

A STUDY OF MUKIM CUSTOMARY FORESTS RECOGNITION IN PIDIE REGENCY, ACEH PROVINCE, INDONESIA

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ABSTRACT

This article examines whether mukim customary law communities are entitled to control customary forests, without conflicting with existing villages, while customary forests have traditionally been controlled by mukim and their customary law communities in Pidie Regency Aceh Province, Indonesia. The government has not recognized the proposed mukim forest as it potentially leads to conflict between customary institutions. This study describes such a dynamic for better understanding and finding a way to future solutions. The customary forest proposal by the Mukim has yet to receive formal government recognition. This study used socio-legal research methods. Data was obtained through observations and interviews with imuem mukim, traditional leaders in several mukims, i.e. Paloh mukim, Kunyet Mukim, and Beungga Mukim, in Pidie Regency. This article showed that the recognition of mukim customary forests in Pidie Regency has not received formal recognition from the government. Therefore, new efforts to propose the recognition of mukim as a Customary Law Community known as *Masyarakat Hukum Adat/MHA*) especially in Pidie Regency needs to be done by all stakeholders.

Keywords: Customary Forest, *Mukim*, Customary Law Community, Government.

INTRODUCTION

The discourse on the recognition of mukim customary forests in Pidie Regency, Aceh Province has hindered the recognition of mukim customary forests by the government, in this case by the Ministry of Environment and Forestry (KLHK) of the Republic of Indonesia. This recognition is important for the mukim customary law communities as a form of legal certainty.

There are some efforts made to preserve and manage forest resources carried out by local customary law communities with reference to customs, and long-standing customs.

Recognition of the mukim customary forests is an effort to maintain the sustainability of forest ecosystems and biodiversity, as well as ensure that the use of forest resources is carried out in a sustainable way and in accordance with customary values recognized by local communities. Although the recognition of mukim customary forests in Pidie Regency has been done well, there are still some challenges that must be overcome. Some of these challenges are changes in community attitudes and behaviors, lack of official support and recognition from the government, and pressure from various groups that want to exploit forest resources irresponsibly. All these challenges need serious attention from all related stakeholders.

The study of customary forests can be started from Law Number 41 of 1999 concerning Forestry and Constitutional Court Decision Number 35 of 2012. Article 2 paragraph 2 of Law No. 41 of 1999 states that "State forests as referred to in paragraph (1) letter a, is a customary forest". So that a lawsuit arises from the Customary Law Community known as *Masyarakat Hukum Adat/MHA*), among others; Alliance of Indigenous Peoples of the Archipelago (AMAN), Unity of Customary Law Peoples of Kuntu. and Unity of Customary Law Peoples of Kasepuhan Cisit. MHA asked the Constitutional Court to issue a ruling affirming customary forests as customary forests and state forests as state forests. The Constitutional Court granted by issuing Constitutional Court Decision Number 35 of 2012. There are two forms of conflict discussed in the ruling regarding forest areas against MHA units due to the enactment of Law No. 41 of 1999, namely MHA unity with companies and MHA units with the government. The two forms of conflict regarding forest areas illustrate that the regulation of forest areas in Indonesia does not pay attention to the existence and unitary rights of MHAs over their customary territories.

So, with the granting of the Constitutional Court Decision Number 35 of 2012, customary forests and state forests are different. Therefore, customary forests have been allowed to be managed according to MHA provisions. However, there has been no clear implementation of the Constitutional Court Decision No. 35/PUU-X/2012 to protect MHAs who have been running customary forests as one of the obstacles to the recognition of customary forests in Indonesia and especially in Aceh. The existence of its subject and object in the recognition of customary forests is still questionable. In Aceh the subject is Mukim. This

