

## The Role of the State in Recognising the Customary Rights of Indigenous Peoples

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### Abstract

This research evaluates the role of the state in recognising the customary rights of indigenous peoples. The issue at hand is conflict between indigenous peoples, private companies and individuals over the utilisation of customary land for various purposes. The focus of this research is a legal analysis of the role of state institutions in supporting the recognition and protection of customary rights of indigenous peoples. This research also aims to explain the relevance and purpose of state regulation in the recognition of indigenous peoples' customary rights in Indonesia, identify and analyse the problems faced by indigenous peoples' customary rights in Indonesia, even though normatively these rights have been recognised by the state and develop solutions for the fulfilment of indigenous peoples' customary rights in Indonesia by collaborating relevant theories. The type of research used is normative juridical, with an approach that involves the study of theories and concepts as well as research into legislation relevant to the topic. The results show that existing regulations are adequate, and the state is committed to recognising and protecting the rights of indigenous peoples. However, effective implementation still requires a more collaborative approach to overcome various obstacles.

**Keywords: Customary Rights, Indigenous Peoples, Recognition**



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## INTRODUCTION

Law is always closely related to human life, so discussions about law cannot be separated from discussions about human life itself. Humans live in groups in the form of communities that are born and develop with different cultures and legal values. (Pradhani, 2021) This diversity is known as plurality, in which there are various values believed by each community.

As society develops, it grows from small groups, tribes, nations, to countries, including the international community, whose rules affect every individual. The presence of the state strengthens legal diversity because the state has the authority to regulate the lives of its citizens and form laws known as state law. In addition, in community groups there is also a legal system other than state law, namely customary law. (Azani 2021)

Customary law is a law that originates from custom. The custom in question is behaviour that is initially carried out by individuals repeatedly, then spreads and is followed by related communities. (Yulia, 2016) The community described earlier is known as a customary law community.

Recognition of customary law communities is contained in Article 18 B paragraph (2) of the 1945 Constitution which states that "The State recognises and respects the unity of customary law communities and their traditional rights as long as they are still alive and in

accordance with the development of the times. society and the principles of the Unitary State of the Republic of Indonesia which are regulated by law." (Aldi & Putra, 2023) The existence of articles on customary law communities in the Indonesian constitution makes the existence of customary law communities clear and guaranteed in national law. One aspect of customary law is land law which regulates customary land.

Customary land is communal land believed to be a gift of supernatural powers or ancestral heritage to a customary law community group, which is always the main element for the life and livelihood of the group. (Boafo & Yeboah, 2022) Customary land plays an important role in ensuring collective welfare. In the context of customary land utilisation, this is closely related to customary rights, where the two cannot be separated.

According to Muchsin, customary rights are rights owned by certain customary law communities over certain areas that are their living environment, which allows them to utilise natural resources, including land, in the area for their survival and livelihood. (Nugroho, HR, Mariza, M., & Indrianingrum, 2022) Normatively, the recognition and protection of the existence of indigenous peoples and customary rights has progressed rapidly in this reform era. Where the Constitution also includes the existence or existence of indigenous peoples who still inhabit a certain area, the content of the legislation has been well structured. (Hilman Hadikusuma, 2014)

Thus, a person's right to enjoy and utilise the wealth and natural resources in his or her territory is a person's civil, political, economic, social and cultural rights that must be recognised, respected and protected. The state has a very important role in recognising the customary rights of indigenous peoples. As the highest authority in determining laws and policies, the state has an obligation to ensure that the rights of indigenous peoples are recognised, protected and respected. This is contained in various regulations, including Law No. 5 of 1960 on Basic Agrarian Principles (UUPA) which recognises the existence of customary rights if the customary law community concerned still exists and its use is in accordance with national interests and applicable laws and regulations. (Hayatul Ismi, 2012)

However, along with the times and the needs of national development, conflicts often occur between the interests of indigenous peoples and other parties, such as the government, private companies, and individuals, who want to utilise customary land for various purposes. (Idris et al., 2019) These conflicts pose a major challenge to the state in carrying out its role as a fair mediator and protector of indigenous peoples' rights.

