

# Forming Legal Culture in Customary Forest Management: Local Wisdom Approach of Customary Law Communities

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## Abstract

Customary law communities in Indonesia firmly attach to customary forests in their territory. For generations, they have preserved and managed customary forests according to customary rules, either written or unwritten, that reflect local wisdom. This article aims to analyze customary law communities' local wisdom approach in forest management to realize legal compliance that reflects legal culture. It assesses local wisdom as the essential form of legal culture in customary forest management and scrutinizes efforts to strengthen local wisdom in forest management arrangements. This article reflects a socio-legal method that explores relevant statutory regulations and their implementation in society. The research and analysis suggest that the legal culture of customary law communities takes the form of compliance in managing forests due to the local wisdom they have internalized from generation to generation. Local wisdom in various regions in Indonesia is integrated with local rules that align with the function of customary law to create social order. It has also been found that several regional governments in Indonesia have made an effort to strengthen local wisdom. The regional government's recognition of the status of customary law communities as the actors in customary forest management has legitimated the local wisdom in protecting customary forests.

## 1. INTRODUCTION

The legal aspect of controlling natural resources is crucial to discuss at national and international forums because it is related to state policy and its responsibility to realize the welfare of its people. Control by the state goes hand in hand with the people's right to self-determination over their natural resources. Therefore, a complex and ambivalent relationship arises between

state principles and people's rights to natural resources.<sup>1</sup> According to Kaufer (2023), many countries are concerned about legal, social, and political aspects related to the management of natural resources and the rights of communities which take into account the the people's constitutional rights.<sup>2</sup>

Article 33 (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the Indonesian Constitution) regulates the state's rights to control and use natural resources. Control by the state is an expression of ideology that grants authority and legitimacy to the state to control and utilize natural resources and the environment.<sup>3</sup> The content of Article 33 of the Indonesian Constitution needs to be understood in line with other constitutional provisions relating to this issue. Article 18 B (2) of the Indonesian Constitution regulates the recognition of customary law communities and their traditional rights, including managing natural resources in customary forests within their territory.

Hopes and excitement regarding the recognition of customary law communities and their rights to manage forests began to appear with the ruling of the Constitutional Court of the Republic of Indonesia in Decision No. 35/PUU-X/2012.<sup>4</sup> This decision changed the provisions of Law No. 41 of 1999 concerning Forestry (Forestry Law) by clarifying that customary forest is no longer part of *hutan negara* (state forest), but is fall into the classification of *hutan hak* (private-owned forest).<sup>5</sup> However, until now, social, political, economic, and legal issues regarding how customary forests are managed still need to be solved.

The status of customary forest in the Forestry Law does not solve the problem of recognizing customary forests in Indonesia yet, as regional governments must determine its recognition in the form of regional regulation or head of the region administrative decree.<sup>6</sup> From 2016 to 2023, the government established 131 Customary Forests spread across 18

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<sup>1</sup> Jérémie Gilbert, *Sovereignty, Self-Determination, and Natural Resources: Reclaiming Peoples' Rights, Natural Resources and Human Rights: An Appraisal* (Oxford: Oxford University Press, 2018), 12.

<sup>2</sup> Ricardo Kaufer, *Forestry Politics from Below: Social Movements, Indigenous Peoples, Forestry Occupations And Eco-Solidarism* (Bielefeld: Center For Interdisciplinary Reseach Unoiversity of Bielefeld Germany, 2023), 5.

<sup>3</sup> Wahyu Nugroho, "Konstitusionalitas Hak Masyarakat Hukum Adat dalam Mengelola Hutan Adat: Fakta Empiris Legalisasi Perizinan," *Jurnal Konstitusi* 11, no. 1 (2014): 113.

