

*Full Length Research Article***Indigenous Custodianship and Timber Legality Assurance System: Challenges and Opportunities for Customary Forest Management in Indonesia**Silfi Iriyani^{1*}, Muhammad Arman², Bramasto Nugroho³, Damayanti Buchori¹, Fitta Setiajati^{3,4}¹ Center for Transdisciplinary and Sustainability Sciences, IPB University, Bogor, Indonesia² Aliansi Masyarakat Adat Nusantara/AMAN (Indigenous Peoples Alliance of the Archipelago), Jakarta, Indonesia³ Department of Forest Management, Faculty of Forestry and Environment, IPB University, Bogor, Indonesia⁴ Laboratory of Forest Policy and Economics, Division of Natural Resource Economics, Graduate School of Agriculture, Kyoto University, Kyoto, Japan* Corresponding Author. E-mail address: silfi@apps.ipb.ac.id**ARTICLE HISTORY:***Received: 2 May 2024**Peer review completed: 16 July 2024**Received in revised form: 15 September 2024**Accepted: 8 October 2024***KEYWORDS:***Customary forests
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Indigenous peoples are caretakers and practitioners of a unique culture connected to their community and the surrounding environment, including forests. In Indonesia, existing regulations acknowledge the identity of indigenous peoples and the forests they oversee. This paper provided evidence of the acknowledgment of customary forests and indigenous peoples, addressing the challenges and opportunities for managing customary forest products, both timber and non-timber, under a timber legality assurance scheme. This research is essential in advocating for legal reforms that protect the rights of indigenous peoples and ensure sustainable forest management while balancing environmental conservation with local community needs. The study sought to illuminate the challenges Indigenous Peoples encounter when accessing and utilizing forests and forest products within their customary territories. It employed exploration methods to gather reliable data and information, validated through expert interviews and described using triangulation. The research concluded that legal innovations are necessary to resolve issues concerning the recognition of customary forests and indigenous peoples to enable effective forest management while safeguarding the rights of indigenous peoples socially, economically, and ecologically. In addition, legal innovations are also required to avoid breaches of timber legality assurance, which can result in forest unsustainability. To enhance the effectiveness of these reforms, it is important to foster collaboration between government bodies and indigenous communities in developing and implementing forest management policies.

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1. Introduction

The United Nations defines indigenous peoples as individuals who inherit and engage in unique cultures deeply intertwined with their environments (Ford et al. 2020). They exhibit distinctive social, cultural, economic, and political features that set them apart from the dominant communities within their regions (Le Tourneau 2020). This collective comprises roughly 370 million people and is dispersed across 70 countries worldwide (Estrada et al. 2022; Mendoza 2016). The United Nations recognizes that the definition of indigenous peoples can vary and be interpreted differently. As a result, identifying indigenous peoples requires more than just a simple

terminological definition; it also involves acknowledging their distinct characteristics and qualities.

Indigenous peoples in their social, environmental, and economic lives depend on using natural resources that are used directly (Abas et al. 2022; Fernández-Llamazares et al. 2020; MacPherson et al. 2020). In the landscape review, the two landscapes that become the living source for these societies are the forest and the sea (Thue 2023). This paper examined forest governance by indigenous peoples from the perspective of customary policies and sustainable practices. Given their unique characteristics, indigenous peoples employ various forms of forest management and utilization as sources of livelihood, guided by their traditional wisdom and knowledge (Wyllie de Echeverria and Thornton 2019). The existence of indigenous peoples in a quarter of the world's landscapes with their knowledge, has taken care of 80% of the world's biological wealth (Toledo 2013). In Indonesia, forests are also an important source of livelihood for indigenous peoples to meet the needs of generations for now and in the future (inter and intra-generations) (Maskawati et al. 2018). Forests that are the living space and source of livelihood for indigenous peoples are customary (Cairns 2007).

In Indonesia, the journey to recognize indigenous peoples' rights to customary forests has been complex and lengthy, continuing into the present day. Before the Indonesian Constitutional Court or *Mahkamah Konstitusi* (MK) Decision Number 35 of 2012, Article 1, paragraph 6 of Law Number 41 of 1999 on forestry classified customary forests as state forests within indigenous territories. This classification, established through territorialization as per Article 1, Paragraph (6) of the Forestry Law, was central to arguments presented by the Indigenous Peoples' Alliance of the Archipelago or *Aliansi Masyarakat Adat Nusantara* (AMAN) and two distinct indigenous communities when they sought a judicial review from the MK in 2012. On 16 May 2013, the MK partially granted AMAN's application for judicial review. The MK Decision Number 35 of 2012 addressed the Judicial Review of Law Number 41 of 1999 on Forestry. This decision resulted in the unconstitutionality of classifying customary forests as state forests under Law Number 41 of 1999. The court primarily focused on two constitutional aspects: the status of customary forests and the conditional recognition of indigenous communities' existence. While the court nullified the classification of customary forests as state forests and recognized their unique status, it declined the request to remove the conditions for recognizing indigenous communities as outlined in the Forestry Law (Afiff and Rachman 2019; Fisher et al. 2020; Matuankotta and Holle 2022).