Moniaga's study examines customary land conflicts between indigenous peoples and private companies in Kalimantan. The study evaluates the role of local and central government in resolving these conflicts and how existing laws and regulations can be applied to protect the customary rights of indigenous peoples. (Haboddin, 2011) In 2022, there will be several agrarian cases involving the customary rights of indigenous peoples. One prominent case is the conflict between the Malind indigenous people in Merauke Regency, Papua, and oil palm plantation companies. The Malind indigenous community in Merauke Regency, Papua, has long inhabited and managed their customary land based on customary law. This land is not only a source of livelihood but also has deep cultural and spiritual values for the Malind community. However, problems arose when oil palm plantation companies expanded into this area. (Nasri Wijaya et al., 2022)

Irhash Maulana, Hanafi Arief, and Faris Ali Sidqi previously conducted a research entitled "Juridical Analysis of the Position of Ulayat Rights of Indonesian Customary Law Communities". This research seeks to understand how these rights are recognised and protected within the framework of national law (Maulana et al., 2021).

The research conducted by Maulana, Arief, and Sidqi and the author's research have similarities, namely both discuss the role of the state in the recognition of customary rights. However, there are fundamental differences between the two studies. Maulana, Arief, and Sidqi's research is more specific in the juridical analysis of the position of customary rights, while the theme "The Role of the State in the Recognition of Customary Rights" has a broader scope. This theme not only includes juridical analysis, but also considers the social, political, and economic implications of the recognition of customary rights.

Ilyas Ismail also conducted research on "The Position and Recognition of Customary Rights in the National Agrarian Law System" which focuses on how the customary rights of customary law communities are recognised and protected in the context of agrarian law in Indonesia. This research analyses agrarian legislation and how it affects the recognition and protection of customary rights (Ilyas Ismail, 2010).

The similarity with the theme "The Role of the State in Recognising the Customary Rights of Customary Law Communities" is that both highlight the customary rights of customary law communities as the main topic. Both studies discuss how these rights are recognised in the Indonesian legal system and the role of state policy in recognising and protecting customary rights. However, there are differences between the two studies. Ismail's research specifically focuses on the national agrarian legal system, including an analysis of agrarian laws and how they relate to customary rights. In contrast, the theme of "The Role of the State in the Recognition of Ulayat Rights" covers a broader legal context, including customary law, environmental law, and public policy in general. (Wicomb and Smith 2011)

Previous research by Tesya Veronika and Atik Winanti on "The Existence of Customary Land Rights of Indigenous Peoples in View of the Concept of Right to Control by the State" has similarities with the research on "The Role of the State in the Recognition of Customary Land Rights of Indigenous Peoples". Both highlight the customary land rights of indigenous peoples as the main topic and discuss how these rights are recognised in the Indonesian legal system (Veronika & Winanti, 2021).

The difference between these two studies is that Tesya and Atik's research focuses on the relationship between customary rights and the concept of state rights in controlling land, examining how the state claims control over customary land within the existing legal framework. While the research "The Role of the State in the Recognition of Customary Land Rights of Indigenous Peoples" in addition to conducting juridical analyses, also considers the social, political, and economic implications of the recognition of customary land rights. (Ardiansyah, Sabardi, and Putro 2020)

Amallia Mawaddah, Mirza Satria Buana, and Erlina conducted research on "Problematics of Administration of Customary Land of Customary Law Communities in Indonesia." This research has similarities with what I am doing, namely both highlighting the customary rights of indigenous peoples as the main topic and using a juridical approach to analyse the issue of customary rights. (Mawaddah et al., 2022)

However, there are differences in the focus of the research. Their research focuses on the problems faced in the administration and management of customary land of indigenous peoples, including technical and administrative issues in the administration of customary land, such as registration, measurement, and recording of customary land. (Lubis, Kaban, and Ikhsan 2024) Whereas my research has a broader scope, covering the legal, social, political and economic aspects of the recognition of customary rights. In addition to juridical analysis, my research also considers the social and economic impacts of state policies on the recognition of customary rights.

Based on the previous research described above, it can be concluded that this research has significant benefits. This research not only ensures clear recognition of customary rights to prevent conflict and protect indigenous peoples from exploitation, but also increases legal certainty regarding the ownership and management of their land and natural resources. As such, this research makes a real contribution to improving social justice, environmental sustainability and social stability in areas inhabited by indigenous peoples.

In Indonesia, the customary rights of indigenous peoples often face challenges in recognition and protection. For example, many Dayak tribes face difficulties in defending their customary rights to customary forests, which are often encroached upon by companies for mining or plantation activities. This is due to the government's lack of recognition of customary forest boundaries and the emergence of land conflicts with companies. (Ana Suheri, 2018)

Therefore, it is important for the government to issue clearer and more inclusive regulations that recognise customary rights and customary land boundaries of indigenous peoples. In addition, it is also necessary to develop policies that consider environmental and cultural sustainability in any decision-making related to natural resource management on indigenous lands.

