



The Process of Recognizing Indigenous Communities and Establishing Customary Forests in North Tapanuli

Rytha Tambunan¹

¹ University Sumatera Utara, Indonesia

Received: July 15, 2023

Revised: July 30, 2023

Accepted: Aug 15, 2023

Online: Sept 5, 2023

Abstract

Indigenous people are communally entitled to customary forests and are referred to as having customary rights. There are structural inequalities and the distribution of land that the government hands over to large corporations rather than to Indigenous People. This study focused on (1) How is the process of recognizing customary law communities and establishing customary forests in the Toba Batak community in the North Tapanuli Regency after the Constitutional Court's decision Number 35/PUU-IX/2012 and how the interactions of various regulations implemented? (2) How do regulations interact when they are used as the basis for recognizing indigenous people and establishing their customary forests? (3) Why are customary rules and state policies still used in the process of resolving forest claim conflicts in issuing decrees for establishing customary forests? This research was conducted by collecting data through field observations, in-depth interviews, and gathering relevant data and documents. This study is expected to provide a better understanding of the process of customary identification and the establishment of customary forests in North Tapanuli, as well as provide input to the government and relevant stakeholders to enhance the protection and sustainability of customary rights and the management of customary forests in the region.

Keywords *customary forests, recognition, and establishment process, indigenous community, customary law*

INTRODUCTION

As an agrarian country, Indonesia also has agrarian laws that regulate land matters and detailed stages of land ownership. The enactment of the Basic Agrarian Law (UUPA) in 1960 marked important momentum for addressing tenure issues in Indonesia. UUPA No. 5/1960 established the principle that land serves as a means of social justice for the community, including indigenous communities. It was undeniable that forests are a vital natural resource for the sustainability and well-being of human life, particularly for indigenous populations or communities residing in forest areas. UUPA 1960 states that all members of indigenous communities have the right to customary land and forest, known as ulayat rights. Based on these ulayat rights, the customary law community can comprehensively possess and manage land.

Customary land ideally is a) plot of land on which there are customary rights of a certain customary law community; b) ulayat rights, which are also known as partnership rights, are areas where a group of indigenous people live to survive, a sanctuary of a magical-religious nature; c) communities living around customary rights have the right to work on the land; and d) each community member can obtain a share of land with certain limitations (Ramadhani, 2019). Ismi

Copyright Holder:

© Rytha (2023)

Corresponding author's email: ritha1@usu.ac.id

This Article is Licensed Under:



(2012), customary rights are recognized in the Indonesian legal system and the recognition given by the state is conditional and layered. This means that there is conditionality and conditions that must be met to be able to access it. Alting (2011) explained that customary law communities are defined as: a) As a unit of human life residing in a certain location that interacts according to a certain system of continuous customs; b) Bound by a sense of shared identity; c) Indigenous peoples are governed by a customary law or social institution that is recognized and accepted by all members of the group; d) Indigenous peoples usually have a social structure and their respective roles in their division; e) Indigenous peoples also have traditional knowledge that can be inherited as intellectual property or local wisdom. Ginting (2012) the existence of indigenous peoples and their rights are burdened with several conditions, which sooner or later open opportunities for the marginalization of the position of indigenous peoples.

Togatorop et al. (2021) highlight the close relationship between customary law communities and land, which has an important meaning in their lives. However, the process of achieving justice for indigenous peoples through the UUPA 1960 has not been fully implemented because of various structural imbalances in the distribution of land ownership. Since 1960, recognition of the existence and rights of indigenous peoples has been questioned and has decreased significantly.

Myers et al. (2017), customary forest users in Indonesia have long made claims about forest areas that are mostly controlled by large corporations that are determined and controlled by the state. Resosudarmo et al., (2019) one of these policies is broad and rapid land reform, targeting around 12% of the country's land area to be redistributed to farmers and communities in 2019. This can be seen in the increasing state interest in natural resources and land, which has resulted in indigenous peoples facing conflicts with the interests of economic development and corporate entities within their customary territories (Liani & Winanti, 2021; Wibowo, 2019).