The MK's rejection of the 'conditional recognition' clause presents a hurdle in recognizing indigenous peoples and their traditional rights, particularly their authority over customary forests as essential living spaces. Acknowledging indigenous peoples' rights to customary forests remains a persistent and contentious issue (Kenrick et al. 2023; Pereira 2021). The Indonesian Government has introduced various schemes and policies, including procedures for establishing customary forests, to address the recognition of indigenous peoples' rights (Nugroho et al. 2023; Rakatama and Pandit 2020; Sahide et al. 2020). Indigenous peoples must first receive official recognition through a regional regulation to secure their constitutional rights to customary forests. Once recognized as an indigenous community, they must apply for government approval to design customary forests. These interconnected processes highlight the overlapping authority of regional and central governments. Only after these steps are completed can the state acknowledge the community's ownership, control, management, and use of customary forest products (Myers et al. 2017; Sahide and Giessen 2015).

After MK Decision Number 35, the regulatory framework has undergone significant changes. These include introducing regulations such as the Minister of Environment and Forestry (MoEF) Regulation Number P21 of 2019, which deals with customary and private forests. When this regulation took effect, customary territories were registered in as many as 14 locations. These areas include the Sebotok Customary Area–West Nusa Tenggara, Bakungan in East Java, Demianus Yesawen Birburdeti in West Papua, Iban Sadap in West Kalimantan, Nua Paumere in East Nusa Tenggara, Animha, Wanijan, Manere and Klesi in Papua, Cenreangin, Bululewang, Arapongka, Tore'a in South Sulawesi, Kampung Lanso in West Kalimantan. These customary areas are still registered. So, according to customary forest management regulations, the community has not been able to utilize forest products as long as it has not been determined (Arizona et al. 2014; Duile 2020; Laturette 2017; Myers et al. 2017).

Meanwhile, in 2019, the number of customary territories that are still in verified status to date is 15 customary areas, namely Huta Langge Langge, Talian Lumban Nahor, Bius Lobu Tua and Huta Natumingka, Sigapiton in North Sumatra Province, Sadei Air Lanang in Bengkulu, Kampung Karangan Panjang, Kampung Laman Talue, Dayak Seberuang Ansok, Riam Batu, Ketemangungan Tamambaloh in West Kalimantan. East Nusa Tenggara has four verified customary areas, including Wolomari, Nua Saga, and Nua Boafeo. South Sulawesi has the customary territory of Lili'na Kesu' and To Kulawi Ngata Sungku in Central Sulawesi. At that time, only three customary territories had certified status. They are Laman Boyutn and Menua Iban Kulan, located in West Kalimantan. The two areas have not been designated as customary forests until now. Currently, only 1 one customary area has been designated as a customary forest, namely Lewu Tumbang Kuayan located in Central Kalimantan Province.

The regulation was later updated through the MoEF Regulation Number P17 of 2020. Acquiring recognition for customary forests remains a complex process, and indigenous peoples encounter further challenges in utilizing forest products from customary forests, such as timber forest products. The MoEF Regulation Number 17 of 2020 regulates in a more complex manner the process of granting management rights to indigenous peoples, where this regulation regulates the necessity of two types of regional regulations, namely regulation and determination. If indigenous peoples have obtained a determination, they have access to apply for management to become customary forests. This is not the case if the new indigenous people have regional regulations regarding the regulation, they must obtain a regent/mayor decree.

The situation of process of applying for customary forest management permits has a very influential impact on indigenous peoples, including (a) regional regulations and/or decisions of regional heads become a political process, not solely influenced by the readiness of the regional government, (b) indigenous peoples who are in the same administrative area will compete in terms of obtaining recognition and management rights, even though the recognition and granting of management rights is the state's obligation to recognize and respect it, and (c) there are limitations in the space of other legal products that have the same substance purpose. In addition, the regulation has closed the mapping process previously carried out by participatory. This is shown by one of the requirements for submitting customary forests in the form of the results of the identification and mapping of customary territories. In the MoEF Regulation Number 17 of 2020, the process is handed over to two parties: an integrated team formed by the regent/mayor or an integrated team of the MoEF. This closes the space for participatory mapping that indigenous peoples often run as their internal initiative to assert their customary territories. So that this

arrangement further complicates the process of fulfilling the requirements for applying for customary forests (Dore 2021).