Another step is to encourage constructive dialogue between the government, companies and indigenous peoples to reach fair and sustainable agreements on land and natural resource management. By building partnerships between all relevant parties, it is expected to develop solutions that benefit all parties in a sustainable manner. (Dan et al., 2020).

Therefore, this research will examine the role of the state in recognising the customary rights of indigenous peoples. The main focus is the role of government agencies, such as relevant ministries and legal institutions, in the process of recognising customary rights. This study is expected to provide a deeper understanding of the importance of the state's role in maintaining a balance between national interests and the traditional rights of indigenous peoples.

## RESEARCH METHODS

This research uses a normative juridical analysis method. This method aims to analyse legal theories and concepts and examine relevant legislation. (Sunggono, 2016) The purpose of using the normative juridical method is to examine legal systematics with the aim of knowing the meaning or basis in law related to the recognition of customary rights of indigenous peoples by the state. By exploring all aspects related to the recognition of customary rights, it is hoped that a comprehensive understanding can be obtained of how the law regulates and protects the rights of indigenous peoples. The approach used in this article is a normative juridical approach.

This approach is conducted by examining legal theories and concepts, as well as analysing legislation relevant to the research topic.

The data sources taken by the author come from:

1. Legislation: Review laws, government regulations, and other regulations relevant to the customary rights of indigenous peoples.
2. Legal Doctrine and Theory: Refer to legal literature, including books, journal articles, and expert opinions relating to the recognition of customary rights.
3. Agreements and Conventions: Looks at international agreements and conventions relating to the rights of indigenous peoples.

The theory used by the author to analyse the questions in this research is the legal theory of customary rights and the recognition of indigenous peoples' rights by the state. This theory includes:

1. Human Rights Theory: Examines how the rights of indigenous peoples are recognised as part of human rights that must be protected by the state. (Sri Rahayu Wilujeng 2018)
2. Customary Law Theory: Analyse the principles of customary law that apply in indigenous communities and how they are recognised and protected by state law. (Zulherman Idris and Miftahur Rachman 2021)
3. Sustainability Theory: Examines how the recognition of customary rights can contribute to the environmental sustainability and socio-economic sustainability of indigenous peoples. (Nasrin R. Khalili 2020)

Using the normative juridical method and this approach, the article aims to reveal how existing legal regulations regulate the recognition of customary rights of indigenous peoples, identify existing problems, and provide recommendations to improve the recognition and protection of customary rights in Indonesia.

## **RESULTS AND DISCUSSION**

### **Recognition of Customary Rights and Indigenous Peoples by the State**

The recognition of customary rights and indigenous peoples in Indonesia is an important part of efforts to maintain cultural diversity and traditional rights. (Asnawi. 2023) Article 18B paragraph (2) of the 1945 Constitution states that, "The State recognises and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia". Republic of Indonesia." (Krismantoro, 2022) This shows the state's commitment to protect and respect the existence and rights of indigenous peoples within the framework of national law. (Firdawaty et al. 2023) The state explicitly recognises and respects the existence of indigenous peoples and their traditional rights.

Such recognition includes the identity, cultural values, and customary legal system that apply in indigenous communities. (Fialho & Van Bergeijk, 2017) Recognition is given as long as the customary law community is still alive and functioning in accordance with the development of society. (Habib Shulton Asnawi 2022) This means that customary law must remain relevant and not conflict with the basic principles of the state and applicable laws and regulations. This is also in accordance with Satjipto Rahardjo's statement quoted by Hendra Nurtjahyo and Fokky Fuad, that there are 4 (four) juridical clauses which are the criteria for the existence of customary law communities: (Salamat, 2016)

1. If you are alive
2. In accordance with the development of society
3. In accordance with the principles of the unitary state of the Republic of Indonesia
4. Regulated in the Law

Regulations regarding the existence and rights of indigenous peoples in Indonesia are contained in the 1945 Constitution of the Republic of Indonesia, as well as other laws and regulations. (Aditya, 2019) This shows that the existence and customary rights of indigenous peoples have been recognised in the applicable legal framework in Indonesia. This section will provide a brief explanation of the regulation of the existence and rights of indigenous peoples in the 1945 Constitution, laws and regulations, and other laws and regulations. (Luthfi et al. 2022)

Customary law communities have one of the most important rights related to their living space, namely customary law rights as stipulated in Article 3 of the UUPA, "With due regard to the provisions of articles 1 and 2, the implementation of customary law rights and similar rights of customary law communities, as long as they still exist in reality, must be organised in such a way that is in accordance with national and state interests based on national unity, and must not conflict with higher laws and regulations." (BPK JDIH, 1960)

It is undeniable that the UUPA is one of the main foundations in the concept and regulatory material related to the recognition of indigenous peoples. The UUPA emerged due to the existence of legal dualism in national land arrangements, namely there is land subject to western law and there is land subject to customary law. (Habib Shulton Asnawi dan M. Anwar Nawawi 2022) To eliminate the dualism of land law in Indonesia, the UUPA was enacted to form a unified national land law.