This study focused on (1) How is the process of recognizing customary law communities and establishing customary forests in the Toba Batak community in the North Tapanuli Regency after the Constitutional Court's decision Number 35/PUU-IX/2012 and how the interactions of various regulations implemented? (2) How do regulations interact when they are used as the basis for recognizing indigenous people and establishing their customary forests? (3) Why are customary rules and state policies still used in the process of resolving forest claim conflicts in issuing decrees for establishing customary forests?

METHODOLOGY

Research Method

This study was conducted from 2021 until 2023 in a customary area that recognized indigenous peoples in Huta Aek Godang Tornaui and Huta Ginjang North Tapanuli Regency. The object of research was the Customary Law Community which carried out the process of recognizing and establishing customary forests.

In this study, an anthropological method was used to study customary law communities and provide insights into their social and cultural dynamics. The research methods are as follows:

1. Participant's observations: By documenting daily activities, social interactions, and legal practice, researchers can understand the context in which customary law operates.
2. Ethnographic: The researchers documented their observations through ethnographic text, providing detailed and contextual notes about the customary law community in field notes during their observations.
3. In-depth interview: Researchers conducted structured or semi-structured interviews with community members, such as elders, leaders, and people familiar with customary law.

4. Oral history: By collecting oral history, researchers can trace the development and evolution of customary law over time. Through storytelling and stories, community members can explain the origins, variations, and cultural significance of the different customs.
5. Literature review: Scholars examine historical records, legal texts, and reports from the colonial era to understand how customary law interacts with state law and how external influences shaped its development.
6. Comparative analysis: Researchers use comparative analysis to study different common-law communities and identify similarities and differences in their legal systems, norms, and practices (Geertz, 1973).
7. Focus Group Discussions (FGDs): Holding focus group discussions with community members can help explore specific aspects of customary law. These discussions allow researchers to observe how individuals negotiate and interpret customary norms as well as uncover tensions or conflicts that arise in the community regarding legal practices.

Researchers can also use network analysis techniques to examine the social relationships and networks within a community. This method helps identify key informants, decision-makers, and influential individuals involved in the administration and enforcement of customary law.

FINDING AND DISCUSSION

Emphasizing the Context of Customary Law Communities and Customary Forests in North Tapanuli Regency

In North Tapanuli Regency, Batak Toba customary law communities adhere to specific rules and norms that govern their social, cultural, and legal practices. While the precise rules may vary in each village or sub-group, there are several common strict rules observed within the Batak Toba customary law communities in North Tapanuli Regency.

The hula-hula system is a rigid hierarchical structure within the Toba Batak community. This system establishes social order and distributes rights and responsibilities based on lineage and clans. The hula-hula system determines leadership positions, decision-making roles, and resource allocations.

In North Tapanuli Regency, the Toba Batak people have a unique social and legal structure governed by the concept of "marga." Marga refers to a patrilineal kinship group or clan within the Toba Batak community. The Marga system plays a crucial role in managing social relationships, resolving conflicts, and maintaining order within a community.

The Marga system provides a framework for identifying and tracing ancestral generations. It forms kinship ties, lineage relationships, and the ownership of specific clans. Each individual belongs to a particular clan based on its patrilineal origin. The marga system serves as the basis for social organization within the community. Marga defines role relationships and responsibilities among clan members. Leadership position and decision-making power are often associated with membership in a particular clan affiliation.

Marga customary law governs inheritance rights and ownership within the Toba Batak community. Marga determines the distribution of property, land, and resources among its members. Inheritance typically follows a patrilineal line, with inherited assets passing from fathers to sons within the same clan.

Moreover, clan systems play a significant role in conflict resolution. Arguments and conflicts within the community are often mediated and resolved by the elders or clan leaders. They employ customary laws and norms to settle disputes, restore harmony and maintain social order. Marga customary law is closely intertwined with various rituals and ceremonies essential to the Toba

Batak community. Rituals, such as weddings, funerals, and other social events, are often conducted according to clan customs and traditions. They strengthen kinship bonds, honor ancestors, and reinforce the collective identity of the clan.

