

LEGAL PROTECTION OF THE CUSTOMARY RIGHTS OF THE RIMBA PEOPLE IN JAMBI PROVINCE

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Abstract

The state recognizes and protects Indigenous Law Communities (MHA) and their traditional rights in the constitution. One of the traditional rights held by MHA is customary rights. Some communities in Indonesia still live in groups and depend on the land/environment they recognize as customary rights. One of the Indigenous Law Communities is the Orang Rimba. The Orang Rimba live inside and outside forest areas, some of them still practice a semi-hunting-gathering culture and wander in the forest which they recognize as their living space. This study aims to examine the urgency of protecting the customary rights of the Orang Rimba and the implementation of the protection of their customary rights. Both issues are reviewed in normative juridical research, based on a set of regulations related to the recognition of MHA and customary rights that are still in effect in Indonesia. From the research conducted, it was found that the government has not fully provided legal protection for the customary rights of the Orang Rimba. The solution offered is a partnership agreement for area management and relocation of Orang Rimba settlements through the Remote Indigenous Community program.

Keywords: *Customary Law Communities, Customary Rights, Orang Rimba, Legal Protection*

Introduction

The state recognizes the existence of Indigenous Law Communities and their traditional rights, as stated in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. One of the traditional rights held by MHA is customary rights. The concept of customary rights originated from Dutch researchers who conducted studies on customary communities/associations spread across the Dutch East Indies. Van Vollenhoven in 1926 defined customary rights as *beschikkingsrecht* or association rights, these rights allow associations and their members to benefit from the land and everything that grows and lives on the land (Sari, 2021). Customary rights are a series of authorities and obligations of customary law communities, related to the land within their territory (Harsono, 2003). In various provisions governing customary rights and MHA, recognition of customary rights cannot be done immediately. Recognition of them is limited and must meet the conditions determined by the state. The most important condition is "as long as it still exists." The existence or non-existence of customary rights can be seen from the existence of customary law communities that have special characteristics as subjects of customary rights, the existence of land that is the object of customary rights, and the existence of customary law communities' authority to regulate their customary rights (Sumardjono, 2001).

In the Indonesian legal system, the existence of customary rights is recognized by the constitution, which is then translated into laws and technical regulations in several government sectors that manage natural resources. Initially, customary rights were explicitly recognized in Article 3 of Law Number 5 of 1960 concerning Basic Agrarian Regulations. The UUPA not only regulates land but also serves as an elaboration of the state's right to control natural resources. However, over time, many laws regarding natural resources were issued after the UUPA. During the New Order era, laws regulating forestry and mining began to be issued, this initiated the division of natural resource management sectors in Indonesia. After the Reformation, the Government and the House of Representatives (DPR) issued 16 laws related to natural resources, which also regulate the existence and rights of indigenous communities (Warman, 2014). In general, customary rights intersect two sectors: the land sector and the forestry sector. These two sectors are managed by two different ministries and also have different technical regulations regarding the handling or fulfillment of customary rights of indigenous communities. The recognition of customary rights in the technical regulations in the land and forestry sectors differs regarding the requirements and forms of

rights granted. The similarity between the two lies in *the legal standing* of indigenous communities, which must be formally recognized by the government through regional decrees or regional regulations. Recognition of customary rights is a form of legal protection that can provide legal certainty over land or areas recognized by customary law communities as customary rights. This study examines the implementation of a set of regulations in the land and forestry sectors that are applied in fulfilling the customary rights of the Orang Rimba in Jambi Province. The Orang Rimba are the object of customary rights research because they still live with a semi-hunting and gathering culture both inside and outside forest areas. Therefore, by examining the protection of customary rights of the Orang Rimba, it is possible to measure the implementation of customary rights protection inside and outside forest areas.