is explained in Article 67 of Law No. 41 of 1999. There are 5 (five) conditions in the article confirming that mukim is MHA. The same requirements are outlined in Article 64 – 65 of the Regulation of the Minister of Environment and Forestry Number 9 of 2021 concerning Social Forestry Management. The explanation of Mukim as MHA is contained in Qanun of Aceh (Regional Regulation) Number 4 of 2003 concerning Mukim Government. It is also stated in the Qanun of each Regency concerning Mukim, Law Number 44 of 1999 concerning the Implementation of Special Privileges of the Aceh Special Region Province, Law Number 18 of 2001 concerning Special Autonomy for the Special Region Province as Nanggroe Aceh Darussalam Province which was later repealed after the existence of Law Number 11 of 2006 concerning Aceh Governance. The rule of law clarifies the position of Mukim as MHA and the apex of the land object is regulated in Qanun. The mukim area becomes a joint area across the villages when they want to manage the forest. In other words, they must hold permission from the mukim before cultivating the forest, and if they abandon the forest must be returned to the mukim. This provision applies almost to all regencies in Aceh.

Although national regulations and regional regulations in Aceh Province state that Mukim is MHA, in reality, there is still an overlap between the state and MHA Mukim regarding the recognition of customary forests in Pidie Regency, Aceh Province. So, there is a discourse on the recognition of customary forests at the mukim and village levels in Pidie Regency of Aceh Province. The research focuses on identifying problems regarding the dynamics of recognition of mukim customary forests in Pidie District, Aceh Province. The specific purpose of the study is to identify the causes of the proposed customary forest by the MHA which have not received formal recognition by the government. This research is important, considering that there are still obstacles in the recognition of customary forests at the mukim and village levels in Pidie Regency. In addition, this research is also important because there is a misunderstanding by the central government regarding the conflict between village and mukim related to customary forests in Pidie Regency, Aceh Province.

In the last 10 years, there have been found some research related to this study such as the research "Certainty of Land Ownership in Customary Settlements Included in Customary Forest Areas After the Decision of Constitutional Court Number 35 / Puu-X / 2012 *Juncto* Decree of the Minister of Forestry Number 941 / Menhut-II / 2013 (Study in Alur Keujrun Village, South Aceh Regency)". This study reviews land tenure and ownership according to

community habits in South Aceh Regency. In addition, this study discusses steps and obstacles in an effort to obtain legal certainty of land ownership status in customary settlements included in customary forest areas (Aidy 2016).

Then, the topic "Sense of Place and Green Politics: A Case Study of Mukim Customary Forest and Environmental Damage in Aceh Nusa Indrapuri (ANI) company Area in Aceh Besar Regency", discusses the *sense of place of mukim* customary forest in the Aceh Nusa Indrapuri (ANI) company area and the impact to development on environmental damage in Aceh Besar district (Rizalul Akbar, 2019). In addition, "The Government's *Political Will* on the Recognition of Customary Forests as an Effort to Resolve Agrarian Conflicts" reviews legal regulations related to forestry and MHA's position as a social dynamic (Saputra & Gaol, 2021). Besides, "MHA's Participation in Forest Resources Conservation in Jantho City District, Aceh Besar Regency" discusses the level of MHA's participation in forest resource conservation in Jantho City District, Aceh Besar Regency. Moreover, "Forest Management Based on Local Wisdom and Village Forest Development in Mukim Lutueng, Mane District, Pidie Regency, Aceh Province" reviews local wisdom in forest management in Mukim Lutueng, the potential of forest development, and community perceptions and attitudes towards the implementation of local wisdom in Mukim Lutueng (Ainul Mardhiah, Supriatno, 2016).

Furthermore, the study about "the Role of Forest Police and *Petua Uteun* (Forest Commander) in Maintaining Forest Conservation in the Interior of Geumpang District, Pidie Regency" discusses the role of *uteun* customary institutions and forest rangers in forest conservation in Geumpang District, Pidie Regency (Aswir, et al., 2017). Then, the study "Acehnese Customs in Environmental Conservation Practices" that explains about 11 (eleven) Acehnese customs in environmental conservation practices also becomes an interesting research (Evi Apriana, 2015). Then, the research concerning "the Origin of Customary Forest Reserve Policy in Indonesia" discusses the process of proposing customary forest reserve policy and its implementation process (Wibowo 2019).