The UUPA itself does not provide an explanation of customary rights, except to state that what is meant by customary rights is *beschikkingrecht* in customary law literature. (Ismail, 2012) *Hak ulayat* as a juridical technical term is an inherent right as a distinctive competence in customary law communities, in the form of authority/power to manage and administer the land within them, with the power to operate both internally and externally. (Mu'in, Fathul, Firdaweri 2022)

Although the Basic Agrarian Law (UUPA) does not specifically regulate legal protection for customary rights holders, such protection is contained in Article 18B paragraph (2) of the 1945 Constitution. (Nurdin, 2022) This constitutional article emphasises the State's responsibility to maintain and respect the customs and traditional rights of local communities, if they are still relevant and in accordance with community development and the principles of the unitary state of the Republic of Indonesia, as regulated in the applicable laws and regulations. (Mu'in et al. 2023) This commitment reflects the government's determination and efforts to restore the rights, including customary rights, of indigenous peoples who have historically been marginalised.

1. As such, *hak ulayat* reflects the legal relationship between a legal community (the subject of the right) and a particular land or territory (the object of the right). Such customary rights include the power to: (David et al., 2023) Manage and regulate the use of land (such as for housing, agriculture, etc.), regulate the creation or development of new settlements or agricultural land, and preserve the environment of the land.

2. Regulate and determine the legal relationship between individuals and land (granting special rights to certain subjects).
3. Determine and regulate legal relations between individuals and all legal activities related to land (such as sale and purchase transactions, inheritance, etc.).

According to the principles of customary law, the relationship of indigenous peoples with their land or territory tends to be administrative rather than proprietary as in the concept of the relationship with state land. Indigenous peoples, in accordance with their customary practices and traditions, manage and administer their lands and territories administratively. (Pradikta et al. 2023) This administrative relationship recognises the community's authority to manage the land in accordance with applicable customary laws and norms. This is different from the concept of ownership that generally applies to state-owned land. This is based on the provisions of Article 33 paragraph (3) of the 1945 Constitution. Thus, the Basic Agrarian Law gives conditional recognition to customary rights, namely: (Bedner & Arizona, 2019)

1. The condition for the existence of customary rights to land is that the recognition of such rights only occurs if the rights exist. This means that in areas where customary rights originally existed but were later replaced by individual property rights due to development, and the customary rights were lost, the customary rights cannot be restored. Similarly, in an area where there is no customary right, no new customary right will arise.
2. The application of customary rights must consider situations that are in line with national interests, prioritise national unity, and ensure compliance with laws and regulations that have a higher hierarchy.

In addition, although the Basic Agrarian Law (UUPA) does not explicitly outline the criteria for collective rights, from these considerations, the criteria for its determination can be compiled by considering the existence of ulayat rights in three aspects, namely: (Oong Supono, 2023)

1. Customary Law recognises the existence of customary law communities that have distinctive characteristics and are recognised as subjects of customary law.
2. Customary rights apply to certain areas or regions that have clear boundaries and are recognised as environments included in the jurisdiction of customary law.
3. Indigenous peoples are granted the authority and autonomy to exercise special rights and manage their territories under their own jurisdiction.

The previous application of Article 3 of the UUPA was the recognition of adat rights, which was further regulated by the Minister of Home Affairs. Article 4 provides incentives for customary land. Guidelines for the Legal Recognition and Protection of Indigenous Peoples are regulated in Minister of Home Affairs Regulation No. 52/2014 and Minister of Agrarian and Spatial Planning/Head of BPN Regulation No. 18/2019 on Customary Land Management. These regulations aim to resolve land issues related to the rights of indigenous peoples that are still protected, although previously some regulations were considered not fulfilling the aspirations of the community. (Safiuddin, 2018)

Recognition of indigenous peoples' rights to customary land is carried out through the establishment and preservation of indigenous peoples' units in accordance with laws and regulations. Land administration applications must be submitted to the Director of the local Land Office. (Yoki Pradikta, Budianto, and Asnawi 2024) Customary land management

includes surveying, mapping and documentation. Measurement is carried out on the boundaries of the land parcel determined by the customary law community, then the land is mapped on the land registration map for further measurement procedures. Land is measured and mapped based on certain criteria, then given an identification number with a district/city land unit within the customary law community unit area. With proof of land ownership, indigenous peoples automatically receive administrative protection.

