

PROTECTION OF THE SPATIAL RIGHTS OF THE GURABUNGA CUSTOMARY LAW COMMUNITY THROUGH THE DETERMINATION OF CUSTOMARY VILLAGES

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Abstract

This study analyzes in depth the urgency of establishing customary villages as an instrument for the protection of the spatial planning rights of Gurabunga customary law communities. This study will identify the legal and sociological implications of designation, as well as analyze the potential challenges and mitigation strategies needed to ensure the sustainability of the traditional rights of the Gurabunga people. Through a multidisciplinary approach, this research aims to present a comprehensive framework that can be adopted in efforts to protect and recognize the rights of indigenous peoples in Indonesia. This study will also highlight how overlapping regulations and conflicts of interest, especially related to land grabbing practices, often hinder the protection of indigenous peoples' rights despite existing regulations governing their existence in Indonesian law. The weakness of the implementation of recognition and respect for indigenous peoples is a fundamental problem that underlies discriminatory practices in government policies. Therefore, this study emphasizes the importance of establishing customary villages as a concrete step to strengthen the legal and cultural position of the Gurabunga community, in line with the constitutional mandate to respect their traditional identity and rights.

Keywords: Traditional Village; Gurabunga; Protection.

INTRODUCTION

The recognition of customary law communities is important not only in the context of cultural and legal diversity in Indonesia, but also the main door to optimize the protection of citizens' constitutional rights. The formulation of this constitutional right is expressly stated verbally in Article 18 B paragraph (2) of the 1945 Constitution that "The State recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Republic of Indonesia, which are regulated in the Law. In addition, the provisions of Article 28 I paragraph (3) of the 1945 Constitution state that cultural and traditional community identities are respected in harmony with the development of the times and civilization.

The existence of customary law societies in Indonesia has factually existed since the time of our ancestors until now. Customary law society is a territorial or genealogical community unit that has its own wealth, has citizens that can be distinguished from other legal communities and can act inward or outward as a legal unit (legal subject) that is independent and self-governing.¹ Despite being constitutionally recognized, the existence of indigenous peoples and their traditional rights often does not receive a proportionate space in government practices in Indonesia.² This raises a variety of problems, especially related to the protection of their spatial rights which are essential to maintain social and cultural sustainability.³ Therefore, the establishment of Customary Villages is crucial as a formal instrument to strengthen the recognition and legal protection of the rights of indigenous peoples, including the right to their customary spatial planning. The importance of this determination lies not only in formal legal recognition, but also in giving greater autonomy to indigenous peoples to manage their own local resources and policies, as

¹ Husen Alting, *Dinamika Hukum dalam Pengakuan dan Perlindungan Hak Masyarakat Hukum Adat Atas Tanah*, (Yogyakarta: LaksBang PersSIndo, 2010), p.31.

² Roberth Kurniawan Ruslak Hammar, "Proses dan Bentuk Penataan Ruang Masyarakat Hukum Adat Arfak Papua Barat dalam Perspektif Penataan Ruang Nasional", *Lex Publica* 6, No.1 (30 January 2019):41-51, <https://doi.org/10.58829/lp.6.1.2019.41-51>, p.41.

³ Eko Noer Kristiyanto, "Kedudukan Kearifan Lokal dan Peranan Masyarakat Dalam Penataan Ruang di Daerah", *Jurnal Rechts Vinding Media Pembinaan Hukum Nasional* 12, No.2 (02 August 2017):151, <https://doi.org/10.33331/rechtsvinding.v6i2.172>, p.151.

stipulated in Law Number 6 of 2014 concerning Villages, this allows customary villages to implement policies that are more relevant to customary values and the needs of their communities, Maintaining environmental sustainability, as well as developing economic potential based on local wisdom. The implementation of this protection is not only essential for the preservation of local culture and traditions, but also to maintain the sustainability and well-being of indigenous peoples during modernization.⁴ A shift towards a more modern culture, although often considered more practical, can threaten the existence of traditional values and local wisdom if not adequately protected. The determination of customary villages, as mandated by Law Number 6 of 2014, is a vital legal instrument in providing formal recognition and autonomy for customary law communities to manage their own territories based on applicable customary values and laws. Nonetheless, positive legal recognition of indigenous peoples, particularly related to land rights and customary territories, has not been fully implemented effectively, leaving many indigenous peoples without significant legal protections.⁵