The use of timber forest products from these areas is governed by additional regulations like the Timber Legality Assurance System (TLAS). Timber forest products in customary forest areas hold the potential to improve indigenous peoples' welfare and contribute to regional income. In general, the planting system by indigenous peoples implements an agroforestry system, which is considered capable of increasing land productivity and the income and welfare of indigenous people (Samrin et al. 2024). After MK Decision Number 35, new regulations and policies have inadvertently restricted indigenous peoples' access to forests. Complex administrative processes, procedural hurdles, and differing interpretations among national and regional stakeholders challenge indigenous peoples' forest management. Additionally, indigenous communities face strict rules and regulations for verifying and certifying the legality of timber from customary forests. Indigenous peoples play a vital role in forest conservation, so their fair involvement in these processes is crucial (Fa et al. 2020; Gabriel et al. 2020; Tran et al. 2020). The study highlighted indigenous peoples' challenges in accessing and using forests and forest products in customary forests: Does the implementation of timber legality and assurance certification ensure the well-being of indigenous peoples? This paper seeks to present a current overview of the recognition of customary forests, the identification of indigenous communities, and the implementation of related policies in Indonesia. It also offers insights and recommendations to align the processes of acknowledging indigenous communities and customary forests with the specific needs and circumstances of indigenous peoples in Indonesia.

The primary goal of the research was to gain a nuanced understanding of how indigenous peoples in Indonesia currently utilize forests and how these practices are impacted by state regulation. By focusing on the lived experiences of indigenous communities, the study aimed to highlight the challenges they face in accessing and using forests and forest products in their traditional territories. In particular, the research sought to identify obstacles to recognizing indigenous peoples' rights, including land tenure issues, restrictions on resource use, and potential conflicts with state policies. By addressing these challenges, the study intended to contribute to a broader conversation about Indigenous rights, conservation, and sustainable forest management in Indonesia, where sustainable forest resource utilization can alleviate poverty (Mohta et al. 2023).

2. Materials and Methods

This study adopts a comprehensive approach to collect and verify information about forest use by indigenous peoples and their regulation by the state in Indonesia. First, the researcher reviewed laws and regulations related to indigenous peoples' use of forests. The regulations used are specific to those after the Constitutional Court or *Mahkamah Konstitusi* (MK) Decision Number 35 of 2012 issuance to the regulations issued in 2021. The regulations studied are from the national level to the local government level. The substance studied is about granting forest management rights to the community.

Furthermore, a review was conducted using allowed forests based on the permits granted, including timber from rights forests and customary forests. To strengthen the study's results, interviews with experts were conducted (Laraswati et al. 2022). Experts selected based on their role as experts in making regulations on customary forests and experts in forest governance are in Indonesia. Key informants for this study are senior experts from the Ministry of Environment and

Forestry (MoEF) of Indonesia, the Advocation and Policy Manager of AMAN, professors from IPB University, and expert staff from the MoEF. They were selected based on their capacity as community policy advocates and experts in policies and regulations on customary forests.

In addition, this study also uses information and experience from the second author in this paper (Aguinis and Solarino 2019; Spigelman 2001; UCLA 2016). Using exploratory and examination methods, the researchers carefully collected data and insights from previous studies and related academic literature and legislative texts (Rahayu et al. 2019). Interviews with experts in the field aim to ensure that the conclusions drawn are grounded and accurate (Maryudi and Fisher 2020; Von Soest 2023).

3. Results and Discussion

3.1. Indigenous Society and Forests as Their Living Space

The UN stated that the number of indigenous peoples in the world is estimated at 478 million people living in 90 countries and representing about 5,000 different cultures. Of these, only 28% of them have access to land. Indigenous peoples in the world can provide food from a system that they implement. About 50–80% of them can meet their own food needs. The cultural and economic survival of indigenous peoples and tribes and their members depends on their access to and use of natural resources in their territories that are associated with their culture and found in them. Without land and resources (including forests), the physical and cultural survival of the indigenous people is at stake. On this basis, the world feels the need to take special measures to protect their rights to property in order to guarantee that they can continue to live their traditional way of life and that their different cultural identities, social structures, economic systems, customs, beliefs and traditions are respected, guaranteed and protected by the State (United Nations 2021). Thus, it can be understood that indeed without the indigenous people there would be no forests, and without forests, there would be no indigenous peoples (UN-REDD 2023).

Meanwhile, Indonesia, which consists of 13,000 islands with an area of 7 million km², has a population of 273 million with more than 1,000 types of tribes and communities with culture and traditions (Mugnier et al. 2023). Indonesia is inhabited by around 50 to 70 million indigenous peoples and varying numbers of people spread across all provinces in Indonesia (AMAN 2021). Since ancient times, indigenous peoples have considered forests a source of life and their living space (de Pater et al. 2024; Martinez-Cruz et al. 2024; Plieninger et al. 2023). Forests are the mother of indigenous peoples in Indonesia. A mother is an analogy of the source of life between indigenous peoples and forests, as done by the Pasang Ri Kajang Indigenous People in the Ammatoa Kajang customary forest in Bulu Kumba Regency, South Sulawesi Province (Fatra et al. 2021; Kambo 2021). The source of life and living space is not only a food provider but also a provider of medicines (Ehara et al. 2023) and spiritual benefits (Widen 2023). The source of life is also for the Tamambaloh Dayak Indigenous People (Efriani et al. 2020) and the indigenous people of Papua (Barri et al. 2019). With these relationships formed, indigenous peoples have a very important role in forest conservation and biodiversity resources (Dawson et al. 2021). More deeply, the system of implementing forest protection and utilization carried out by indigenous peoples with their traditional knowledge can be used to improve the way of forest management that is wise (Akalibey et al. 2024; Hattu and Tahamata 2024; Parks and Tsioumani 2023). Therefore, providing guarantees to indigenous peoples to use forests based on their traditional