Legal Basis for the Recognition of Customary Law Communities and Customary Forests

1. Laws and Government Regulations

The legal basis for establishing the recognition of customary forests and their management policies has been stipulated by the Ministry of Environment and Forestry's Social Forestry and Environmental Partnership, which includes:

- a. Law No. 41 of 1999 on Forestry. Article 5 paragraph (1) clearly states that customary forests, recognized by the government, are forests owned by customary law communities, each with its own local names, such as clan forests, ulayat forests, communal forests, bengkar forests, and others.
- b. Law No. 32 of 2009 on Environmental Protection and Management (EPMA). Article 1 number 31 of Law 32/2009 on Environmental Protection and Management defines Customary Law Communities as a group of communities that have traditionally inhabited a specific geographic area due to: a) ties to ancestral origins; b) strong connection with the environment; and c) value systems that determine economic, political, social, and legal norms.
- c. Law No. 18 of 2013 on the Prevention and Eradication of Forest Destruction.
- d. Constitutional Court Decision No. 35/2012 on Law No. 41 of 1999 on Forestry.
- e. Ministerial Regulation No. 34 of 2017 on the Recognition and Protection of Local Wisdom in Natural Resources and Environmental Management.
- f. Ministerial Regulation No. 9 of 2021 on Customary Forests and Rights-Based Forests.

Within the current Indonesian legislation, there are at least five legal instruments that can be used to obtain recognition of the rights of Customary Law Communities, including:

- a. Law No. 6 of 2014 on Villages.
- b. Minister of Home Affairs Regulation No. 52 of 2014 on Guidelines for the Recognition and Protection of Customary Law Communities.
- c. The Minister of Agrarian and Spatial Planning/National Defense Head Regulation No. 10 of 2015 on Procedures for Determining Communal Rights over Land for Customary Law Communities and communities located in specific areas.
- d. The Minister of Environment and Forestry Regulation No. 32 of 2015 on Rights-based Forests.
- e. Presidential Regulation No. 88 of 2017 on Procedures for Resolving Land Possession within Forest Areas.

2. Government Policies and Programs

The policies and programs of the Government of North Tapanuli Regency regarding Customary Law Communities and Customary Forests serve to acknowledge the rights of indigenous communities, protect local wisdom, and ensure the sustainability of natural resources in North Tapanuli. The regulations and programs established by the Government of North Tapanuli Regency regarding customary law communities and customary forests include the designation of Customary Forest Areas, the establishment of Customary Institutions, Empowerment Programs for Customary Law Communities, Protection of Local Wisdom, Participation of Indigenous Communities in Decision-making, and Education and Preservation of Local Culture.

The Process of Recognizing the Batak Toba Customary Law Community in North Tapanuli

The process of recognizing customary law among the Toba Batak community in North Tapanuli generally involves several important stages. The specific process may vary depending on the local

context and administrative procedures (Wignjodipoero, 1983).

The first step was to identify and document the Batak Toba community in North Tapanuli according to customary law. Research, consultation, and fieldwork are necessary to understand their practices, customs, and legal system. The involvement of community leaders, elders, and members is crucial for gaining a deep understanding of their customary law traditions.

The second step was to facilitate consultations and community participation. Meaningful consultation and community participation were essential. The Batak Toba community should actively participate in the recognition process and express its perspectives, preferences, and concerns. This stage can be achieved through community meetings, workshops, or other forms of participation that promote inclusive decision-making and respect for the community's autonomy.

Second, it's necessary to document customary law practices. Customary law practices, including Toba Adat, must be thoroughly documented. This involves recording customary norms, rules, and procedures related to various aspects of community life such as land ownership, marriage, inheritance, dispute resolution, and administration. Documentation can include oral reports, written documents, traditional texts, and other relevant sources.

Furthermore, it is important to ensure that the recognition of customary law aligns with the national legal framework. This may involve reviewing existing laws, regulations, and practices to identify areas where customary law can be recognized and integrated. It may also involve advocacy of legal reforms or changes to align general laws with customary legal systems.

The next stage involved establishing community-based recognition mechanisms. Local regulations and customary laws can be developed in collaboration with the Toba Batak community. These mechanisms can provide a framework for the formal recognition and legal protection of customary law. They can establish procedures for conflict resolution, land rights management, traditional governance structures, and other relevant aspects of customary law administration.