The laws and regulations ensure the protection of the rights of indigenous peoples, both individual and communal rights, as well as cultural values that reflect local wisdom. However, in practice, there are often conflicts between indigenous rights and national development interests, which require an adaptive and inclusive legal approach to ensure justice for all parties.⁶ This challenge highlights the urgency of more in-depth research on the mechanism for determining customary villages as an effective strategy in strengthening the spatial planning rights of customary law communities, especially in the Gurabunga area. This research will examine in depth how the determination of customary villages can be an effective legal instrument to protect the spatial planning rights of Gurabunga Customary Law Communities, considering the constitutional basis and relevant laws and regulations. This study will analyze the case of the determination of Gurabunga Customary Village as a study model to identify obstacles and opportunities in the implementation of customary rights protection policies, as well as formulate constructive policy recommendations. Therefore, this study aims to comprehensively describe how the determination of customary villages, especially in the context of Gurabunga, can function as a strong medium of protection for the spatial planning rights of indigenous peoples, while adapting customary norms to Indonesia's positive legal framework.

Previous studies by Betha Rahmasari (2023) entitled *The Influence of Customary Law in Village Government Arrangements: A Normative Perspective* show that the recognition and legal protection of indigenous peoples often clash with the interests of modernization and development, so harmonization between customary law and positive law is needed to ensure the sustainability of their rights.⁷ In the research of Ronald Saija et al. (2020) with the research title *Ownership Status of Customary Land Rights in the Agrarian Reform Asset Arrangement Policy in Southeast Maluku Regency*, the determination of customary villages tends to focus on legal-administrative aspects without touching on the practical implications for the protection of spatial planning rights specifically, or examining the confusion of legal interpretations related to customary rights that are still debated among legal experts and judges. This conflict often arises due to the overlap between the recognition of indigenous peoples' customary rights and government policies that prioritize development and investment, as highlighting problems in the agrarian reform asset management policy that has not explicitly stated the position of indigenous peoples as policy subjects, which has an impact on the difficulty of the struggle for communal rights.⁸ This research will fill the gap as a novelty of ideas by examining specifically how the determination of Gurabunga Traditional Villages can be a concrete solution to overcome legal uncertainty and overlapping regulations that have been hindering the protection of existing community spatial planning rights.

⁴ Cindy Cintya Lauren, "Analisis Adaptasi Masyarakat Lokal terhadap Perubahan Sosial dan Tren Budaya di Indonesia Ditinjau dari Perspektif Hukum Adat" *Jurnal Hukum dan HAM Wara Sains* 2, No.9 (09 September 2023), 874, <https://doi.org/10.58812/jhhws.v2i09.646>, p.874.

⁵ Jasardi Gunawan, "Studi Rekognisi Masyarakat Adat di Amerika dan Indonesia" *JISIP (Jurnal Ilmu Sosial dan Pendidikan)* 5, No.2 (02 March 2021):42, <https://doi.org/10.36312/jisip.v5i2.1953>, p.42.

⁶ Vice Admira Firnaherera dan Adi Lazuardi, "Pembangunan Ibu Kota Nusantara: Antisipasi Persoalan Pertanahan Masyarakat Hukum Adat" *Jurnal Studi Kebijakan Publik* 1, No.1(29 November 2022):71-84, <https://doi.org/10.21787/jskp.1.2022.71-84>, p. 71.

⁷ Betha Rahmasari, Ariza Umami & Tirta Gautama, "Pengaruh Hukum Adat dalam Pengaturan Pemerintahan Desa: Perspektif Normatif" *Muhammadiyah Law Review* 7, No.2 (2021), <https://doi.org/10.24127/mlr.v7i2.2770>, p.60.

⁸ Ronald Saija, Fransiscus X.V.R Letsoin, Tory Jegg Akyuwen dan Pieter Radjawane "Status Kepemilikan Hak Atas Tanah Adat Marga dalam Kebijakan Penataan Aset Reforma Agraria Di Kabupaten Maluku Tenggara" *Jurnal SASI* 26, No.1, (19 May 2020), <https://doi.org/10.47268/sasi.v26i1.246>, p. 99.