values and rights is a form of the state fulfilling its promise to indigenous peoples as mandated by the MK Decision Number 35 of 2012 (Rumiarta et al. 2022).

3.2. *The Policy on Customary Forests in Indonesia*

3.1.1. *How is the implementation of customary forest policies in perspective today before and after the issuance of Constitutional Court Number 35 of 2012?*

Before the MK Decision Number 35 of 2012, customary forests were classified as part of state forest territory within forestry laws. The introduction of the Indonesian Law Number 5 of 1967, establishing the basic provisions for forestry during the New Order era, marked a significant shift, as it reinstated the *Domein Verklairing* concept, which had been abolished by Law Number 5 of 1960, the Basic Agrarian Regulations. This Forestry Law was seen as an effort to assert state control over customary lands. It involved resettlement programs that legally displaced indigenous communities from their ancestral lands, including customary forests they managed (Duile 2020; 2021).

The regulations for customary forests are outlined in Law Number 41 of 1999 concerning Forestry, which replaced Law Number 5 of 1967 on the Basic Provisions of Forestry. Article 1, Point 6 of Law Number 41 of 1999 defines customary forests as state forests within indigenous territories under customary law. This interpretation sustains state control over forests, including those classified as customary forests owned by indigenous peoples. The categorization of customary forests as state forests has caused land tenure conflicts in forested areas, resulting in disputes between indigenous peoples and the government and tensions with loggers who receive government-granted licenses (Mia et al. 2017).

In response to these issues, in 2012, the Indigenous Peoples' Alliance of the Archipelago (AMAN) collaborated with two indigenous peoples from Kenegerian Kuntu in Riau Province and Kasepuhan Cisitu in Banten Province to submit a request for a review of Law Number 41 of 1999 on Forestry. The primary arguments put forth by AMAN in their request for a legal review include:

1. The law has led to uncertainty surrounding the rights of indigenous peoples over their ancestral territories;
2. It has contributed to poverty among indigenous communities;
3. The law is incongruent with the fundamental objective of the Republic of Indonesia, as stated in the preamble of the 1945 Constitution, which emphasizes the protection of the Indonesian nation, the homeland, and the promotion of public welfare;
4. The law contradicts the purpose of recognizing indigenous peoples, as articulated in Article 18B, paragraph (2), and Article 218I, Paragraph (3) of the 1945 Constitution. The recognition of indigenous peoples' existence and their traditional rights within the constitution reflects an acknowledgment and respect for the reality that certain community groups existed long before the establishment of the Republic of Indonesia.

On 16 May 2013, the MK rendered its verdict on AMAN's judicial review application. The ruling addressed two constitutional issues: the status of customary forests and the conditional recognition of indigenous peoples' existence. The court sided with AMAN regarding customary forests, stating that these should not be classified as part of state forests but rather recognized as a separate category owned by indigenous peoples. The court criticized the existing forestry law for including customary forests in the state forest classification, arguing that it overlooked Indigenous Peoples' rights and breached the constitution. Nevertheless, the MK declined AMAN's request to

remove the prerequisites for recognizing indigenous peoples' presence, as stated in the Forestry Law. Consequently, Article 67, paragraph (1), which addresses the conditional recognition of indigenous peoples' existence, was upheld and enforced according to the court's decision.

If previously customary forests were not adequately recognized in state forest management in Indonesia, then after MK Decision Number 35 of 2012 issuance, attention to customary forests began to emerge (Budiman et al. 2021; Harada et al. 2022). The MK's decision is a breakthrough and new hope for indigenous society to manage their customary forests. This momentum should encourage faster changes in recognizing indigenous peoples for their rights (AMAN 2021; Myers et al. 2017). The real impact of the issuance of the MK Decision Number 35 of 2012 is that customary forests are no longer state forest areas but have been returned to indigenous society (Arizona et al. 2014). Recognizing customary forests in Indonesia's forest management context marks a new chapter in history. According to Article 1, Number 7 of Government Regulation Number 23 of 2021 on Forestry Management, a Customary Forest is defined as a forest located within the territory of indigenous peoples. However, indigenous peoples have inhabited these lands long before Indonesia's independence (Rauf 2020).