<sup>4</sup> See Aliansi Masyarakat Adat Nusantara (AMAN: Alliance of Indigenous Peoples of the Archipelago), the Kenegerian Kuntu Indigenous Community and the Kasepuhan Indigenous Community Cisitu (Review of Law No. 41 of 1999 concerning Forestry against The 1945 Constitution of the Republic of Indonesia), Constitutional Court Decision No. 35/PUU-X/2012, p. 185; and Sartika Intaning Pradhani, "Traditional Rights of Indigenous Peoples in Indonesia: Legal Recognition and Court Interpretation," *Jambe Law Journal* 1, no. 2 (2019): 177-205.

<sup>5</sup> Candra Perbawati et al, "Legal Discourse on Customary Forest Determination Progressive Law Based," *Fiat Justisia: Jurnal Ilmu Hukum* 17, no. 1 (2023): 20.

<sup>6</sup> See explanation regarding this matter in Section 2.2.

provinces and 40 regencies with a total area of around 244,195 hectares and involving 76,079 heads of families.<sup>7</sup> Customary Area Registration Agency released that between September 2022 and March 2023, 124 maps of traditional territories with an area of 4.4 million hectares have been registered with the agency.<sup>8</sup> In Indonesia, establishing a regional regulation sometimes takes much time. Therefore, the legality of ongoing daily activities of the customary law society, e.g., collecting forest products, during the process of recognizing the customary forest process becomes uncertain.<sup>9</sup>

Social conflicts often arise in the communities surrounding the forest area, primarily regarding forest management that does not benefit the community economically.<sup>10</sup> In line with policies in the economic sector, the Government tends to offer facilities for investors to carry out business activities by utilizing forests. However, the activities of companies that obtain forest use permits only sometimes pay attention to the economic, social, and cultural situation of the customary law communities who live in the forest and its surroundings. Therefore, controversy often arises regarding the principles of granting permits to manage forestry resources in the territories of customary law communities.<sup>11</sup> Also, there is a social sensitivity, demanding that granting permits for the utilization of forest must not only be intended to obtain economic benefits but is also helpful for the welfare and sustainability of the existence of the local communities. Therefore, using natural resources in customary territories should not threaten their survival because they are the legal owners of these territories, even long before the state's founding.<sup>12</sup>

The government tends to uphold and enforce statutory regulations as the only law. Licensing emerges as a government instrument in granting concessions and determining management rights for customary forest natural resources based on state law. Therefore, there is often a disregard for the rights of legal communities and local wisdom. It is not surprising

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<sup>7</sup> Directorate General of Social Forestry and Environmental Partnerships, Ministry of Environment and Forestry, "Indonesia Menjadi Role Model Ketahanan Iklim Berbasis Masyarakat," <http://pskl.menlhk.go.id/berita/623-berita-kabar-pesona-edisi-4-desember-2023.html>.

<sup>8</sup>Kasmita Widodo, "Pemerintah Masih Lemah dalam Melindungi Hak Masyarakat Adat" <https://brwa.or.id/news/read/561>.

<sup>9</sup> See Kenny Cetera, "Keseleraan Implementasi Aturan Pengakuan Hak Masyarakat Adat untuk Mengelola Hutan terhadap Nilai-Nilai Pancasila," *Pancasila: Jurnal Keindonesiaan* 1, no. 2 (2021): 154.

<sup>10</sup> Winda Indah Wardani, "How Can the Law Protect the Forest?," *Journal of Law and Legal Reform* 2, no. 4 (2021): 531.

<sup>11</sup> Zaka Firma Aditya and Sholahuddin Al-Fatih, "Legal Protection of Indigenous People's Rights through Strengthening the Licensing Principles Based on Social Sensitivity," *Journal of Indonesian Legal Studies* 6, no. 1 (2021): 8.