RESEARCH METHOD

This study uses an empirical legal research method, which focuses on analyzing field data and legal practices that occur in the community to comprehensively understand the implementation of the protection of the spatial rights of the Gurabunga customary law community. This approach is based on direct observation, in-depth interviews with relevant stakeholders, and document analysis to holistically understand the social and legal dynamics that affect the determination of customary villages and the protection of spatial rights. This approach allows researchers to explore the effectiveness of existing legal frameworks in providing real protection for indigenous rights, as well as identify implementation challenges on the ground. This empirical legal research focuses on the existence of laws that cannot be separated from the social conditions of society and human behavior associated with such legal institutions. Primary data collection will be carried out through in-depth interviews with traditional elders, community leaders, village government representatives, and relevant Gurabunga community members to explore information about customary law practices, spatial planning history, and their experiences related to the determination of customary villages, secondary data will be collected through literature studies, search of relevant laws and regulations, and official documents such as decisions on the determination of customary villages, spatial maps, as well as archives related to history and customary territories. Data analysis will be carried out qualitatively, integrating an analytical descriptive approach to decipher and interpret findings from interviews, observations, and document studies, to identify patterns, themes, and categories relevant to the protection of indigenous peoples' spatial rights. This data analysis technique will ensure that any interpretation is based on strong empirical evidence, while also providing space for the exploration of the contextual nuances of the cultural practice.

A. RESEARCH RESULTS AND DISCUSSION

1. Gurabunga Indigenous Peoples and Customary Spatial Planning

The life of the people on the island of Tidore is inseparable from the customs of the people who according to history have existed for a long time with most of the population being Muslims. The kinship system of the Tidore people is Patrilineal, which follows the paternal line in the lineage. The Tidore people on the island of Tidore according to history are a group of people who have a hereditary bond with the origins of their ancestors. This fact is told in several Tidore folklore that the descendants of the Tidore customary law community are related to the presence of Djafar Sadek, an Arab who came to North Maluku who married a Moluccan princess. The result of the marriage gave birth to four sons who later became the ancestors of four Islamic kingdoms, namely Tidore, Ternate, Bacan, and Jailolo. This understanding of patrilineal kinship systems and ancestral ties is important to examine how these indigenous values affect the ownership structure and management of traditional spatial planning in Gurabunga. Furthermore, the analysis will include how customary law conceptions of communal ownership and the use of natural resources shape the socio-economic and ecological landscape of the region.⁹ The historical connection with the Islamic royal system in North Maluku also indicates the existence of cultural acculturation that has the potential to affect the interpretation and practice of customary law related to spatial planning.¹⁰

Gurabunga has 5 clans, namely: Mahifa, Folasowohi, Toduho, Tosofu Makene and Tosofu Malamo. These 5 clans do not gather in one region. But it has its own territory (eto se region), namely: Mahifa the territory of Bukufululu, Folasowohi the territory of Goyamahira, Toduho the territory of Legomabuku and Tosofu the territory of Tolagosora. In 1950 the five clans came together and agreed to gather the five clans to become one in a village. The village was named Gamsung or Kampung Baru and is still a hamlet of Gamtofkange Village. In 1965, by agreement of the five clans, Gamsung Village was renamed Gurua Banga which means "lake in the forest" because it is located adjacent to a lake in the middle of the forest. Furthermore, in 1967 Gurua Banga Village was expanded from Gamrufkange Village to an autonomous village. In 1981 the name of Gurua Banga was changed to Gurabunga by the Regent Ahmad Malawat. Gurabunga which means Flower Garden is felt to be more suitable than Gurua Banga which is often changed to Gura Banga which means Forest Garden. Factually, the Tidore customary law community still exists, as explained in the previous sub-chapter, and its existence must be acknowledged. So that the condition for the subject of customary rights has been met, namely the Tidore customary law community. The existence of the

⁹ Simarmata, "Hukum Nasional yang Responsif Terhadap Pengakuan dan Penggunaan Tanah Ulayat", *Jurnal Rechts Vinding Media Pembinaan Hukum Nasional* 7, No. 2 (2018), <https://doi.org/10.33331/rechtsvinding.v7i2.251>, p. 283.

¹⁰ Fitriyani dan Hendri, "Mapparola dalam Pernikahan Adat Suku Bugis di Sulawesi Selatan Perspektif Sosiologi Hukum Islam", *Al-Izzah Jurnal Hasil-Hasil Penelitian*, (31 May 2024), <https://doi.org/10.31332/ai.v0i0.8988>, p. 27.