The recognition and protection of indigenous peoples' land is an obligation of the government to respect, protect and facilitate the development of indigenous peoples and their traditional rights within the framework of the Unitary State of the Republic of Indonesia. Such recognition indicates that the state recognises indigenous peoples' rights to natural resources and ensures that the government protects these rights from threats from other parties. Such recognition is regulated in the form of state laws that guarantee indigenous peoples' rights to land and other natural resources. In addition to issuing laws, efforts have been made by the government to recognise the customary rights of indigenous peoples in several ways, namely: Firstly, with the establishment of a specialised institution AMAN, although not a government institution, AMAN is supported by various government institutions. policies to fight for the rights of indigenous peoples. (Arizona et al., 2019) The government has also established task forces and specialised agencies in several regions that are tasked with addressing indigenous peoples' issues more specifically.

Second, mediation and conflict resolution. The government has established mediation and agrarian conflict resolution teams in several regions to resolve land disputes between indigenous communities and other parties such as plantation or mining companies. (Boca et al., 2018) These teams are tasked with mediating and finding fair solutions for all parties involved. Third, recognition through justice decisions. In addition to legislation, the government supports the enforcement of customary rights through the judicial system. (Schweiger, 2019) Courts are often an important arena for asserting the rights of indigenous peoples through decisions that recognise and protect their customary rights. Based on this explanation, the existence of the Basic Agrarian Law of 1960 and the Minister of Home Affairs Regulation No. 52/2014 on Guidelines for the Recognition and Protection of Customary Law Communities and other government efforts show that the state recognises the existence of customary law communities in Indonesia. This regulation is an effort to realise legal recognition of land management and protection of the rights of customary law communities.

This research aims to examine in depth the recognition of customary rights of indigenous peoples in Indonesia. In the process, the author identifies various challenges faced by indigenous peoples in obtaining recognition and protection of their customary rights. Based on normative juridical analysis, the author compiles three main sub-chapters that become the focus of findings and discussion in this research:

#### 1. Recognition of Customary Rights and Indigenous Peoples by the State

In essence, state regulations recognise customary rights by ensuring that the existence, identity of indigenous peoples is officially recognised, thereby strengthening their legal position. These regulations protect indigenous peoples' land and natural resources from appropriation by outsiders, safeguarding the foundations of their lives and culture. Clear



rules help resolve agrarian conflicts and promote social and legal stability in indigenous territories.

In addition, the aim of this regulation is to empower indigenous peoples to manage natural resources independently and sustainably in accordance with local wisdom, and involve them in natural resource management to promote sustainable practices that preserve the environment. It also aims to address inequalities faced by indigenous peoples by providing equitable access to resources and participation in decision-making. The country's rules are relevant and aim to recognise, protect and fulfil the customary rights of indigenous peoples, and support environmental sustainability and social justice.

## 2. Condition of Customary Rights of Indigenous Peoples in Indonesia

Normatively, customary rights have been recognised by the state. However, in fact, indigenous peoples still face many problems. For example, the customary law issues faced by the Dayak tribe in Kalimantan are complex issues that cover various social, economic and environmental aspects. As indigenous peoples who have inhabited and guarded Kalimantan's forests for centuries, the Dayak tribe has a close relationship with their land and forests. Indigenous forests are not only a source of life but also an integral part of their cultural identity. However, in recent decades, their customary rights have often been overlooked and not formally recognised by the government.

Law No. 41/1999 on Forestry was supposed to provide legal protection for customary forests, but its implementation has fallen short of expectations. The boundaries of customary forests are often unclear and not formally recognised, causing Dayak indigenous communities to experience legal uncertainty. This condition is further exacerbated by the entry of large companies that exploit forests for mining and plantations, often without consultation or consent from indigenous communities.(Subiakto et al., 2015).

The takeover of customary forests by these companies causes significant environmental damage, loss of livelihoods, and destruction of ecosystems that have been sustainably managed by Dayak tribes. In addition, indigenous communities often have to face conflicts with companies and the government, both physically and through legal channels, which adds to their burden and uncertainty.