According to the AMAN's 2020 Annual Note, the MK Decision Number 35 of 2012 marked a turning point for Indigenous Peoples, sparking the development of policies that revise and transform regulations on forests and natural resources, both generally and about specific arrangements within customary forest areas. Nevertheless, AMAN asserts that the emerging policies fall short of these corrective intentions. The most recent policy regarding customary forests, MoEF Regulation Number 17 of 2020 concerning Customary Forests and Private Forests, is criticized by AMAN as merely reiterating previous similar policies.

Since 2013, Indigenous Peoples and civil society organizations have been working to adhere to the procedures outlined in various technical policies concerning customary forests. This includes advocating for local governments to create regional regulations recognizing indigenous peoples. There have been 158 regional legal products regarding indigenous peoples, distributed as follows: 11 provincial regulations, 1 governor regulation, 57 regional regulations, 2 regent regulations, and 87 regent decrees across 23 provinces and 65 regencies. Among the 65 regencies with local legal products related to indigenous peoples, 30 regencies have advanced to recognizing indigenous peoples and their territories. Meanwhile, five regencies have only established committees for indigenous peoples, and 30 have not yet taken further action to implement their regional legal products. This indicates that 53% of local governments have not fulfilled their responsibilities in executing the regional legal products they have established (AMAN 2021).

According to the participatory mapping of 968 Indigenous Peoples, covering 12.4 million ha and registered by the Indigenous Territory Registration Agency or *Badan Registrasi Wilayah Adat* (BRWA), there are currently 99 indigenous areas that local governments have officially recognized through regional legal products. These areas cover 2.56 million ha. Additionally, 616 maps of indigenous areas encompassing 7.16 million ha have been regulated by regional legal products, but their process still needs to be completed with a Decree or Regent Regulation. Regional legal products have yet to cover the remaining 2.71 million ha of indigenous areas.

The MoEF has established an area of customary forest covering 59,442 ha across 80 decrees (Perbawati et al. 2023). This amount is significantly small compared to the potential customary forests of 8,748,109 ha identified by AMAN, BRWA, and JKPP in August 2021. Hence, to expedite the recognition of customary forests, there is a need for strong political commitment and legal innovations from the government to support the management and acknowledgment of

indigenous peoples and their rights to their territories (Gaul and Hartono 2021; Hidayat et al. 2018; Patittingi 2020; Ungirwalu et al. 2021).

Table 1 showcases the results from a policy analysis centered on applying forest management permits within various social forestry schemes. This analysis follows the guidelines set by the MoEF Regulation Number 9 of 2021, which pertains to the management of social forestry.

Table 1. Number of paragraphs, articles, sections and letters governing applications for approval of social forestry according to MoEF Regulation Number 9 of 2021

Schematic	Paragraph	Article	Section	Letters
Village forest	3	9	42	88
Community forest	3	9	40	83
Community plantation forest	2	9	40	85
Forestry partnership	2	8	34	48
Customary forest	3	14	53	92

Table 1 reveals that recognizing and acquiring customary forest permits is governed by three paragraphs, 14 articles, 53 sections, and 92 letters. This level of regulation for customary forests is more extensive than for other social forestry licensing schemes. Consequently, the process involves a complex and lengthy chain of procedures. Fig. 1 illustrates the steps for proposing customary forests by communities governed by customary law, per the Regulation of the MoEF Number 9 of 2021 concerning the Management of Social Forestry.

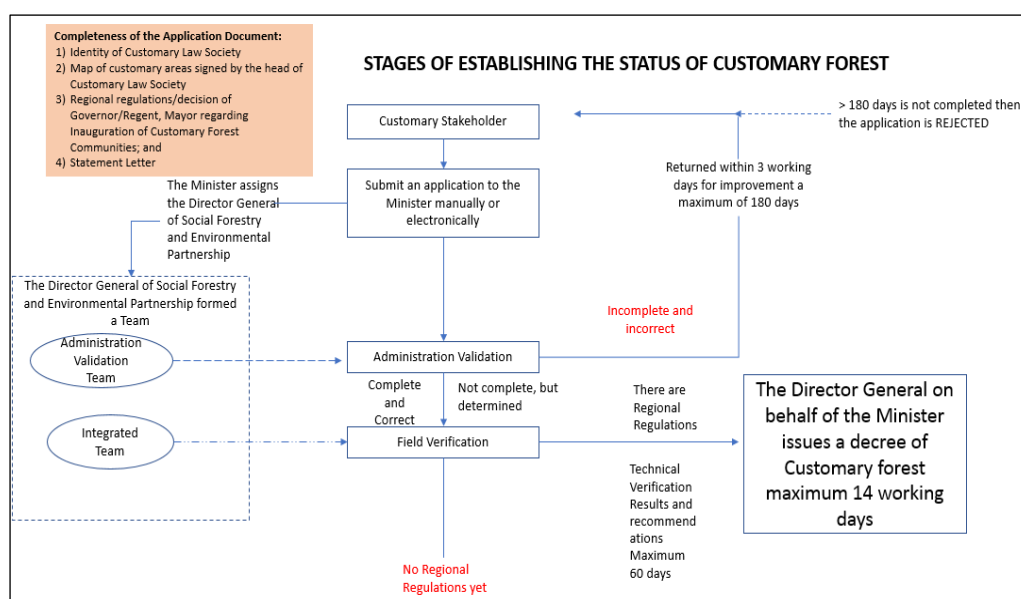


Fig. 1. The process and stages of applying for the status of customary forests by indigenous law communities.