Tidore customary law community is followed by the existence of customary lands of the Tidore customary law community, one of which is Hale Gimalaha. Therefore, the conditions for the existence of customary rights objects have also been met. So that the explanation that the conditions for the recognition of the existence of the customary land of the Tidore customary law community according to Jamaluddin have been cumulatively met. The importance of this recognition is also reinforced by the long history of kingdoms in North Maluku, such as the Sultanates of Tidore and Jailolo, which controlled significant territories and had customary systems that have governed the lives of their people for centuries.¹¹ The existence of this well-established customary law system, including spatial planning, shows that the recognition of the rights of the Gurabunga indigenous people is not just a new demand but a reflection of the existing and functioning social order.¹² The designation of customary villages for Gurabunga, therefore, is a crucial step in reaffirming traditional authority in the management of natural resources and the preservation of cultural identity in the midst of modernization.¹³

The people of Tidore highly respect the customs left by their ancestors which are then inherited and obeyed in general by the people of Tidore until now. These habits can be classified in several fields, namely the fields of economics, religion, social, and cultural arts. In the social field, for example, the people of Tidore know that there is a prohibition on stepping on places that are considered sacred or sacred. One of the places that is considered sacred is jere. According to the belief of the people of Tidore, jere is the grave of an ancestor who is considered to have spiritual power and is highly respected in his time so that the tombstone of the ancestor automatically appears on the surface of the ground. If the above taboos are violated, then the person concerned will be subject to balito. These provisions also apply in terms of land tenure. Violations of customary ordinances in land tenure can result in social or even spiritual sanctions for the perpetrators.¹⁴ This indicates that customary values, which have been passed down from generation to generation, serve as a powerful instrument of social control and have serious implications for the management of customary territories.¹⁵ Customary consensus on the use of space is also often reached through deliberation in locations considered sacred, ensuring the legitimacy of decisions from ancestors and communities.¹⁶

The tradition used in land cultivation, namely every gardening, must begin with the first grass and tree cutting called tolagumi. Tolagumi is an early ritual in tillage. Tolagumi is one of the rituals in which it is to go around the forest area to be worked on by presenting two or more witnesses. Usually, the witnesses are local traditional leaders. The area has been surrounded to mark the area of land and the boundaries of the garden area. Tolagumi also requires residents who have just cleared forests for plantations not to cultivate all forest areas. For example, if the area included in the ritual circle is four hectares, then two hectares will be cultivated first and the remaining two hectares will be left as a reserve for posterity. Thus, even though some of the forests that are part of the circle of the ritual process before they are opened, they are already considered as the property of the cultivator. The meaning of the tolagumi ritual itself is to pray that there will be no obstacles in the work in clearing the land. So that the work runs smoothly. The ritual also reflects a traditional conservation philosophy that ensures the sustainability of natural resources for future generations, suggesting that indigenous peoples already had a holistic spatial management system in place long before the concept was known in modern times.¹⁷ This customary-based spatial management also often involves the establishment of certain zones, such as prohibited forests or areas that are considered to have high spiritual value, which should not be disturbed and serve as an ecosystem balancer.¹⁸ An autonomous natural

¹¹ Laila Abdul Jalil, "Nisan Kuno di Jailolo: Bukti Perkembangan Islam Abad ke 18 di Maluku Utara", *Berkata Arkeologi* 37, No.2 (20 December 2017), <https://doi.org/10.30883/jba.v37i2.214>, p. 195.

¹² Moch Zihad Islami dan Yulia Rosdiana Putri, 2020, "Nilai-Nilai Filosofis Dalam Upacara Adat Mongubingo Pada Masyarakat Suku Gorontalo", *Jurnal Ilmu Budaya* 8, No.2 (06 August 2020), <https://doi.org/10.34050/jib.v8i2.10983>, p.186.

¹³ Muhammad Rizal Syawal dan Ernawati Hendrakusumah, "Revitalisasi Desa Adat Budaya Hibua Lamo di Desa Kakara Lamo Kabupaten Halmahera Utara", *Jurnal Riset Perencanaan Wilayah dan Kota* 17, (14 July 2023), <https://doi.org/10.29313/jrpwk.v3i1.1927>, p.17.