Research Methods

This research uses a normative juridical method by raising two problem formulations, namely the urgency of protecting the customary rights of the Orang Rimba and the implementation of customary rights protection applied by the government to the Orang Rimba. In normative legal research, the author collects primary legal materials in the form of applicable laws and regulations and secondary legal materials from books, journals, and research reports related to the research topic. The collected legal materials and data will be examined holistically, followed by an examination of their implementation.

Results and discussion

Results

The Urgency of Protecting the Customary Rights of the Orang Rimba

The Orang Rimba live in groups led by a traditional leader called "Temenggung." They nomadic in the forest, which they consider their living space. Some still practice a semi-hunter-gatherer lifestyle, relying on the forest for their livelihood, while others live nomadically within Industrial Forest Plantation areas and oil palm plantations under Cultivation Rights (HGU). The Orang Rimba inhabit the lowland forest areas of Jambi Province. Their population is spread across three main areas: around the Bukit Duabelas National Park (TNBD), around the Bukit Tigapuluh National Park (TNBT), and along the Trans-Sumatra Highway. The following is a map of the distribution of the Orang Rimba group in Jambi Province, created by KKI Warsi (2020):

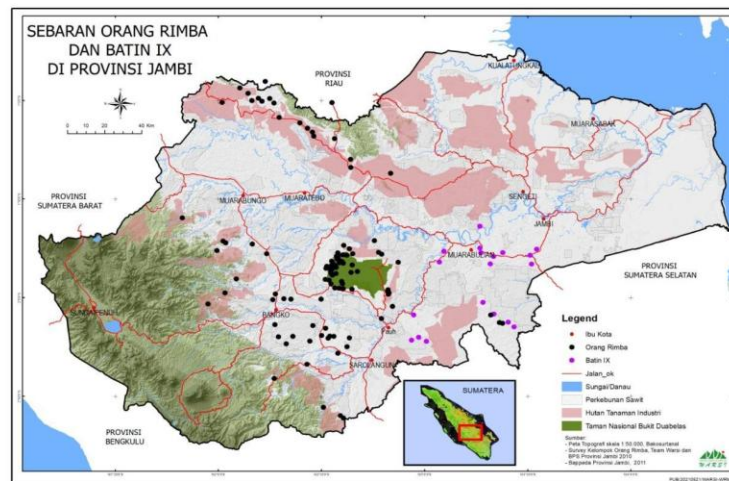


Figure 1 Distribution of Orang Rimba and Batin IX in Jambi Province

The Orang Rimba are highly dependent on the forest for all their needs. The loss of forest has had a significant impact on the Orang Rimba's livelihoods, not only causing food insecurity but also eroding their customs and culture in the long term. While the rate of deforestation in Jambi Province has been very high year after year, according to data from the Indonesian Conservation Community (KKI) Warsi, in 2018, forest cover in Jambi was only 920,000 hectares, or 18 percent of the total area of Jambi. Compared to 1990, Jambi's forest cover was still 2.5 million hectares (Tambunan, 2018). The loss of forest as their primary living space and source of livelihood has forced the Orang Rimba to adapt to their new environment. As their living space changes, some groups choose to move deeper into the forest, others choose to stay, and others move to relocation settlements. Adi Prasetyo classifies three types of Orang Rimba groups based on their lifestyle after forest clearing: those who still pursue a nomadic hunter-gatherer lifestyle, those who are semi-sedentary, and those who are fully sedentary (Prasetyo, 2017). Each of these adaptation strategies

has a significant impact on the Orang Rimba's culture and lifestyle. Those who choose to remain in areas that have been converted survive by collecting oil palm fruit scraps (*loose fruit*) for sale. Some groups even become beggars along the Trans-Sumatra Highway all the way to Jambi City. The presence of companies in the Orang Rimba's living space has sparked ongoing conflict and humanitarian tragedy. Those who choose to remain in areas converted to plantations often encounter both the company and villagers when searching for oil palm fruit bunches on company premises or in community gardens. On April 29, 2025, one Orang Rimba died and another was seriously injured after being assaulted by security officers from a palm oil plantation in Tebo Regency, accused of stealing oil palm fruit bunches (Arif, 2025). Despite the numerous conflicts since the 1980s, the government has yet to take a serious approach to protecting the customary rights of the Orang Rimba. The proposed solution is the development of relocation settlements for the Orang Rimba through the Remote Indigenous Community (KAT) program. This forces the Orang Rimba to adapt to a settled lifestyle and abandon their hunter-gatherer culture. This solution also fails to guarantee legal certainty for the customary rights of the Orang Rimba, who are forced to abandon their living space.