In addition to the Dayak customary rights issues, the Batak tribe in North Sumatra also faces similar challenges. The boundaries of their customary lands are often not officially recognised by the government, causing legal uncertainty for Batak communities. The influx of large companies exploiting the land for commercial agriculture, mining and infrastructure development without consultation or consent from indigenous communities has further exacerbated the situation.

Unsustainable exploitation leads to environmental damage, loss of biodiversity, and degradation of land that was previously managed traditionally and sustainably by Batak communities. Conflicts between indigenous peoples and companies or government often occur, both physically and through legal channels, adding to the burden and uncertainty for indigenous peoples.

The expropriation of customary land results in the loss of livelihoods and cultural identity, leading to the social and economic marginalisation of indigenous peoples. The process of gaining official recognition of customary land is often complex and time-

consuming, presenting bureaucratic obstacles that indigenous peoples find difficult to overcome. Addressing these issues requires a concerted effort from governments, companies and the wider community to ensure that the customary rights of Batak indigenous peoples are respected and protected.(Pasaribu 2022)

In both examples above, customary land rights of indigenous peoples still face challenges in official recognition, adequate legal protection, and implementation of policies that support environmental sustainability and social justice for indigenous peoples. The government needs to step up efforts to recognise and protect these customary rights through improved regulations, better law enforcement, and inclusive dialogue with indigenous peoples to achieve sustainable and equitable solutions for all parties involved.

### 3. Solutions to fulfil the customary rights of indigenous peoples

Indigenous peoples face a variety of challenges related to customary rights, but the proposed solutions tend to be similar. Indigenous peoples must be actively involved in decision-making processes that affect their lives, including in the formulation of policies and regulations. Governments should ensure that these decisions not only fulfil general economic and social needs, but also respect the rights of indigenous peoples in accordance with international human rights standards. In addition, governments need to work with indigenous peoples to identify, understand and recognise applicable customary law norms. Implementation measures should take into account cultural sensitivity and local wisdom, and ensure that customary law can be effectively applied in resolving conflicts, regulating natural resource management, and promoting social justice.

Natural resource management policies and practices should take into account the aspirations and long-term needs of indigenous peoples. This includes promoting sustainable agricultural practices, sustainable forest management, and protection of ecosystems critical to indigenous peoples' survival. The government and relevant parties must commit to involving indigenous peoples in planning and decision-making processes related to natural resource management on their customary lands.(Faridah Junida Maudian, A. Muslimin 2023) By integrating these three theories, it is hoped that solutions to fulfil the customary rights of indigenous peoples can be more comprehensive, sustainable, and in accordance with human values and justice. This will not only strengthen the protection of indigenous peoples' rights, but also support environmental sustainability and social justice more broadly. (Stivani Marantika Poro, Ali Imron 2017)

## CONCLUSION

The state recognises the customary rights of indigenous peoples through regulations and laws that aim to strengthen their legal position. Nonetheless, a number of issues remain, such as weak implementation, lack of participation of indigenous peoples in decision-making, legal vagueness, and discrimination. To effectively fulfil customary rights, strategies needed include strengthening consistent implementation of laws, increasing indigenous peoples' participation in decision processes, harmonising regulations, empowerment through education, developing fair conflict resolution mechanisms, as well as collaboration with relevant parties and the use of technology for land mapping. By doing so, the state can more effectively recognise, protect and fulfil the customary rights of indigenous peoples, while supporting environmental sustainability and social justice.