Subsequently, formal recognition and implementation occurred. The recognition of Batak Toba customary law in North Tapanuli can be formalized through various means, including the issuance of regional regulations, government regulations, or agreements between the community and relevant authorities. Recognition should be followed by effective law enforcement, which may include the establishment or strengthening of institutions responsible for enforcing customary law, capacity-building initiatives, and public education campaigns.

It is important to note that the process of recognizing customary law is dynamic and ongoing. Ongoing dialogue, engagement, and collaboration between the Batak Toba community, local government, legal experts, and other stakeholders required to ensure a comprehensive and inclusive approach to recognition and implementation.

The Establishment of Customary Forests

The recognition of customary laws regarding forest management among the Batak Toba community in North Tapanuli and other places in Indonesia faces various challenges and realities. Despite efforts to acknowledge and respect customary forest practices, there remain factors that affect the realization and effectiveness of such recognition.

The lack of institutional support and capacity at the local level can hinder the recognition and implementation of traditional forestry practices. Government agencies responsible for forest management may lack resources, knowledge, or an adequate understanding of customary law to

engage and support the Toba Batak community in management.

Recognition of customary forest practices can lead to challenges when they conflict with national development priorities, such as infrastructure projects, commercial logging, or large-scale agriculture. In such cases, the positive impacts of economic development may be overshadowed by rights and customary practices, resulting in the marginalization of the Batak Toba community and the loss of control over forest resources.

Conflicts over land and forest resources can arise between the Batak Toba community and other stakeholders, including government agencies, private companies, and surrounding communities. These conflicts can be complex and protracted, often requiring legal action and dispute-resolution mechanisms to settle competing claims and interests.

Socioeconomic pressures such as poverty, limited alternative livelihood options, and changing demographic patterns can also impact the Toba Batak community's ability to practice and maintain their customary forest management. Economic factors can lead to the erosion of traditional practices and the introduction of unsustainable natural resource utilization methods.

Despite these challenges, there have been positive developments in some areas regarding the recognition of customary forest practices. Efforts to raise awareness, strengthen community participation, and build partnerships among the Batak Toba community, civil society organizations, and government agencies have shown promise in promoting sustainable forest management and protecting customary rights.

The realities and challenges of recognizing customary law related to forest management in the Toba Batak community need to be addressed through ongoing dialogue, cooperation, and advocacy.

Sources of Agrarian Conflict in the Indigenous Communities of North Tapanuli

Some of the sources include:

a. Land Disputes

The common causes of agricultural land disputes in North Tapanuli are related to land disputes. Indigenous communities often claim traditional rights over ancestral territories, including land considered to be collective ownership based on their clans (marga). Such land disputes often arise because land is believed to have been owned by the clan for generations.

b. Tensions with External Parties

Tensions can arise between indigenous communities and external actors such as businesses, investors, and other stakeholders interested in the natural resources of their ancestral lands. Differences in interests and rights of land and natural resources can lead to complex and protracted agricultural conflicts.

CONCLUSION

The process of recognizing the rights of indigenous communities in North Tapanuli is a crucial step in ensuring the sustainability of their customary rights and way of life. This recognition acknowledges and respects their rights to land, natural resources, and normal livelihood.

Identifying indigenous communities and establishing indigenous forests in North Tapanuli involve complex struggles and challenges. Indigenous communities often face obstacles to formal recognition, such as complicated administrative requirements, a lack of understanding and government support, and conflicts with various interests.

The recognition of indigenous communities and the establishment of indigenous forests have

positive impacts on the indigenous communities of North Tapanuli. This includes restoring the rights of indigenous communities, enhancing participation in decision-making processes related to natural resource management, strengthening the identity and culture, and improving the economic well-being of indigenous communities.

Several policy recommendations need to be made to enhance the identification of indigenous communities and the establishment of indigenous forests in North Tapanuli. These recommendations include expanding access to and support for indigenous communities in the administrative process, improving coordination between local governments and indigenous communities, and ensuring sustainable monitoring and evaluation of the implementation of policies for the identification and establishment of indigenous forests.