¹⁴ Yuliana, Y., Wahid, B., Purwanti., *Op. Cit*

¹⁵ Yul Isti Masri, "Representasi Budaya Suku Tidore dalam Trailer Suanggi", *Al MISBAH (Jurnal Islamic Studies)*, 6, No.1 (01 April 2018), <https://doi.org/10.26555/al-misbah.v6i1.2655>, p.1

¹⁶ Mansyur., *Op. Cit*

¹⁷ Ramadhani Arumningtyas, Andi Alimuddin Unde dan Jeanny Maria Fatimah, "Komunikasi Simbolik Ritual Andingingi: Pesan Masyarakat Adat Ammatoa Kajang tentang Pentingnya Menjaga Hutan", *Perspektif Komunikasi Jurnal Ilmu Komunikasi Politik dan Komunikasi Bisnis* 7, No.1, (17 July 2023 <https://doi.org/10.24853/pk.7.1.19-32>, p. 19

¹⁸ Dadi Anesa, Rommy Qurniati, Yulia Rahma Fitriana dan Irwan Sukri Banuwa, "Budaya dan Kearifan Lokal dalam Pengelola Lahan Dengan Pola Agroforestri di Kesatuan Pengelolaan Hutan Lindung Batutege Provinsi Lampung", *Jurnal Ilmiah Kehutanan Rimba Kalimantan: Jurnal Hutan Tropis* 6, No.1 (18 March 2022), <https://doi.org/10.32522/ujht.v6i1.5840>, p.26

resource management system by indigenous communities with their customary institutions has proven to be able to maintain the multifunctional preservation of forests, indicating optimism that the sustainability of natural resources in Indonesia is in the hands of sovereign indigenous peoples. This approach is in line with the concept of communal natural resource management, where resources are seen as shared property and decisions are made based on traditions internalized in their cosmology.¹⁹ This value system then forms a strong environmental ethics, in which excessive exploitation of nature is considered a violation of cosmic order and can have spiritual consequences.²⁰ This process is also in line with increasing global awareness of the importance of environmental and ecosystem management based on local wisdom, as seen in traditional practices in the use of coastal and marine resources in Tidore Islands City.²¹ This recognition is essential to preserve traditional traditions and customary institutions that have been tested in maintaining ecological and social balance, as well as recognizing the existence of customary rights that have existed for generations.²² The importance of local wisdom in the management of natural resources is not only limited to ecological aspects, but also includes the social, cultural, and spiritual dimensions that shape the ecological morality of indigenous peoples. This awareness drives the need for the implementation of a legal framework that accommodates sustainable customary resource management systems and has proven to be effective in maintaining ecosystem sustainability.²³

2. The Process of Determining Gurabunga Traditional Villages

The transition of the status of a village to a customary village is a process of changing the form of government of a region that involves a shift from a modern government system to a customary government system. This process is generally motivated by the desire of the community to return to their cultural roots, as well as the potential for better natural and social resource management through customary systems. In Indonesia, this change in status is regulated in Law Number 6 of 2014 concerning Villages. This law provides space for the community to take the initiative to change status, both from village to village, and from village to customary village. Operationally, the Regulation of the Minister of Home Affairs Number 1 of 2017 concerning Village Planning provides a clear legal framework regarding changes in village status, including the transition from sub-district to customary village. This regulation provides space for the community to take the initiative to change status, with the aim of providing flexibility in the management of government and development at the village level. This shows that local wisdom is not only a traditional value, but also formally recognized as the basis for sustainable and adaptive resource management.²⁴ This formal recognition provides a legal basis for indigenous communities to preserve and apply their local wisdom in territorial management, in line with the success of regulations that strengthen indigenous peoples' institutions in resource conservation, as in the case of the Wabula people in Buton Regency.²⁵

This is in line with efforts to strengthen local cultural identity and traditions, as well as create a solid legal foundation to protect these cultural heritages.²⁶ This step also allows indigenous peoples to play a more active role

¹⁹ Efriani, Jagad Aditya Dewantara, Dewi Utami dan Indah Listyaningrum, "Ekologi Tradisional Dayak Tamambaloh", *Jurnal Ilmu Lingkungan* 18, No.3, (30 November 2020), <https://doi.org/10.14710/jil.18.3.503-514>, p. 503

²⁰ Lelya Hilda, "Revitalisasi Kearifan Lokal Dalihan Na Tolu Masyarakat Muslim Mandailing Dalam Menjaga Harmonisasi Lingkungan Hidup", *Miqat Jurnal Ilmu-Ilmu Keislaman* 40, No.1, (01 January 2016), <https://doi.org/10.30821/miqot.v40i1.218>, p. 1