Implementation of Legal Protection for the Customary Rights of the Orang Rimba

Legal protection can be *in abstracto* and *in concreto*, in terms of *in abstracto*, namely from the rules or legal principles made containing rules that protect the interests of individuals and society, while legal protection *in concreto*, namely in the application or implementation of the rules that have been made is carried out in accordance with applicable law so as to realize legal protection for society (Hadjon, 1987). In the context of land title certificates, Sri Hajati interprets it as a form of legal protection, with efforts to guarantee the security of individual and group rights, both from the actions of the authorities (government) and from interference from other parties in society. This concept can be divided based on two points of view, namely, from the perspective of the function of protecting the interests of society vertically and horizontally, then from the perspective of the purpose of protection as a preventive and repressive measure (Hajati, 2022).

Protecting customary rights is not as simple as issuing a Decree, but involves a long and complex process. Specifically, indigenous communities must first be recognized as customary law communities by the government. Only after this formal recognition can their customary rights be recognized. The procedures and procedures for recognizing customary rights also depend on where the customary rights are located. If they are located in a forest area, they must comply with the provisions of the Ministry of Forestry. If they are located outside a forest area, they must comply with the procedures set by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN). In the context of the Orang Rimba's customary rights, their status as a Customary Law Community (MHA) is first discussed, followed by the existence and protection of their customary rights within and outside the forest area.

1. Orang Rimba as a Customary Legal Community

Formal recognition of the Orang Rimba as Indigenous Peoples (MHA) is an absolute requirement for recognizing their customary rights. The procedures for recognizing MHA are regulated by the Ministry of Home Affairs, which issued Ministerial Regulation Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Indigenous Legal Communities. This Ministerial Regulation provides guidance to Regional Governments regarding the stages that must be taken by Regional Governments in identifying and recognizing the existence of indigenous legal communities. In the initial stage, Regional Governments establish MHA Committees at the Regency/City level, then conduct an MHA inventory, verify and validate MHA, and determine MHA through a Regional Head Decree or Regional Regulation. In the identification process, five main indicators that must be met include: history, customary territory, customary law, assets, and customary institutions.

Historically, the Orang Rimba's existence as a distinctive community can be traced back to the Malay Kingdom era and the Dutch East Indies colonial period, as documented in the ethnographic records of Dutch anthropologists such as Van Dongen and Boers, as well as in post-independence ethnographic works by Oyvind, Prasetijo, and other researchers. This demonstrates that the Orang Rimba have strong historical roots, which constitute a requirement for customary law. Furthermore, from the substantive aspect of customary law, the Orang Rimba's customary legal system is based on a cosmology of natural balance and collective memory passed down through *Seloko*. Their legal norms are hierarchically divided, with the highest law known as the Undang Nan Delapan. This law classifies crimes into two categories:

- a. The four above: Serious crimes that cannot be bailed out (such as incest), with the penalty of social expulsion or death;
- b. The four below: Crimes that can be rehabilitated through customary fines.