<sup>12</sup> *Ibid.*

that there are practices of exploitation by companies receiving concessions on the environment of customary forest areas.<sup>13</sup>

This situation indirectly negates customary law communities from gaining access to customary forests. The concessions issued by the government make the application of customary law in managing forests unclear. It is a contradictory situation because customary law communities have maintained forest preservation for generations by respecting and obeying customary law, which contains fundamental values of respect for nature.<sup>14</sup>

As revealed by Martin et al (2016), the method of protecting the customary forests of the Semende farming community in the highlands of South Sumatra can be used as an example of local wisdom that is inherently adopted in their customary laws. They follow guidelines for saving forests: the belief in *Tunggu Tubang* and *Ulu Ayek*, the guardians of nature, especially forests. The community admits that forest wood must be used with knowledge of custom, and no one dares to violate it.<sup>15</sup>

Sumarni et al (2023) reveals that the Dayak Ngaju community who live in the upper river in Central Kalimantan Province indicates how local wisdom is applied in managing customary forests. They conceive the interconnectedness between their lives and the ecosystems in a 'duty of care' that links social, economic, and cultural aspects and the natural environment on the other. This concept implies a responsibility to care for and protect the land, closely tied to cultural norms and values.<sup>16</sup>

Parera et al (2022) found the strong commitment of customary law communities in Maluku Province to balance nature in managing forests. They applied *dusung* management, local wisdom-based traditional agroforestry by planting short-lived plants in empty spaces between fruit trees or other trees; prohibiting the pre-harvesting activities, called *sasi*, for obtaining good quality products; prohibiting cutting down trees at water sources and along riverbanks; allowing the cut down of trees only by skinning the tree and let them fall on their own so as not to damage the surrounding trees; obeying to the rules faithfully; and appointing *kewang*, customary police which oversees the *dusung* management and guards the environmental security from the sea to the forest. Even though government regulations have determined the economic aspect of forest products, such as sugar palms, as raw materials for cakes and traditional liquor (*sopi*),

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<sup>13</sup> Nugroho, *op.cit.*, 111.

<sup>14</sup> *Ibid.*, 112.

<sup>15</sup> Edwin Martin et al, "Tunggu Tubang Ulu Ayek and Social Mechanism of Sustainable Protected Forest Management," *Jurnal Manajemen Hutan Tropika* 22, no. 2 (2016): 88.

<sup>16</sup> Sumarni et al, "Safeguarding Indigenous Rights and Territories: Integrating Dayak Ngaju Wisdom in Peatland Ecosystem Management," *Udayana Journal of Law and Culture* 7, no. 2 (2023): 122, 131.

customary rules are still obeyed based on forest guard principles.<sup>17</sup> Besides, Latdalam Village in Tanimbar Islands Regency uses the term ‘*Yempori*’ which according to the *Yamdena* traditional language is referred to as an old village which historically has rights and authority over its customary territory.<sup>18</sup>

Local wisdom in land and forest management can also be found in the Atauro Community, who inhabit the Timor Leste region, a neighboring country to Indonesia.<sup>19</sup> Syaufina and de Carvalho (2020) explored the *Tara Bandu* principle in regulating customary forest management in Timor Leste, including imposing light to heavy customary sanctions to prevent forest damage. If the mistake is in the minor category, then the person concerned is only given a warning, apologizes in public, and is not allowed to repeat the mistake. Suppose the damage violated falls into the severe category. In that case, the person concerned must slaughter a cow and pay a fine according to the rules agreed upon by the community and the traditional leader. The many sanctions that have been imposed on violators of these customary rules have so far made people afraid of harming the forest.<sup>20</sup> The abovementioned studies guide exploring aspects of legal culture that are formed and rooted from the culture and beliefs of customary law communities in efforts to maintain a natural balance in their territory. The studies also suggested that legal culture and local wisdom passed down from generation to generation are essential in saving forest resources and ensuring ecological sustainability.

Therefore, this article aims to analyze the local wisdom approach in forest management by customary law communities to realize legal compliance that reflects legal culture. Specifically, this article will analyze local wisdom as the essential form of legal culture in customary forest management and efforts to strengthen local wisdom in forest management arrangements.

From a methodological aspect, this study applies a socio-legal method that scrutinizes statutory regulations as well as their implementation in

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<sup>17</sup> Evelin Parera et al, “How do the Customary Forest and Protected Forest Management Principles Affect Ambon City Protected Forest Management between the Government and Indigenous Peoples? (Case in the Mount Sirimau Protected Forest Group, Ambon City, Maluku Province),” *Jurnal Pengelolaan Hutan Tropis* 28, no. 3 (2022): 255, 259, 264.