²¹ Ruslan Husen Saban Tawari, "Tradisi dan Kelembagaan Masyarakat Dalam Pengelolaan Sumberdaya Pesisir dan Laut di Kota Tidore Kepulauan Provinsi Maluku Utara", *Triton Jurnal Manajemen Sumberdaya Perairan* 16, No.1, (01 April 2020), <https://doi.org/10.30598/tritonvol16issue1page19-27>, p. 19

²² Sahrina Safiuddin, "Hak Ulayat Masyarakat Hukum Adat dan Hak Menguasai Negara di Taman Nasional Rawa Aopa Watumohai" *Mimbar Hukum Fakultas Hukum Universitas Gadjah Mada* 30, No.1, (01 February 2018), <https://doi.org/10.22146/jmh.16681>, p. 63

²³ Nur et al, "Pengelolaan lahan dan ruang hutan dengan perspektif kearifan lokal komunitas Ammatoa Kajang sebagai usaha konservatif" *Jurnal Pengelolaan Lingkungan Berkelanjutan (Journal of Environmental Sustainability Management* 90, (2022), <https://doi.org/10.36813/jplb.6.2.90-105>, p. 90

²⁴ Abdullah, M.A., Arifin, "Panglima Laot: His Legacy and Role in Conserving Marine Resources in Aceh, Indonesia, " *SHS Web of Conferences* 45, (2018), <https://doi.org/10.1051/shsconf/20184506003>, p.6003

²⁵ Tamar Mustari, Sulhan Manaf, dan Laode Abdul Manafi, "Pola Pemanfaatan Sumberdaya Laut Berbasis Kearifan Lokal Pada Masyarakat Wabula, di Kabupaten Buton", *Simulacra Jurnal Sosiologi* 2, No.1 (01 February 2019), <https://doi.org/10.21107/sml.v2i1.5521>, p. 53.

²⁶ Lauren., *Loc.cit*

in decision-making related to their territories, in line with the principle of village autonomy mandated by law.²⁷ It also reflects the recognition of local wisdom as an important capital in the conservation of natural resources and the environment, in accordance with the ecological-spiritual approach that is widely found in indigenous communities.²⁸ The Government recognizes, respects, and protects the rights of Indigenous Peoples over Coastal Areas and Small Islands that have been used for generations, as stipulated in Article 61 of the Law on the Management of Coastal Areas and Small Islands.²⁹

The change in the status of the village to a customary village as stipulated in the Minister of Home Affairs Regulation Number 1 of 2017, is basically a form of village planning. This process is carried out based on community initiative and pays attention to the potential and characteristics of the area concerned. The mechanism that needs to be passed involves a series of comprehensive administrative and consultative stages, ranging from deliberation at the local level to submitting applications to local governments.³⁰ This stage is essential to ensure that all stakeholders, including indigenous peoples and local governments, have a common understanding and commitment to the status change. These measures also aim to facilitate formal recognition of customary governance structures and applicable customary laws, to improve local governance and accountability in resource utilization. In this context, the formalization of the existence of communities and the format of customary villages is crucial, raising questions about whether the central position of customary law in the mechanism is able to strengthen its capacity or simply meet the requirements of recognition and accommodation.³¹ Therefore, it is important to analyze how this determination can optimize the function and role of customary institutions, as well as ensure that the values of local wisdom remain the foundation of every village policy and development. This formalization process often creates a dynamic between customary autonomy and state control, especially in the context of local governments' recognition of the existence of indigenous peoples and villages. In the context of the determination of customary villages, the identification and in-depth study of the rights of origin and socio-cultural structure of indigenous peoples is an absolute prerequisite that must be met. This process requires not only legal justification, but also strong sociological and cultural validation to ensure that the recognition is rooted in the social realities of the Gurabunga indigenous people.