Fig. 1 demonstrated that prior to applying for customary forest status, the area being proposed, and the status of indigenous peoples must first receive recognition as customary law communities. To apply to customary forest, it is necessary to provide documents that include the identity of the customary law communities, maps of customary areas, regional regulations, and a declaration letter.

3.1.2. The circumstances of forest utilization in the existing customary forest regime when viewed from the welfare perspective of customary forest management community

As of 2020, AMAN has recognized a potential customary area of 42,049,000 ha, with 10,562,000 ha proposed to the Government. Out of this proposed area, the Indigenous Territory Registration Agency has registered 11,185,214.75 ha through participatory mapping of indigenous peoples. The Ministry of Environment and Forestry also identified 6,551,305 ha as potential customary forest areas (AMAN 2021). Given this expanse, indigenous peoples who rely on forests for their livelihood can sustain themselves through forest resources and environmental services. **Table 2** provides an overview of the economic value of natural resource products and environmental services for six indigenous communities within forest areas: Karang-Lebak Community, Kajang-Bulukumba Community, Kallupini-Enrekang Community, Seberuang-Sintang Community, Saureinu-Mentawai Community, and Moi Kelim-Sorong Community.

Table 2. The economic value of natural resource products and environmental services in 6 customary forests (1 USD = IDR 13,831) (Hidayat and Sidiq 2019)

Indigenous community	Economic Value of Natural Resource Products and Environmental Services
Kesepuhan Karang	IDR 36.2 billion/year IDR 16.32 million/capita/year IDR 1.36 million/capita/ month
Kajang	IDR 28.92 billion/year IDR 6.42 billion/capita/year IDR 0.54 million/capita/month
Kallupini	IDR 35.59 billion/year IDR 5.07 million/capita/year IDR 0.42 million/capita/ month
Seberuang	IDR 38.49 billion/year IDR 36.43 million/capita/year IDR 3.04 million/capita/ month
Saureinu	IDR 33.54 billion/year IDR 23.19 million/capita/year IDR 1.9 million/capita/month
Moi Kelim	IDR 159 billion/year IDR 41.23 million/capita/year IDR. 3.44 million/capita/month

Research conducted by AMAN in collaboration with three universities in Indonesia (IPB, UI, and UNPAD) in 2018–2019 demonstrated the significant economic value of forests, suggesting that indigenous peoples can achieve self-reliance without external investment if they are recognized and allowed to harness these natural resources for their livelihoods. Additionally, the economic value and environmental services of forests managed by indigenous peoples can contribute to regional development. Proper recognition, respect, and fulfillment of the rights of indigenous peoples would provide investment security and allow the community to engage in open discussions through FPIC (Free, Prior, and Informed Consent), ensuring a legal and legitimate approach (Ahmad et al. 2018).

FPIC, defined as free, prior, and informed consent, is an international legal instrument that protects the rights of individuals or communities potentially affected by a development project (Mitchell et al. 2019). For effective economic advancement in forest utilization, the FPIC process

should be executed accurately to determine the optimal forest management scenario for indigenous peoples' living spaces. Proper FPIC implementation can prevent misalignment between policy and practice. However, this is not solely an economic issue; it also involves preserving social and cultural values. Customary forests serve as key indicators of the values of indigenous communities' lives, encompassing environmental buffer zones, water sources, and spiritual significance (Ifrani et al. 2019; Leo et al. 2022).

The recognition of customary forests serves as a means for resolving conflicts, particularly tenure disputes in forest areas, due to the overlap in the use of these areas. Guaranteeing the rights of indigenous peoples within customary forests also provides a foundation for sustainable management of these forests in Indonesia (Arizona et al. 2014). One aspect of this challenge is the presence of mining permits in forested areas and palm oil companies operating in forested zones that overlap with indigenous territories. This has led to conflicts that criminalize indigenous peoples within their lands (Ari et al. 2021; Hendra et al. 2023; Satyawan et al. 2022).

For example, in the case of Halmahera, there is a home range of the indigenous Tobelo Dalam tribal community, also known as O Hongana Manyawa or Togutil, which the government has designated as a state forest area. This land contains an active mining operation without the necessary permits. The situation has threatened the well-being and living space of the Tobelo Dalam community. These indigenous peoples face not only threats to their habitat but are also socially stigmatized as undesirable individuals, in part because they live in the forest without external contact. Their way of life is increasingly at risk due to river pollution, diminishing hunting grounds, and a struggle for space for forest plots. As a result, the current situation has yet to address the welfare of the indigenous community (Rumadan and Salamah 2023).