<sup>18</sup> Adonia Ivonne Laturette and Sri Ayu Junita Sainyakit, “Perlindungan Hukum Masyarakat Adat terhadap Infrastruktur Gas Blok Masela,” *SASI* 29, no. 1 (2023): 170.

<sup>19</sup> Richard Collet, “Timor Leste Hidupkan Kembali Hukum Adat untuk Melestarikan Lingkungan setelah Merdeka dari Indonesia - Tak Ingin Jadi Bali lain,” <https://www.bbc.com/indonesia/vert-tra-57341345>.

<sup>20</sup> Lailan Syaufina and Eduardo Fernando Martins de Carvalho, “Perception and Activity of Community in Firewood Consumption in Dili City of Timor Leste,” *Jurnal Silviculture Tropika* 11, no. 1 (2020): 3.



society by virtue of supporting legal reform.<sup>21</sup> This study is interdisciplinary in nature and implies a hybrid of both legal science and social science methods.<sup>22</sup> Primary data was obtained by observing the activities of customary law communities in managing customary forests and conducting interviews with customary leaders in Bali. Bali is chosen as the sample because it is an area in Indonesia that recognizes customary law communities and has several customary forests that are still well protected and managed. The secondary data was sourced from books, journal articles, and other reference sources. The analysis is carried out qualitatively, classifying and connecting the relationships between one data and other data. Next, elaboration and interpretation analysis are carried out to conclude the logical process of deduction and induction.

## **2. RESULT AND ANALYSIS**

### **2.1. Local Wisdom as the Essential Form Legal Culture in Customary Forest Management**

Obedience in the customary law community order is impregnated because of cultural patterns that are manifested in various local wisdom values. Community governance then becomes a guideline for society and interaction. The community's belief system also shapes obedience as a legal culture.<sup>23</sup>

The concept of legal culture reflects a set of values, ideas, and norms that guide thinking, speaking, behaving, and acting as expected by most local community members. This means that a community's legal culture is a set of values, ideas, and norms built by local community members' wisdom and effort, which are internalized from generation to generation. It functions as a guideline that connects legal regulations theoretically and actual behavior or actions in practice.<sup>24</sup>

Communities around forests generally have their way of managing and utilizing forest products. They use customary and cultural norms in managing forests so that they always protect and manage forests even though other people do not necessarily care about the function of the forest.<sup>25</sup> Customary law communities have rules for managing resources that are believed to be their communal property.<sup>26</sup>

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<sup>21</sup> Victor Imanuel W. Nalle, "The Relevance of Socio Legal Studies in Legal Science," *Mimbar Hukum* 27, no. 1 (2015): 184.

<sup>22</sup> Sulistyowati Irianto, "Legal Education for the Future of Indonesia: A Critical Assessment," *The Indonesian Journal of Socio-Legal Studies* 1, no. 1 (2021): 23.

<sup>23</sup> Sulaiman, "Legal Culture of Aceh Society in the Buying Sell Agreement," *Al Risalah* 17, no. 1 (2017): 2.

<sup>24</sup> *Ibid.*

<sup>25</sup> Mulyadi, Dede, and Widiawaty, *op.cit.*, 57.