The aspiration of the Gurabunga customary law community to change the status of the Village to a Customary Village politically and legally can be carried out based on the community's initiative agreed in the village communication deliberative forum which is then followed up by the local government and stipulated by the Regional Regulation. Jojau of the Sultanate of Tidore M. Amien Farook stated that: "the cultural identity of the Gurabunga customary law community is still very strong, so that the urban lifestyle in the administrative government structure of the village is actually not very appropriate, if the existing government is in the form of a village more in implementing the traditional style of life." Likewise, former Gurabunga Village Head Samsul Arifin stated that "... The aspirations of the people of Gurabunga want that this Village be returned to its original position, namely the village because Gurabunga has a cultural history and a very important position in the Sultanate of Tidore, therefore by maintaining this cultural identity with the structure of village government will become more autonomous in the exercise of authority based on the matter of origin". This transformation is crucial to ensure that customary institutions can function optimally in managing their own territories, along with the formal recognition of the rights of origin inherent in the customary law community.³² This recognition is in line with Article 18B paragraph of the 1945 Constitution which respects the unity of customary law communities and their traditional rights as long as they are alive and in accordance with the times. The application of Article 18B is the constitutional basis for the

²⁷ Jenny Kristiana Matuankotta, "Pengakuan dan Perlindungan Hukum Terhadap Eksistensi Pemerintahan Adat", *Jurnal SASI* 26, No.2, (02 May 2020), <https://doi.org/10.47268/sasi.v26i2.305>, p.188.

²⁸ David Efendi, Arifin Muhammad Ade dan Alam Mahadika, "The Spritual-Ecological Approaches of Indigenous Communities of Tidore Towards Environmenal Conservation", *Jurnal Sosiologi Reflektif* 17, No.1, (April 2022), <https://doi.org/10.14421/jsr.v17i1.2552>, p. 503.

²⁹ Maya Puspita, "Kearifan Lokal Dalam Pengelolaan Sumber Daya Pesisir dan Laut Hukum Adat Laot dan Lembaga Panglima Laot di Nanggore Aceh Darussalam", *Sabda Jurnal Kajian Kebudayaan* 3, (03 February 2017), <https://doi.org/10.14710/sabda.v3i2.13253>, p.13.

³⁰ Muammar Ammar Alkadafi, Rusdi, Fitria Ramadhani Agusti, dan Muhammad April, "Kebijakan Penetapan Pemerintahan Kampung Adat di Kabupaten Siak Provinsi Riau", *Jurnal El-Riyasah* 10, No.1 (22 April 2021), <https://doi.org/10.24014/jel.v10i1.7445>, p.1

³¹ Tine Suartina, "Between Control and Empowerment: Local Government and Acknowledgement of Adat Villages in Indonesia", *Indonesia Law Review* 10, No.3, (31 August 2020), <https://doi.org/10.15742/ilrev.v10n3.679>, p.341.

³² Yulianingrum dan Aula Vivi, "Mempertegas Kedudukan Hukum Kesatuan Masyarakat Hukum Adat dalam Memenuhi Hak-Hak Konstitusional", *Yuriska Jurnal Ilmiah Hukum* 10, No.1, (17 September 2018), <https://doi.org/10.24903/yrs.v10i1.270>, p.73.

determination of customary villages, allowing Gurabunga to run a customary-based government that is more independent and in accordance with local values. This recognition is also in line with Article 28I paragraph of the 1945 Constitution which states that cultural identity and the rights of traditional communities are respected in line with the development of the times and civilization.

3. Implications of the Determination of Customary Villages on the Protection of Spatial Planning Rights of Gurabunga Customary Law Communities

This determination has significant implications for the recognition and protection of the traditional rights of the Gurabunga people, especially in the context of the management and utilization of customary spatial planning. This transformation reinforces the right of origin as an inherent right of indigenous peoples, which includes the right to customary land and territories as the main living space and resource. With the status of a customary village, the Gurabunga Customary Law Community obtains full authority to prepare and implement spatial plans that are in harmony with customary values and local wisdom, in contrast to the uniformity of the village government system which has the potential to weaken customary institutions and ancestral territories. This is strengthened by the 1945 Constitution of the Republic of Indonesia Article 18B paragraph and Article 28I paragraph which explicitly recognizes and respects traditional rights indigenous peoples. Therefore, the existence of these customary villages is a strong juridical foundation to protect customary territories from the threat of exploitation and appropriation by outsiders, while ensuring the sustainability of customary practices in environmental management.