In addition, a research on "Social Capital and Local Wisdom in Forest Management: A Case Study in the Forest Area Gampong (village) of Kunci, Sawang District, North Aceh Regency" discusses the use of social capital, local wisdom and local knowledge in utilizing forest areas in *Gampong* Key, Sawang District, North Aceh Regency (Rangkuti et al., 2020). Besides, the study about "Socialization and Assistance in the Preparation of Forest

Management Qanun Based on Local Wisdom in gampong (village) Alue Leukot, Paya Bakong District, North Aceh Regency", discusses forest management and encroachment procedures by prioritizing local wisdom values in village (Yulia et al., 2022). Last but not least, the study on "Potential Tenure Conflicts in Forest Management Unit (KPH) Region II Aceh Protected Forest Area" discusses the condition of tenure conflicts, the impacts that occur and the handling of forestry tenure conflicts that occur in KPH Region II Aceh protected forest areas (Ahmad et al., 2022).

All studies described above show that so far there is no certain reserach that has been done focusing on mukim as MHA who hold the rights to manage customary forest in Pidie Regency. Moreover, it also proves that there is no duplication either in the contents or research location as well research methods between this research with the previous research that have been identified above. Therefore, it can be claimed that this research is the original research and has specific novelty with certain concept of how to recognize customary forest as the forest managed by mukim as MHA.

RESEARCH METHOD

This study used socio-legal research method, related to normative legal rules practice in relation to certain legal events that occur in society (Abdulkadir Muhammad, (2004). Socio-legal research referred to as sociological legal research/field research. Socio-legal studies are built on primary data, or information gathered from the public as a first source through the collection of field data such as interviews and observations. In this study, related information was collected through observations and interviews in Pidie Regency, including in the Mukim of Beungga, the Mukim of of Kunyet and the Mukim of Paloh.

RESEARCH OUTCOME AND DISCUSSION

1) National Regulation on Recognition of Customary Forests

Before Indonesia's independence, MHA units were accepted along with their traditional rights as long as they were alive and in line with the progress and development of society. This recognition led to customary forests in Indonesia which is still uncertain (Kadir 2019). MHA has had to fight to balance the State's regulatory policies in forestry and natural resource management since the beginning of Indonesia's independence. This applies to forest areas

bound by MHA rights (Arauf, 2021). Protection of the existence of MHA can be aided by recognition of its existence. Natural resource utilization and forest management are just one example of how the state recognizes the existence of MHA. This is in accordance with Article 33 paragraph 3 of the 1945 Constitution saying that natural resources are always used as efficiently as possible to advance human well-being (Septya Hanung Surya Dewi, I Gusti Ayu Ketut Rachmi Handayani, 2020): MHA's rights to customary forests are usually viewed in a relative way in a national context. This choice was taken after reviewing the provisions of the constitution. According to the constitution, the recognition of customary rights must be "in accordance with the development of society and the ideals of the Unitary State of the Republic of Indonesia". This statement illustrates how Indonesia adheres to its own unitary state model, so the meaning and application of customary rights in the international community will be different from Indonesia. (Tobroni, 2013) The phrase is stated in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

There should be no overlap between state power and MHA rights. The state has full rights to control and take, manage the inventory, designation, use, utilization and legal relations that take place within the state forest area. Conversely, in terms of the scope and legitimacy of customary rights, state power over customary forests is limited. So that it becomes clear the status of recognition and protection of MHA units guaranteed by Article 18B paragraph (2) of the 1945 Constitution (Arauf, 2021). MHA has customary land rights and jurisdiction, one example of which is customary forest, as affirmed by Article 18B and Article 33 paragraph (3) of the 1945 Constitution (Septya Hanung Surya Dewi, I Gusti Ayu Ketut Rachmi Handayani, 2020). Forest management in Indonesia is then regulated by Law No. 41 of 1999 concerning Forestry.

According to Law No. 41 of 1999, there are two types of forests in Indonesia: state forest and rights forest. State forest is forest located on land that is not encumbered with land rights. Rights forest is forest located on land that is subject to land rights. According to Law No. 41 of 1999 Article 1 Point 6, customary forest is a state forest located on the land of communities that practice customary law. Thus, according to the explanation of Article 1 point 6 of the Law, customary forests, clan forests, lordship forests, or other designations belong to MHA and are included in state forests (Abdillah et al., 2018). This categorization becomes the cause of disputes between MHA and the government (state) regarding customary forests.