<sup>26</sup> Kurniasari, Yuliaty, and Deswati, *loc.cit.*

Abdulah (2015) explored the adaptation ability of customary law communities, which is reflected not only through patterns of interaction with each other but also with the surrounding environment. In preserving their forest ecosystem, the Mataue community, the Ngata Toro community, and the Dataran Lindu community in Donggala Regency, Central Sulawesi Province, rely on conservative local wisdom in managing the customary forest in the Lore Lindu National Park. They enforce a rule that a limited land clearing must obtain permission from the customary institution.<sup>27</sup>

As revealed by Yulia and Herinawati (2022), the awareness of customary law communities towards the legal order can be seen from the essential role of the *Dewan Pawang Hutan* in safeguarding forests in Aceh Province for generations which has even been carried out since Aceh was led by Sultan Iskandar Muda. The regional government also enacted a Qanun which gives authority to the *Pawang Hutan* to preserve forest areas.<sup>28</sup>

The content of local wisdom in shaping the behavior of customary law communities is the ultimate value that can contribute to ensuring the maintenance of legal behavior. This, by Satjipto Rahardjo, is called a peculiar form of social life, symbolizing deep respect for original Indonesian law, which lives and develops as the living law. Apart from that, this affirms the character of law as a tool to achieve national goals that accommodate the autonomous nature of traditional local authorities in maintaining and sustaining nature.<sup>29</sup> The lives of traditional law communities are carried out based on local wisdom. This is also recognized in the Indonesian Constitution as traditional rights inherent in customary law communities.<sup>30</sup>

Mulyadi, Dede, and Widiawaty (2022) explored that the Nagari Sungai Buluh community in Padang Pariaman Regency, West Sumatra Province is still bound by guidelines for behavioral values towards their forests, which are implemented by complying with the designation of regional forests, reserve forests, and prohibited forests. In prohibited forests, for example, an inherited rule prohibits any customary member from cutting down the forest unless they cannot meet their daily needs and must obtain permission from the *ninik mamak* as the customary leader. Apart from these customary rules, observance of behavior is also driven by the belief that the customary

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<sup>27</sup> Vayka Abdulah, "Perlindungan Hukum Hak-Hak Masyarakat Hukum Adat dalam Pengelolaan Sumber Daya Hutan di Taman Nasional Lore Lindu," *Jurnal Legal Opinion* 5, no 3 (2015): 3.

<sup>28</sup> Yulia and Herinawati, "Customary Law of The Forest in The North Aceh Recency," *Diponegoro Law Review* 7, no. 2 (2022): 330-333.

<sup>29</sup> Wahyu Nugroho, "Konsistensi Negara Atas Doktrin Welfare State dalam Pengelolaan Sumber Daya Hutan oleh Masyarakat Adat," *Jurnal Hukum Lingkungan* 1, no. 2 (2014): 45.

<sup>30</sup> I Gusti Agung Mas Rwa Jayantiari, "Harmonisasi Pengaturan Hak Kesatuan Masyarakat Hukum Adat atas Sumber Daya Alam Berbasis Hukum Progresif," (Dissertation, Doctor of Law Study Program Faculty of Law Udayana University, 2019), 12.

forest is guarded by the *inyiak balang*, which, based on ancestral mythology, is a large animal that guards and watches over the forest.<sup>31</sup>

Customary rules are often not stated in written texts but are conveyed through oral speech from generation to generation. If this instrument is born from a customary law community, it is often called customary law. However, if this regulation is created by a community that is not a customary law community, it is often referred to as a local agreement. However, customary law and local agreements are binding and have legal consequences in the form of sanctions for violators.<sup>32</sup>

The customary law community of Anatowa who live in Kajang, Bulukumba Regency, South Sulawesi Province, practices a harmonious relationship with nature inherited from their ancestors through ancestral messages. Customary forest management is part of overall environmental protection. Forests are managed in a balanced manner. For example, if someone cuts down a tree, they must provide a replacement. If anyone violates it, they will be subject to customary sanctions.<sup>33</sup>

The imposing of local wisdom-based sanctions is often found in legal communities in Bali Province. For example, the traditional forest in the Bayung Cerik Customary Village, Kintamani, Bangli Regency, called Alas Due, is always protected and respected because it is trusted as a source of community fertility. They routinely perform Hindu rituals related to the existence of the forest at Bangun Sakti Temple and Plapuan Temple. Even though the *awig-awig* (customary rules) do not explicitly state this, unwritten rules prohibit *krama* (customary community members) from entering forest areas and prohibiting hunting and killing animals in the middle of the forest. Even if there is an interest in entering the forest, manners are prohibited from destroying the ecosystem. The sanctions imposed on violators are carrying out the *neduh* and *maguru piduka* ceremonies.<sup>34</sup>