REFERENCES

- Alting, H. (2011). Penguasaan Tanah Masyarakat Hukum Adat (Suatu Kajian Terhadap Masyarakat Hukum Adat Ternate). *Jurnal Dinamika Hukum*, 11(1). <https://doi.org/10.20884/1.jdh.2011.11.1.75>
- Aritonang, D. A., Prasetyo, A. B., & Triyono. (2016). Pengakuan Hak Masyarakat Adat Tungkal Ulu Sumatra Selatan dalam Mengelola Hutan Adat Setelah Putusan MK No. 35/PUU-X/2012 tentang Hutan Adat. *Diponegoro Law Journal*, 5(3), 1–7.
- Arizona, Y., & Cahyadi, S. R. M. H. E. (2014). *Kembalikan Hutan Adat Kepada Masyarakat Hukum Adat*. Perkumpulan HuMa Indonesia.
- Geertz, Clifford. 1973. *The Interpretation of Cultures*, New York: Basic Books Inc.
- Ginting, D. (2012). Politik Hukum Agraria Terhadap Hak Ulayat Masyarakat Hukum Adat di Indonesia. *Jurnal Hukum Dan Pembangunan*, 42(1), 29–53.
- Ismi, H. (2012). Pengakuan dan Perlindungan Hukum Hak Masyarakat Adat Tanah Ulayat dalam Upaya Pembaharuan Hukum Nasional. *Jurnal Ilmu Hukum*, 3(1).
- Liani, M. N. H., & Winanti, A. (2021). Hak Masyarakat Hukum Adat Dalam Pelaksanaan Pengadaan Tanah Ulayat Bagi Pembangunan Untuk Kepentingan Umum. *SALAM: Jurnal Sosial Dan Budaya Syar-I*, 8(1), 159–172. <https://doi.org/10.15408/sjsbs.v8i1.19395>
- Moore, Sally, Falk. (1978). Law and social change: The semi-autonomous social field as an appropriate subject of study. *Law & Society Review*, 12(4), 719–746.
- Myers, R., Intarini, D., Sirait, M. T., & Maryudi, A. (2017). Claiming the forest: Inclusions and exclusions under Indonesia's 'new' forest policies on customary forests. *Land Use Policy*, 66(October 2014), 205–213. <https://doi.org/10.1016/j.landusepol.2017.04.039>
- Nader, Laura. (1969). *Up the anthropologist: Perspectives gained from studying up*. In Dell H. Hymes (Ed.), *Reinventing Anthropology* (pp. 284–311). Vintage Books.
- Peraturan Pemerintah LHK No.9 Tahun 2021
- Putusan MK 35/RUU-X/2012
- Ramadhani, R. (2019). Eksistensi Hak Komunal Masyarakat Hukum Adat dalam Pengadaan Tanah untuk Kepentingan Umum. *Jurnal Penelitian Hukum DE JURE*, 19(1), 97–108. <https://ejournal.balibangham.go.id/index.php/dejure/article/view/549/pdf>
- Resosudarmo, I. A. P., Tacconi, L., Sloan, S., Hamdani, F. A. U., Subarudi, Alviya, I., & Muttaqin, M. Z. (2019). Indonesia's land reform: Implications for local livelihoods and climate change. *Forest Policy and Economics*, 108(April). <https://doi.org/10.1016/j.forpol.2019.04.007>
- SK.352/MENLHK/SETJEN/KUM.1/6/2021
- Tambunan, R. (2019). Etnografi Tanah pada Masyarakat Batak Toba di Tapanuli Utara.
- Vergouwen, J. C. (2004). *Masyarakat dan Hukum Adat Batak Toba*. LKIS Pelangi Aksara.
- Wibowo, A. (2019). Asal Usul Kebijakan Pencadangan Hutan Adat di Indonesia. *BHUMI: Jurnal Agraria Dan Pertanahan*, 5(1), 26. <https://doi.org/10.31292/jb.v5i1.317>
- Wignjodipoero, Soerojo. 1983. *Introduction and Principles of Adat Law*, Haji Masagung, Jakarta.