though it is recognized based on the constitution and laws related to natural resources, the position of customary law communities can be weak reduce its bargaining position and investment.³⁴

29 I Nyoman Nurjaya, "Is the Constitutional and Legal Recognition of Community Customary Law in the Multicultural Country of Indonesia a Genuine or Pseudo Recognition?," *Constitutional Review* 1 no.2 (2015) : 49-68. DOI: <https://doi.org/10.31078/consrev123>

30 Fajar Laksono Suroso, "Constitutional Court and Protection of Constitutional Rights of Indigenous Peoples," *National Seminar on Protection of Constitutional Rights of Indigenous Peoples held in cooperation with the Constitutional Court and the Law Faculty of Mulawarman University*, Samarinda, 28 September (2017): 4.

31 Faiq. Tobroni, "Menguatkan Hak Masyarakat Adat Atas Hutan Adat (Studi Putusan MK Nomor 35 PUU-X 2012)," *Jurnal Konstitusi* 10 no. 3 (2016): 461-82. <https://doi.org/10.31078/jk1035..>

32 I Gusti Agung Mas Rwa Jayantiari, et.al. Pembagunan Hukum Berorientasi Keadilan Melalui Harmonisasi Hukum Negara dan Hukum Adat, *Jurnal Majelis*, 2 (2020):155

33 Helmi et al, "Local Wisdom In Indonesia: Assessing its Legal Status and Role in Forest Protection." *Jambe Law Journal* 6 no.2 (2023): 125-141. DOI:[10.22437/jlj.6.2.125-141](https://doi.org/10.22437/jlj.6.2.125-141)

34 Sukirno and Muh. Afif Mahfud "Relational Dynamics Of State Law And Customary Law:A Study Of The Ulayat Land Rights Recognition," *Kanun Jurnal Ilmu Hukum* 24 no. 3, (2022): 309-325.

Even though the management of natural resources still requires the strength of traditional values that are socio-religious rooted in customary law with balanced and integrated adaptation relations in the form of arrangements which are then consistently realized to provide justice to customary law community entities.

3. CONCLUSION

The recognition of customary law communities for their laws in managing natural resources in customary territories is regulated sectorally and partially. This is what causes customary law to not be fully applicable in the territorial space of customary law communities. The implementation of the rule of law due to the dominant right to control the state shows the weakness of legal diversity. So it can be seen that the relationship between state law and customary law has different patterns. In order for there to be harmonious coexistence between the two systems, it can be specifically regulated through the customary law communities.

The regulation of state law through sectoral laws does not provide an optimal space for the life of customary law communities. Based on the normative aspects and empirical facts that have been discussed, legal pluralism that is still weak in the recognition of customary law requires an affirmation in the form of a special regulation of the Law on Customary Law Communities. This method will further place it in a good bargaining position as a subject who can integrate customary law into national law, including matters related to the right to natural resources in customary territories. The condition of coexistence, namely harmony between the two legal systems, can be realised by norms that are explored from the socio-cultural structure of customary law communities. So that the characteristics of customary law values with local wisdom adopted in laws and regulations that can be fair.

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