Harly (2023) found that the customary society in Bayan Village, West Lombok Regency, West Nusa Tenggara Province still maintain their ancestral traditions by the principles stated in their customs protecting the forest. This includes sanctions for anyone who harms customary forests. If

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<sup>31</sup> Asep Mulyadi, Moh. Dede and Millary Agung Widiawaty, "The Role of Traditional Beliefs and Local Wisdom in Forest Conservation," *Jurnal Geografi Gea* 22, no. 1 (2022): 56.

<sup>32</sup> Nendah Kurniasari, Christina Yuliaty and Rismutia Hayu Deswati, "Posisi Praktek Pengelolaan Sumber Daya Kelautan dan Perikanan Berbasis Hukum Adat dalam Perspektif Hukum Nasional" *Jurnal Kebijakan Sosial Ekonomi Kelautan dan Perikanan* 6, no. 2 (2016): 112.

<sup>33</sup> Astri Hasbiah, "Analysis of Local Wisdom as an Environmental Conservation Strategy in Indonesia," *Journal Sampurasun: Interdisciplinary Studies for Cultural Heritage* 1, no. 1 (2015): 4.

<sup>34</sup> I Ketut Sweta, "Protection of Customary Forests in Bayung Cerik Village," Interview by I Gusti Agung Mas Rwa Jayantiari and I Made Suarnata, Bayung Cerik Village, June 5, 2023.



someone cuts down a tree that does not comply with customary regulations, he/she will be subject to a fine of one buffalo, one quintal of rice, and 244 coins.<sup>35</sup>

The reality of interaction between customary law communities in several regions in Indonesia can be analyzed based on the concept of forming factors and the theory of legal systems that are built by legal culture. The historical ties of a place passed down from their ancestors, along with patterns of habitual awareness and obedience, form the legal culture of customary law communities in the region. Protecting customary forests is a reflection of the absorption of traditional values. Apart from that, local wisdom, which contains knowledge passed down from generation to generation, becomes a reference and basis for compliance behavior, especially in forest management. This is in line with one of the functions of customary law to create social order.

## **2.2. Efforts of Strengthening Local Wisdom in Forest Management Arrangements**

From an administrative perspective, Article 14 (1) of Law No. 23 of 2014 concerning Regional Government determines that the administration of government affairs in the forestry sector is divided between the national and provincial governments. Forestry is an optional government affairs for regional governments.<sup>36</sup> The national Government, however, can designate particular areas within provincial and/or district/city areas to carry out certain strategic government functions for the national interest in the form of protected forest and conservation forest.<sup>37</sup>

The Government Regulation No. 23 of 2021 concerning Forest Management (hereinafter Government Regulation 23/2021) determines customary forests as forests that are within the territory of customary law communities.<sup>38</sup> Besides, it determines that customary law community is one of the main actors to implement the social forestry, a sustainable forest management system, by virtue of improving their welfare, environmental balance and socio-cultural dynamics various type of forest, including customary forests.<sup>39</sup> Article 233 of the Government Regulation 23/2021 makes clear that customary forests originate from state forests; and/or not state forests are managed by customary law communities which have the main functions of conservation, protection and/or production. Regarding the

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<sup>35</sup> Lalu Noval Banu Harly, "Sustainable Forest Management from the Perspective of Customary Law in Indonesia: A Case Study in the Bayan Community," *International Journal of Social Sciences and Humanities* 1, no. 1 (2023): 35.

<sup>36</sup> Law No. 23 of 2014 concerning Regional Government, Art. 12 (3) (d).

<sup>37</sup> *Ibid.*, Art. 360 (2).

<sup>38</sup> Government Regulation No. 23 of 2021 concerning Forest Management, Art. 1 (7).