Regarding family and kinship law, the Orang Rimba adhere to a matrilineal system and apply the principle of group endogamy to maintain the purity of identity (Berta, 2014). Post-marital residence patterns are matrilineal, meaning the husband is subject to the rules of the wife's family (Steinebach, 2008). In addition, there is a preference for cross - *cousin marriage* , which is considered ideal for maintaining social harmony (Prasetijo, 2011). Institutionally, customary law is enforced through a hierarchical leadership structure led by a Tumenggung, assisted by customary officials such as the Tenggana (Prasetijo, 2011). Based on these empirical facts; namely the existence of history, living area, operating legal system, and functional institutions, the Orang Rimba have actually (*de facto*) fulfilled all the elements as a Customary Law Community. Therefore, formalizing recognition through regional legal instruments is an absolute step to provide legal certainty and protection of their traditional rights as mandated by the constitution.

2. Protection of Indigenous Rights of the Orang Rimba in Forest Areas

Following Constitutional Court Decision No. 35/PUU/-X/2012, which affirmed that Customary Forests are no longer State Forests, the direction of forestry policy has undergone a paradigm shift in recognizing customary rights. The government responded through regulations at the Ministerial Regulation level to implement the recognition of customary rights within forest areas. After undergoing several amendments, the current applicable regulation is Minister of Environment and Forestry Regulation No. 9 of 2021 concerning Social Forestry, which accommodates the recognition of customary rights both inside and outside forest areas through the Customary Forest scheme. The implementation of the designation of Customary Forests faces administrative obstacles, where the Ministry of Forestry requires the existence of regional legal products (Regional Regulations or Decrees of Regional Heads) that verify the existence of Customary Law Communities (MHA) according to the indicators of Minister of Home Affairs Regulation No. 52 of 2014. To date, there has been no determination of the status of Orang Rimba as MHA, so the government offers alternative solutions through the Conservation Partnership scheme (in conservation areas) and Forestry Partnership (in production forests).

In Jambi Province, the Orang Rimba's living space is concentrated in Bukit Duabelas National Park (TNBD), Bukit Tigapuluh National Park (TNBT), and the surrounding production forests. Specifically, in TNBD, the protection of customary rights has evolved through zoning mechanisms. The 2015 top -*down zoning system* was rejected for not accommodating customary land functions, and was subsequently completely revised in 2018. This revised zoning system was developed through a participatory approach, involving 13 Tumenggung groups as planning subjects to map the area, including delineating sacred areas such as *Benuaron* and *Pusaron* (TNBD, 2019). This reflects the fact that national park management has incorporated local knowledge and customary rights as the primary database. As a form of legal access, TNBD established a Conservation Partnership with the Orang Rimba group. Based on primary data, eight Tumenggung groups (including the Tumenggung Nangkus, Bepayung, and Nyenong Groups) have signed Cooperation Agreements (PKS) between 2018 and 2024, with specific partnership areas for the collection of non-timber forest products (TNBD, 2025). Meanwhile, in production forest areas, the Forestry Partnership solution is implemented to address tenurial conflicts resulting from Industrial Plantation Forest (HTI) permits, such as the agreement with PT. Wana Perintis in 2016. However, this model is considered less than ideal because the company's previous *land clearing activities* have degraded the primary forest ecosystem that is the basis of the Orang Rimba's religion, culture, and customs. Theoretically, the partnership scheme could be categorized as "pseudo-protection" because the state does not completely relinquish control of land ownership to the Indigenous Peoples' Association (MHA). However, from a sociological and practical perspective, the Conservation Partnership, supported by participatory zoning in the TNBD (National Park of the Borneo) National Park, has provided substantive protection for the Orang Rimba's living space by incorporating their customary rights into the state's legal framework.