The economic value of natural resources and environmental services in the six indigenous areas greatly determines the welfare of the society in the six areas (**Table 1**). The results can be directly utilized from the forest and the environment for agriculture, plantations, and fisheries (Ahmad et al. 2018). The economic value of forest resources and environmental services from these customary forests has not yet been used optimally, so the benefits of forest resources are still very small for the region's indigenous community. Achieving the low level of customary forest is based on several factors. Recognizing customary forests is complex due to the multi-layered bureaucratic and administrative steps involved. This complexity is further exacerbated by the lack of readiness by local governments to provide services and facilitate the recognition of indigenous peoples. Additionally, the creation of local legal products related to the recognition of customary forests is intertwined with the political processes at the local government level (Furness et al. 2015; Maryudi et al. 2022; Sahide and Giessen 2015).

The policy approach that focuses on granting utilization rights to customary forests does not equate to acknowledging the authority of indigenous peoples to control and manage their customary forests. This approach views the rights of indigenous peoples to their forest ecosystems and the broader relationship between indigenous peoples and the state. The perspective of granting rights to customary forests suggests a paradigm that restricts the determination of customary forests to forest areas that are already subject to permits or located within conservation areas (Jemarut et al. 2023; Khaidar and Nugraha 2022; Siagian 2021).

The Forestry Law, being a sector-specific law, overreaches its authority in determining the conditions for the existence of indigenous peoples. This approach also presents another issue: a uniform perspective on indigenous communities, which fails to account for the vast diversity and complexity of these communities across Indonesia. In Papua Province, the Jayapura Regency

contains customary forest areas known as Orya Oktim, Unurum Guay District, Yapsi District, Kaureh District, and Airu District. These areas make up 66.74% of the total area of Jayapura Regency, encompassing approximately 1,169,553 ha (Zakaria et al. 2020). The Jayapura Regency of Papua Province has a forest area rich in biodiversity, including valuable wood resources. The province has specific regional regulations covering various aspects of forest and forest resource management. These include Special Regional Regulation Number 19 of 2008 on the Protection of Intellectual Property Rights of Indigenous Papuans, Number 20 of 2008 on Customary Courts, Number 21 of 2008 on Sustainable Forest Management in Papua Province, Number 22 of 2008 on the Protection and Management of Natural Resources of Indigenous Communities, and Number 23 of 2008 on the Ulayat Rights of Indigenous Peoples and Citizens' Individual Rights.

However, research by the KARSA research team indicates that the effective implementation of these special regional regulations and their associated implementing regulations is hindered by conflicting references to national-level legislation, particularly Law Number 41 of 1999 on Forestry, and Law Number 21 of 2021 on Spatial Planning (Zakaria et al. 2020). This ineffective policy implementation means Papua's use of timber and non-timber forest products has not sustainably contributed to community welfare. Additionally, the complexity of regulations is compounded by violations of the legality of timber forest products. Observations from the Forest Independent Monitoring Network (JPIK) reported on 14 September 2021, that 32 companies violated timber legality principles across upstream, downstream, and market areas.

In the upstream area, several types of violations were observed. These include falsifying timber documents legitimized with a timber certificate from the Land Rights Owner. Additionally, Timber Utilization Permits (TUPs) were misused by pretending to be farmer groups engaging in illegal logging outside TUP areas. Timber from illegal logging was falsely claimed to have come from TUP locations, and companies exploited indigenous peoples' claims over their customary forests as a means of encouraging communities to conduct illegal logging. Some companies logged outside their concession areas but then legitimized the activity with timber certificates as though the timber originated from within the concession.

Moreover, certain companies failed to report compliance with raw materials as required by the Industrial Raw Material Fulfillment Plan (IRMFP). In the downstream sector of the industry, violations occur when companies manipulate records of wood mutations to falsely link timber to a particular company despite it being sourced from illegal logging activities. These companies alter transportation documents, showing that the wood has passed through several intermediaries. This manipulation aims to obscure the true origin of the timber, which is sourced from illegal logging (Eddyono 2017; Telapak 2021).

Such tactics are used to exploit weaknesses in the Timber Legality Assurance System (TLAS) regulations, which only require tracking timber one step back in the supply chain and do not mandate reporting wood mutations to the relevant Certification Agency or Forestry Service, despite the occurrence of these mutations. Companies sometimes switch to a different certification agency after revoking their original certification, attempting to circumvent legal obligations. In the market sphere, instances of V-legal abuse involve multiple non-producing exporters who offer V-legal documentation services. Forwarders or cargo expedition companies act as intermediaries, brokers, or negotiators in this process. Medium, small, and micro-sized enterprises purchase these V-Legal documents for their operations. The cost of acquiring and selling V-Legal documents ranges from IDR 2 to 8 million per container, varying depending on the goods' HS code (trade classification number). The Timber Legality Assurance Agency (TLAA)'s insufficient oversight

of non-producing exporters has rapidly increased illegal trade involving V-Legal documentation. This issue highlights the complex dynamics within the political landscape, especially concerning the decentralization of authority between central and local government entities (Tyson 2010).