<sup>39</sup> *Ibid.*, Art. 1 (64).

formal stipulation, Article 234 of the regulation regulates that the recognition of the existence of customary law community in the area of state forests is determined by regional regulation while its recognition outside the state forest area is determined either by regional regulation or decree of governor/ regent/mayor in accordance with his/her authority.

Article 235 of the Government Regulation 23/2021 requires the existence of customary institution and law, in particular customary sanctions that still adhered to by the community as one of the criteria to determine the existence of customary law community. It also requires four criteria to determine a forest can be classified as a customary forest. First, the forest is situated within the area of the customary law community. Second, the forested area has a defined and is managed according to the community's local wisdom. Third, the forest originating from the state forest area or outside of it. Fourth, the community still carries out forest product harvesting activities in the surrounding forest areas to meet their daily living needs.<sup>40</sup>

By perceiving that customary law societies have similar characteristics with indigenous peoples, it may be argued that the customary law society concepts of authority, legitimacy, and the nature and source of law may differ fundamentally from those used to justify state power and are typically less rigid, less absolute, and less anthropocentric.<sup>41</sup> Further, the concept of self-determination of indigenous peoples over their natural resource<sup>42</sup> may also be used as analogy of the self-autonomous management of natural sources by customary law societies in Indonesia.

Mahyuni dan Topan (2023) conceived a local wisdom-based forest protection regulation to prevent and limit damage to forests and forest products caused by human actions that comprehensively guarantee the rights of the state, communities, and individuals over the forest.<sup>43</sup> Strengthening the recognition of local wisdom can support the existence of customary law communities. Therefore, regulating local wisdom as part of the cultural aspect cannot be separated from the existence of customary law

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<sup>40</sup> The substances of Government Regulation 23/2021 described in this paragraph are also reiterated in Regulation of the Minister of Environment and Forestry of the Republic of Indonesia No. 9 of 2021 concerning Social Forestry Management, in particular Art. 1(1), Art. 62, Art. 63, Art. 62, and Art. 65.

<sup>41</sup> Ludvig Beckman, Kirsty Gover and Ulf Mörkenstam, "The Popular Sovereignty of Indigenous Peoples: Challenges in Highly Populated Countries," *Citizenship Studies* 26, no. 1 (2021): 3.

<sup>42</sup> Chaterine J. Iorsn, "Indigenous Peoples and Self Determination: Challenging State Sovereignty," *Case Western Reserve Journal of International Law* 2, no. 2 (1992): 282-285.

<sup>43</sup> Mahyuni Mahyuni and Muhammad Topan, "A Forest Protection Model Based on Local Wisdom of the Kotabaru Dayak Indigenous Communities in Kalimantan Selatan Forest Conservation," *International Journal of Law, Environment, and Natural Resources* 3, no. 1 (2023): 8.

communities.<sup>44</sup> Adopting or integrating local wisdom into regional regulations and policies is a strategic effort to ensure sustainable environmental preservation in customary forests. These regulations and policies would be used as a basis to issue public order that controls people's behavior.

Local wisdom is an intangible but priceless asset and is reflected in every activity of the local community. The Regional Government Law clarifies that both national and regional governments are given the authority to determine local wisdom.<sup>45</sup>

Bali may be used as an example of how the practice of incorporating local wisdom into regional regulations and policies is implemented. Article 5 (1) Law No. 15 of 2023 concerning the Province of Bali (hereinafter referred to as Law 15/2023) declares two characteristics of Bali. First, *Tri Hita Karana* is a Balinese philosophy regarding the three causes of happiness: a harmonious attitude to life between humans and God, among humans themselves, and between humans and the environment based on holy sacrifice (*yadnya*). Second, *Sad Kerthi*, which reflects local wisdoms of purifying several aspects of life: the soul (*atma kerthi*); the sea and beaches (*segara kerthi*); water sources (*danu kerthi*); plants (*wana kerthi*); humans (*jana kerthi*), and the universe (*jagat kerthi*). The Law 15/2023 substantively incorporated local wisdom as the basis for regulating the harmonious relations of its people. Regarding the efforts to protect natural resources and customary forests, the local wisdom stipulated in the regulation has a responsive character.