Forests for society become an important component of their way of life. They have coexisted peacefully with the forest for generations and it serves as the main foundation for the development of their culture. Due to the status of customary forests (Syofiarti, Titin Fatimah, 2023) as state forests, it raises the perception that MHA has neglected its forest tenure obligations and even lost rights to its customary territories which were then seized by outsiders under the pretext of obtaining permission from the state. To maintain their forest areas as their customary territory, this led to many disputes between MHA and the government as well as with other legal entities. Therefore, the classification of customary forests by the Forestry Law as state forests creates injustice to MHAs who as a result live in poverty and may even be driven from their customary lands. The issue of customary (Syofiarti, Titin Fatimah, 2023) forests has become one of the most crucial things for customary forest communities, so it has begun to cause a lawsuit from MHA against the government.

Because Law No. 41 of 1999 has not been able to guarantee the protection of customary rights owned by MHA, a judicial review has been submitted to the Constitutional Court by the MHA Nusantara Alliance (AMAN) on the arrangement of customary forests including state forests. The Constitutional Court affirmed in its decision No. 35/PUU-IX/2012 that customary forests are not state forests but forests that have been owned by MHA for generations as long as they can be proven. This gives MHA great hope to obtain legal protection guarantees for customary forests that have been designated as state forests (Septya, et al. 2020). In fact, there has been no clear implementation of the Constitutional Court Decision No. 35/PUU-X/2012 to protect MHAs who have been running customary forests. In essence, the Constitutional Court ruling separates customary forests from state forests, but does not classify them into separate categories from rights forest; rather, it recognizes customary forests as a form of forest rights. As a result, in addition to being a land rights forest owned by a person or legal entity, it is also a forest within the MHA area.

Customary forests can be considered as state forests, if they are not in accordance with the values of the Unitary State of the Republic of Indonesia. Laws and regulations often contain policies that do not conform to people's expectations and even contribute to social problems. Following up on the Constitutional Court Decision No. 35/PUU-IX/2012, government policies that should regulate customary forests are as follows: First, the establishment of customary forest areas that are separate from state forest management and designated as buffer areas for

state forest areas. Second, implementing MHA arrangements through community empowerment in accordance with local wisdom. Third, protected plant and wildlife species remain under government management except for the purposes of customary events and coaching. Fourth, guidance to MHA on procedures for using customary forests according to local wisdom (Wiyono, 2018). These four policies are considered important to be implemented to follow up on the results of the Constitutional Court Decision No. 35/PUU-IX/2012 for MHA related to customary forest areas.

2) Recognition of Customary Forests in Aceh

Customs derived from local traditions and knowledge offer alternative perspectives for solutions in environmental management, one of which is sustainable forest governance (Dian Aswita, Suleman Samuda, Evi Apriana, 2022). LHK Regulation No. 9 of 2021 allows MHA to sustainably manage forests in Customary Forest areas. The regulation recognizes five social forestry programs: Village Forest (HD), Community Forest (HKm), People's Plantation Forest (HTR), Customary Forest, and Forestry Partnership. Forests located on MHA land are referred to as customary forests. Customary territories can be in the form of land, water, and/or water, along with the natural resources on it, owned, utilized, and preserved for generations sustainably based on local wisdom, to meet the needs of the community. Two recognition mechanisms are stipulated in Minister of Environment and Forestry 9/2021 Article 63 Paragraph 1. Local regulations should be established for MHAs residing in state forests. Regarding MHAs residing outside state forest areas, they are regulated by local regulations or decisions taken in accordance with the authority of the governor, regent, or mayor. The regional regulation includes the substance of the regulation of MHA recognition procedures and the substance of the determination of the confirmation, recognition, and protection of MHA.