3. Protection of Indigenous Rights of Orang Rimba Outside Forest Areas

The protection of the customary rights of the Orang Rimba outside forest areas (Other Use Areas) has undergone a dynamic regulatory evolution under the jurisdiction of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN). The initial foundation was laid through Agrarian Affairs and Spatial Planning/National Land Agency Regulation Number 5 of 1999, which established the parameters for the existence of Indigenous Law Communities (MHA). This paradigm then shifted through ATR/BPN Regulation Number 9 of 2015, which equated customary rights with communal rights, before finally being corrected by ATR/BPN Regulation Number 18 of 2019, which separated the customary land administration regime from communal rights (Sukirno, 2018). Recognition of customary rights with communal rights certificates is no longer valid. Currently, the reference is the Minister of ATR/BPN Regulation Number 14 of 2024 concerning the Implementation of Land Administration and Registration of Customary Land Rights. This latest regulation introduces a tiered scheme, starting from

administration (inventory, measurement, and recording in the Customary Land Register/DTU) to rights registration. If the MHA has legal recognition from the regional government (Regional Regulation or Decree of the Regional Head), the customary land registered in the DTU can be upgraded to Management Rights (HPL). This HPL registration is optional; customary land that is not registered as HPL remains recognized as customary land as guaranteed in Article 16 paragraph (1) of the a quo Ministerial Regulation. (Sumardjono, 2024). The concept of HPL on customary land leaves behind a residue of theoretical issues. HPL, which is based on the concept of *Beheerrecht* (state control rights), implies that the state delegates some of its authority to the rights holder. This creates uncertainty regarding the status of the land after the HPL expires, whether it will revert to state land or remain customary land. This requires further study to ensure legal certainty.

In terms of implementation, the agrarian conflict resolution between MAH and a company in Jambi Province applied the 2022 communal rights scheme to the Suku Anak Dalam (SAD) 113 group in Batanghari Regency. Through conflict resolution with PT. Berkah Sawit Utama, 11 certificates covering 770 hectares were issued on non-HGU land purchased by the company. However, it is important to clarify that ethnographically, the SAD 113 group is genealogically part of Suku Batin IX, not the Orang Rimba. To date, there has been no precedent for formal recognition of customary rights for the Orang Rimba community in Jambi Province, which resides outside forest areas. The state's approach to Orang Rimba outside forest areas remains social welfare, through the Remote Indigenous Community (KAT) program, which involves relocation and social assistance, rather than legal recognition of their customary territory.

Discussion

The Orang Rimba view the forest as their home or living space. In Orang Rimba cosmology, the forest has been a part of themselves and their group from birth to death. This view is in line with the concept of customary rights recognized in Indonesian law, namely that customary rights extend not only to land but also to the living environment of the Indigenous Peoples (MHA). Although recognized by the constitution, customary rights in Indonesian law have been degraded in their implementation. In the forestry sector, forests designated as state forest areas cannot be automatically transferred to MHA for management within the scope of customary rights. MHA must undergo a complex administrative process simply to prove their continued existence. In the land sector, recognition is achieved through the issuance of HPL certificates, which contradict the concept of customary rights and the state's right to control. The disparity in treatment between these two sectors has proven to make it difficult for indigenous peoples (MHA) to obtain recognition of their customary rights, particularly for those whose customary rights lie both inside and outside forest areas. In the context of the Orang Rimba, they must undergo administrative processes for recognition in both sectors. Furthermore, there is no special treatment for indigenous peoples in obtaining their customary rights; they are forced to compete with corporations for land and management rights. It is also important to note that if land recognized as customary rights is already controlled by corporations, under current law, there is no opportunity for indigenous peoples to obtain full recognition of their customary rights.

Conclusion

The protection of the Orang Rimba's customary rights is urgently needed, given the increasingly limited forest space available to them. Furthermore, full recognition is essential to resolve conflicts between the Orang Rimba and companies and to create legal certainty for them. The government's legal protection efforts over the years have remained superficial. The government has never provided comprehensive protection by fully recognizing the customary rights of the Orang Rimba; the efforts made have been temporary, with agreements on area management. Meanwhile, Orang Rimba groups living outside forest areas have been forced to relocate to settlements built by the government through the Remote Indigenous Community (KAT) program. Therefore, it can be concluded that the government is indirectly forcing the Orang Rimba to adapt or become extinct.

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¹UUPA Number II Number 2 and the definition of HPL in PP No. 18 of 2021.

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