This designation also allows the Gurabunga Customary Law Society to manage their natural resources in a sustainable manner, based on local wisdom that has proven effective for centuries.³³ This recognition is not only limited to normative recognition, but also provides a strong legal basis for indigenous peoples to assert sovereignty over their territories, which is essential for preserving the environment and cultural sustainability.³⁴ Through this determination, the mechanism for resolving agrarian disputes and spatial planning in customary territories can be carried out in accordance with local customary law, minimizing intervention from the state legal system that sometimes does not accommodate the peculiarities of indigenous peoples. This process is a concrete step in realizing the constitutional mandate that guarantees respect for the traditional rights of customary law communities, as enshrined in the 1945 Constitution Article 18B paragraph. This recognition indicates that the traditional rights held by indigenous peoples constitute an inherently conferred authority and are inseparable from their existence as cultural entities.

The protection of these rights includes land rights, cultural rights, and the right to participation, which collectively strengthen the sustainability and empowerment of indigenous peoples in village governance structures.³⁵ This protection includes the authority of the village to conduct its government based on community initiatives in accordance with the original culture that does not conflict with the law, as well as to manage assets and establish a customary governance structure.³⁶ This is in line with the amendment to the 1945 Constitution which strengthens the constitutional basis for the recognition of customary law communities and their traditional rights, although the nature of the recognition is still conditional.³⁷ However, special regulations supporting the permanent establishment of customary villages are still not available, so the recognition of customary village nomenclature still faces legal uncertainty, even though the Constitutional Court's decision is final and binding.³⁸ Therefore, it is necessary to synchronize sectoral regulations with the spirit of recognizing the rights of customary law communities in order to avoid overlap and conflicts of authority. This harmonization effort is crucial to integrate customary law into a positive legal framework without eroding the autonomy and local wisdom of indigenous peoples. Formal recognition of indigenous villages through comprehensive regulation will strengthen their legal standing in dealing with spatial planning and resource management issues, ensuring the continued protection of indigenous territories. In addition,

³³ Helben Gainau, Ronny A.Maramis, Merry Elisabeth Kalalo dan Caecilia J.J Waha," Gainau, H., Maramis, R. A., Kalalo, M. E., & Waha, C. J. J. (2023). The Existence of the Rights of Indigenous People in the Implementation of Regional Autonomy" *International Journal of Applied Business and International Management* 8, No.2, (20 August 2023), <https://doi.org/10.32535/ijabim.v8i2.2426>, p.67.

³⁴ Dwijanata," *Perlindungan Hukum dan Pelestarian Tradisi Siat Yeh Desa Adat Jimbaran*" *Jurnal Magister Hukum Udayana* 12, No.2 (29 July 2023), <https://doi.org/10.24843/jmhu.2023.v12.i02.p14>, p.440.

³⁵ Betha Rahmasari, Ariza Umami, Tirta Gautama, *Loc. Cit*

³⁶ Femilia & Huda, *Op. Cit*

³⁷ Yance Arizona, *Op. Cit*

³⁸ Muhtadli," *Recognition of Traditional Villages as Local Government Administrators in Indonesia Based on the Principle of Autonomy*", *Constitutionale* 1, No.1, (25 September 2020), <https://doi.org/10.25041/constitutionale.v1i1.2008>, p.57

the existence of adaptive and inclusive regulations is needed to bridge potential conflicts between customary law and national law, especially in the context of land ownership and rights to natural resources.

B. CONCLUSION

This study confirms that the determination of the Gurabunga Customary Village is a concrete manifestation of the constitutional mandate to recognize and protect the traditional rights of customary law communities, especially related to spatial planning, although implementation challenges still require a stronger regulatory framework. Nonetheless, the success of this designation highlights the importance of ongoing dialogue between governments and indigenous peoples to achieve holistic and sustainable solutions in the management of indigenous territories. Harmonization between customary law and positive law must continue to be pursued through active coordination between stakeholders to achieve effective and inclusive village governance. Strengthening the capacity of village government officials in understanding customary law is also essential to ensure consistency in the implementation of development policies and programs. Follow-up studies can explore the effectiveness of customary village determination in addressing land disputes and their impact on the economic welfare of indigenous peoples, as well as analyze the extent to which local wisdom is integrated into national development plans. Comparative research on customary village designation models in different jurisdictions can also provide valuable insights into best practices and relevant challenges. In addition, future research can analyze the impact of indigenous village recognition on environmental and biodiversity conservation in indigenous territories, given the crucial role of indigenous peoples as guardians of natural ecosystems. Ultimately, increased awareness and understanding of customary law among village government officials, indigenous leaders, and the community at large is needed to strengthen the effective implementation of customary village policies.

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