## REFERENCES

- Ana Suheri. (2018). *Perlindungan Hukum Terhadap Tanah Adat Kalimantan Tengah Dalam Kerangka Negara Hukum*. 4(2), 92.
- Ardiansyah, Ardiansyah, Lalu Sabardi, and Widodo Dwi Putro. 2020. "National Law Relations with Customary Law in the Establishing of Regulation of the Recognition of Indigenous Peoples Rights to the Land of Ulayat." *International Journal of Multicultural and Multireligious Understanding* 7, no. 5: 426–34.
- Azani, Muhammad. 2021. "The Development of Islamic Law in Indonesia Through Traditional Theory and Legal Changes." *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam* 6, no. 2: 113–28.
- Ardiansyah, Ardiansyah, Lalu Sabardi, and Widodo Dwi Putro. 2020. "National Law Relations with Customary Law in the Establishing of Regulation of the Recognition of Indigenous Peoples Rights to the Land of Ulayat." *International Journal of Multicultural and Multireligious Understanding* 7, no. 5: 426–34.
- Asnawi., Habib Sulthon. 2023. "Perkawinan Penganut Aliran Penghayat Kepercayaan Di Provinsi Lampung Dan Dampaknya Terhadap Hak Asasi Perempuan Perspektif: Hukum Keluarga Islam Dan Konvensi Internasional." dalam DISERTASI Program Doktor (S3) Pascasarjana (PPS) Universitas Islam Negeri Raden Intan Lampung. <http://repository.radenintan.ac.id/22698/>.
- Azani, Muhammad. 2021. "The Development of Islamic Law in Indonesia Through Traditional Theory and Legal Changes." *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam* 6, no. 2: 113–28.
- Dan, P., Tanah, P., Hukum, M., Di, A., Meratus, D., Selatan, P. K., Of, M., Ulayat, T., Peoples, I., Meratus, D., & South, P. (2020). *Perlindungan Dan Pengelolaan Tanah Ulayat Masyarakat Hukum Adat Di Dayak Meratus Desa Papagaran Kalimantan Selatan*. 12(2), 105.
- Faridah Junida Maudian, A. Muslimin, Habib Shulton Asnawi. 2023. "Perlindungan Hukum Terhadap Perkawinan Di Bawah Umur Dan Implikasinya Terhadap Hak Perempuan Perspektif Hak Asasi Manusia (HAM)." *Al-Wathan: Jurnal Ilmu Syariah* 4, no. 1. <https://jurnal.stisda.ac.id/index.php/wathan/article/view/72>.
- Firdawaty, Linda, Ahmad Sukandi, Noorjehan Safia Niaz, and Habib Shulton Asnawi. 2023. "Yusuf Al-Qardhawi's Perspective of Ihdad and Its Relevance to Career Women's Leave Rights in Bandar Lampung." *Jurnal Ilmiah Al-Syir'ah* 21, no. 2. <https://doi.org/10.30984/jis.v21i2.2343>.
- Habib Shulton Asnawi dan M. Anwar Nawawi. 2022. *Hegemoni Patriarkhisme Hak Keadilan Perempuan Dalam Undang-Undang Perkawinan Di Indonesia*. Yogyakarta: The Journal Publishing. <http://thejournalish.com/ojs/index.php/books/article/view/358>.
- Habib Shulton Asnawi, M. Anwar Nawawi. 2022. *Dinamika Hukum Perkawinan Di Indonesia Tinjauan Hukum Keluarga Islam Terhadap Legalitas Perkawinan Kepercayaan Penghayat*. Yogyakarta: CV. Bildung Nusantara. <https://balaiyanpus.jogjapro.go.id/opac/detail-opac?id=346958>.
- Ilyas Ismail. (2010). *Kedudukan Dan Pengakuan Hak Ulayat Dalam Sistem Hukum Agraria Nasional*. 14.
- Lubis, Asmadi, Maria Kaban, and Edy Ikhsan. 2024. "The Development of Recognition and