3.1.3. *The potential of timber legality assurance system (TLAS) in customary forest*

The results of research published by KARSA in 2020 in the customary Forest area in the Traditional Territory of Riam Tinggi Village, Lamandau Regency, Central Kalimantan; Wana Posangke customary Forest, Morowali Regency, Central Sulawesi; and the customary Forest in Yapsi District, Jayapura Regency, Papua also showed that the community in the area still faces problems related to the use of forest products in the form of timber. Using timber from customary forests faces challenges, particularly regarding certification requirements that demand tenure legality. Some findings from studies highlight stakeholders' concerns about the capability to manage customary forests effectively and the complexities of integrating customary forests into timber certification schemes (Myers et al. 2020; Zakaria et al. 2020).

There are fears that these processes could lead to forest degradation. Indonesian regulations have shifted focus from Timber Legality Certification to Sustainability Certification and verification by the Timber Legality Assurance System (TLAS), as adjusted by the Job Creation Act. However, doubts persist about the capacity of customary forest managers to meet the criteria, indicators, and verifiers required by these certification standards. These doubts are reasonable given that the management and utilization of customary forests are often conducted in simple, practical, and subsistence-oriented ways, with production volumes primarily focused on meeting daily needs. This traditional approach may pose challenges for forest managers trying to navigate and comply with more complex certification requirements (Zakaria et al. 2020). Balancing the environmental, financial, and societal aspects of forest management remains a major challenge for community-based stakeholders and the recognition of indigenous peoples' rights. To ensure fair treatment of indigenous communities in the management and sustainable use of forests, it is crucial to establish clear regulatory frameworks that adhere to normative standards and cater to local indigenous populations' unique needs and expectations (Ungirwalu et al. 2021).

In an interview with AMAN on 23 December 2021, it was emphasized that the Timber Legality Assurance System (TLAS) faces significant challenges when applied to customary forests. There is a need for special provisions to tailor the TLAS for use in customary forests. A generic, standardized approach is unsuitable, as the utilization of timber or non-timber forest products (NTFPs) in customary forests is subject to indigenous areas' specific practices and regulations. For instance, in the customary forest of Kajang, Bulu Kumba, South Sulawesi, timber trade is prohibited because the forest is a critical water source, and deforestation could lead to drought. Additionally, the forest plays a role in traditional rituals, such as installing new indigenous leaders. These forests' unique cultural and environmental significance requires a specialized approach to TLAS implementation (Salaka et al. 2018).

The new policy will extend the Timber Legality Assurance System (TLAS) to non-timber forest products (NTFPs). In addition to timber, forests provide various other products, such as coffee in forested areas of Papua. This expansion raises questions about how TLAS will apply to these products and whether including them under the same system as timber will be practical. If a forest's function is designated as protection, it could conflict with timber extraction from the area. In terms of institutions, there may be a need to establish or manage new ones to facilitate the

implementation of TLAS in customary forests. Equating the TLAS mechanism for customary forests with non-customary forests is inappropriate from a legal standpoint. Customary forests belong to indigenous peoples, reflecting their collective rights, and their usage is governed by customary rules, which may exclude outsiders. Economically, integrating community forests into TLAS raises questions about potential benefits for indigenous communities. According to research conducted by AMAN in 2012, indigenous communities reported a lack of clear economic benefits from TLAS, and the costs involved were often higher than the costs of illegal logging. Furthermore, customary forests hold significant value for indigenous peoples beyond economic interests; they serve as living spaces and sites for sociocultural interaction with nature (Myers et al. 2020).

4. Conclusions

The current state of customary forests significantly influences the projected governance of these forests over the next decade. Given the present circumstances, a legal breakthrough is necessary to enable the recognition of indigenous communities and their rights to their ancestral lands. As an interim measure, before the full establishment of indigenous peoples, participatory mapping of indigenous territories, submitted to the government and recognized by local legal instruments, should also confirm the recognition of customary forests. Once local government grants these rights, specific regulations are needed to support forms and models of forest management by indigenous communities based on their traditional knowledge and aligned with ecological balance. The lack of clear laws regarding the status of indigenous peoples in Indonesia restricts deeper research, including studies on indigenous peoples' use of timber forest products. A thorough, in-depth study is essential to assess the compatibility of customary forests with the Timber Legality Assurance System (TLAS). To facilitate this process, establishing a dedicated task force comprising legal experts, indigenous leaders, and government officials could help streamline the development and implementation of supportive regulations and ensure that indigenous knowledge is effectively integrated into forest management practices.

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