Legal instruments related to recognition and respect for customary law communities should make their authority to act clearer, including over natural resources in customary territories.<sup>46</sup> Regulations regarding the recognition of customary law communities through a form of legal product that holistically also includes parts of their culture are also explained by Adnyani, Atmaja, and Sudantra (2021). They argued that the cultural and regional life of customary law communities are not separated, so the government must interpret the intersubjective meaning of local wisdom in

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<sup>44</sup> I Gusti Agung Mas Rwa Jayantiari, A A Gede Oka Parwata, and I Gusti Ngurah Dharma Laksana, "Orientasi Kesejahteraan dalam Pengaturan Subak Sebagai Warisan Budaya Dunia," *Kertha Patrika* 43, no. 1 (2021): 87.

<sup>45</sup> See Hasmonel, Derita Prapti Rahayu, and Faisal, "The Urgency of Integration of Local Wisdom Related to Environmental Conservation in the Bangka Belitung Islands," *Mulawarman Law Review* 6, no. 2 (2021): 119; and Law No. 23 of 2014 concerning Regional Government. Annex, 46.

<sup>46</sup> Gde Made Swardhana and Suwiat Jenvitchuwong, "Participation in Customary Land Management: Developments and Challenges for the Protection of Indigenous Communities," *Journal of Human Rights, Culture and Legal Systems* 3, no. 2 (2023): 312.

forming related regulations.<sup>47</sup> Sutaryantha and Kusumasari (2020) revealed that customary law communities in Bali in particular place local wisdom as part of the applicable rules. In relation to the formation of state legal products, for example, regional regulations that are taken into account are the considerations that the Balinese traditional law community exists with power that is born of itself with its customs which contain local wisdom.<sup>48</sup>

Siombo (2021) believes local wisdom in managing natural resources should be more effectively adopted and regulated through regional regulations. Apart from that, the value of local community wisdom can be used as a source for regional government regulation.<sup>49</sup> Regional regulations theoretically have a narrow degree of flexibility because they may not deviate from national laws and regulations.

Regional regulations and policies that recognize and incorporate local wisdom strengthen the existence of customary law communities, which are inseparable from their customary forests. The forest management and conservation carried out sustainably by customary law communities reflect the ideas behind constitutional provisions regarding the recognition of their existence and customary rights.

### **3. CONCLUSION**

Local wisdom is integrated into the rules of life of customary law communities in managing customary forests. The legal culture of customary law communities in various regions of Indonesia was formed due to shared awareness based on local wisdom, which has been implemented for generations. Legal compliance, which reflects legal culture, is in line with the function of customary law in realizing social order. Efforts to strengthen local wisdom in forest management arrangements are realized by forming forestry-related laws and regulations by the national and local governments. The regulations at the national level determine customary law communities as one of the main actors in social forestry management. At the regional level, the regulations that recognize the status of customary law society in managing customary forests and incorporate local wisdom have strengthened forest management and preservation by customary law communities.

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<sup>47</sup> Ni Ketut Sari Adnyani, Gede Marhaendra Wija Atmadja, and I Ketuit Sudantra, "Four Conditions for Recognition of Indigenous Peoples in the Constitution and State Revenue," *JILS (Indonesian Journal of Legal Sciences)* 6, no. 2 (2021): 311.

<sup>48</sup> Md Putri Wiyantari Sutaryantha and Bevaola Kusumasari, "Traditional Collaborative Governance: Understanding Decision-Making Processes in Traditional Villages in Bali, Indonesia," *Udayana Journal of Law and Culture* 4, no. 2 (2020): 121.

<sup>49</sup> Marhaeni Ria Siombo, "Local Wisdom as Basic Material For Drafting Local Government Regulations: A Case Study of Dayak Forest Fires in Kalimantan, Indonesia," *Linguistics and Culture Review* 5, no. 3 (2021): 1069.

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