- Protection of the Customary Rights of Indigenous Peoples in Indonesia.” *KnE Social Sciences*, 209–24.
- Luthfi, M., Habib Shulton Asnawi, Habib Ismail, and M Nurdin Zuhdi. 2022. “Kejawen Science in Javanese Marriage and Its Implications for Household Harmony Household Harmony.” *SMART: Journal of Sharia, Traditon, and Modernity* 2, no. 2. <https://doi.org/10.24042/smart.v2i2.20605>.
- Mu’in, Fathul, Firdaweri, Hasanuddin Muhammad. 2022. “Analysis on the Decisions of the Tanjungkarang and Metro Religious Courts Toward State Civil Apparatus Divorce Case On Islamic and Positive Law Perspective.” *Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam* 7, no. 1. <https://journal.iaimnumetrolampung.ac.id/index.php/jm/article/view/2442>.
- Mu’in, Fathul, Faisal, Arif Fikri, Habib Shulton Asnawi, and M. Anwar Nawawi. 2023. “The Practice of Substitute Heirs in Indonesian Religious Court: Restricted Interpretation.” *Al-Ahwal* 16, no. 1. <https://doi.org/10.14421/ahwal.2023.16107>.
- Maulana, I., Arief, H., & Sidqi, F. A. (2021). *Analisis Yuridis Kedudukan Hak Ulayat Masyarakat Hukum Adat Indonesia*. 10. [https://eprints.uniska-bjm.ac.id/6036/1/Artikel\\_IrhashMaulana.pdf](https://eprints.uniska-bjm.ac.id/6036/1/Artikel_IrhashMaulana.pdf)
- Mawaddah, A., Satria Buana, M., & Erlina. (2022). Problematika Penatausahaan Tanah Ulayat Masyarakat Hukum Adat di Indonesia. *Benua Law Review*, 4(2), 150. <http://balrev.ulm.ac.id/index.php/balrev>
- Nasrin R. Khalili. (2020). Theory and Concept of Sustainability and Sustainable Development. *International Institute for Sustainable Development.*, 2(July), 13. <https://www.iisd.org/topic/sustainable-development>
- Nasrin R. Khalili. 2020. “Theory and Concept of Sustainability and Sustainable Development.” *International Institute for Sustainable Development*. 2, no. July: 13.
- Nasrin R. Khalili. 2020. “Theory and Concept of Sustainability and Sustainable Development.” *International Institute for Sustainable Development*. 2, no. July: 13.
- Pasaribu, Roki Suriadi. 2022. “Pengakuan Dan Perlindungan Hukum Terhadap Keberadaan Masyarakat Hukum Adat Batak Toba.” *Nommensen Journal of Legal Opinion (NJLO)* 03, no. 1: 10.
- Pradikta, Hervin Yoki Pradikta, Paisal Sanjaya, Tiara Rica Dayani, and Habib Shulton Asnawi. 2023. “Efforts to Prevent Marriage at Child Age through Socialization and Education on the Risks of Early Marriage from the Perspective of Islamic Law.” *J-Dinamika : Jurnal Pengabdian Masyarakat* 8, no. 1. <https://doi.org/10.25047/j-dinamika.v8i1.3852>.
- Pasaribu, Roki Suriadi. 2022. “Pengakuan Dan Perlindungan Hukum Terhadap Keberadaan Masyarakat Hukum Adat Batak Toba.” *Nommensen Journal of Legal Opinion (NJLO)* 03, no. 1: 10.
- Sri Rahayu Wilujeng. 2018. “HAK ASASI MANUSIA: TINJAUAN DARI ASPEK HISTORIS DAN YURIDIS.” *Analytical Biochemistry* 11, no. 1: 5.
- Stivani Marantika Poro, Ali Imron, wika Yudha Shanty. 2017. “PERLINDUNGAN HUKUM HAK TRADISIONAL MASYARAKAT HUKUM ADAT TERHADAP TINDAKAN INDIVIDUALISASI TANAH ULAYAT UNTUK TUJUAN KOMERSIAL.” *Bhirawa Law Journal* 2, no. 1: 60.
- Subiakto, W. D., Pertanian, F., & Pertanian, F. (2015). Peranan Hukum Adat Dalam Menjaga

- Dan Melestarikan Hutan Di Desa Metulang Kecamatan Kayan Selatan Kabupaten Malinau Propinsi Kalimantan Utara. *Jurnal AGRIFO*, XIV(2), 300.
- Sri Rahayu Wilujeng. 2018. "HAK ASASI MANUSIA: TINJAUAN DARI ASPEK HISTORIS DAN YURIDIS." *Analytical Biochemistry* 11, no. 1: 5.
- Stivani Marantika Poro, Ali Imron, wika Yudha Shanty. 2017. "PERLINDUNGAN HUKUM HAK TRADISIONAL MASYARAKAT HUKUM ADAT TERHADAP TINDAKAN INDIVIDUALISASI TANAH ULAYAT UNTUK TUJUAN KOMERSIAL." *Bhirawa Law Journal* 2, no. 1: 60.
- Veronika, T., & Winanti, A. (2021). Keberadaan Hak Atas Tanah Ulayat Masyarakat Hukum Adat Ditinjau Dari Konsephak Menguasai Oleh Negara. *Humani (Hukum Dan Masyarakat Madani)*, 11(2), 310. <https://journals.usm.ac.id/index.php/humani/article/view/4397>
- Wicomb, Wilmien, and Henk Smith. 2011. "Customary Communities as 'Peoples' and Their Customary Tenure as 'Culture': What We Can Do with the Endorois Decision." *African Human Rights Law Journal* 11, no. 2: 422–46.
- Yoki Pradikta, Hervin, Aan Budianto, and Habib Shulton Asnawi. 2024. "History of Development and Reform of Family Law in Indonesia and Malaysia." *KnE Social Sciences* 2024, no. 4. <https://doi.org/10.18502/kss.v9i12.15863>.
- Zulherman Idris, and Miftahur Rachman. 2021. "Identifikasi Hukum Adat (Perspektif Bahagian Kajian Sosiologi Hukum)." *Journal Equitable* 6, no. 2: 130. <https://doi.org/10.37859/jeq.v6i2.3269>.