The reason for the difficulty of MHA recognition is because of its relationship with natural resource management (SDA). The emergence of hope that natural resource management is not solely dependent on the state, resulted in limitations called state tenure rights (HMN), which were first adopted in Law Number 5 of 1960 concerning Agrarian Principles (UUPA) (Sulaiman, Muhammad Adli, 2019). MHA has interests that must be respected by the government or state, especially with regard to the use of natural resources. In the management and utilization of natural resources, the government is required to uphold the

interests of the welfare and development of all people, including indigenous peoples (Muazzin, 2015). As long as the fact of MHA's existence remains, MHA is a supporter of rights and obligations in law enforcement (Husin, 2019). Mukim is the subject of Customary Law Peoples (MHA) in Aceh as stated in Aceh Qanun Number 4 of 2003 concerning Mukim Government, then also stated in the respective Regency Qanun concerning Mukim. Mukim meets the criteria as an MHA as specified in Article 67 of Law 41/1999 and Articles 64-65 of Minister of Environment and Forestry No. 9 of 2021.

Acehnese society and the existence of forests cannot be separated from the customs that develop in Acehnese society which not only regulate administrative unity but also to the level of how to regulate living space in forests, agricultural fields, and coastal areas (Dian Aswita, Suleman Samuda, Evi Apriana, 2022). It was found that there are forest customs, rice field customs, plantation customs, vegetable/crop gardening customs (*meulampoh*), farming customs, and agricultural mining customs in forest conservation practices, plant conservation, agriculture, and plantations in the field.

Through customary forests, the legacy of smart forest management has been practiced by the people of Aceh for decades. Adat *glee* is the law governing the forestry industry, particularly forests that have or have not been planted by local people (Evi Apriana, 2015); they regulate, among of them are: *Pawang Seuneubok* as the person in charge of clearing and using the plantation land (Nurdin, 2019); *Panglima Krueng* was in charge of guarding the river; *pawang Uteun*, known as uteun handler. (Ilyas, n.d.). Customary forests as understood are classified as local wisdom with the presence of *Pawang Uteun* so that their role is very important not only the preservation of the forest itself, but also how it can provide economic and welfare impacts for the people around the forest.

Some regulations in forest areas, including: *first*, people are prohibited from cutting forests; trees in forests that produce honey should not be cut down; banyan trees can store water, should not be cut down; to protect the supply of springs, it is forbidden to cut down trees around springs; to cut down trees on the left and right banks of the river with a distance of 100 (one hundred) meters because it will cause the river to dry up; make use of wood accordingly necessity; plant fruit trees in the forest, such as durian, rambutan, and mangosteen, while maintaining ecosystem balance; conserving forests to protect water supplies for humans, wildlife, and forest plants; and wood from fallen trees can be collected and utilized only for

residential and non-commercial purpose (Zakaria, 2022). *Secondly; cah glee* (forest clearing); there must be a report and there will be a *khanduri glee*. Some abstinence or prohibitions in the forest, among others: rattan that is more than 3 (three) meters long is not allowed to be taken, and rattan that has reached more than 10 meters in length is not allowed to be taken. This provision has been stipulated in the Qanun (local regional) of Mukim. If somebody violates it, there will be penalty according to the results of deliberation. The fine will adjust the economy of the community. Prohibition on cutting trees carelessly in protected forest areas. People lost in the forest are also the responsibility of Pawang *uteun* (Zakaria, 2022). These regulations are contained in the Qanun of each district concerning Mukim in Aceh.

Pawang *uteun*, also known as pawang glee, is responsible for the recognition of customary forests. He oversees the management of wood and non-timber resources (such as honey, gastric sap, bird's nest, rattan, and resin) as well as waste collection, provides advice and guidance on forest management, and resolves disputes involving violations of *glee customary law* (Ginting & Muazzul, 2019). Uteun handler is a person in charge of explaining customary forest areas (Khalidin, n.d.) The relationship between *the uteun* handler and the mukim is a unity (not a separate institution from the mukim). Pawang *uteun* is a mukim fittings, which specifically helps mukim in forest area management. Everything that happens in the forest must be reported to the settler. The *uteun* handler is directly under and responsible to the *imuem mukim*.

Mukim and *gampong* are one unit, so forest management in Aceh, especially in Pidie Regency, has no conflict between *gampong* and mukim. The proof that mukim and *gampong* are one unit is contained in Article 1 point 8 of the Qanun of Pidie Regency Number 7 of 2011 concerning Mukim Government and Article 1 point 8 of the Qanun of Pidie Regency Number 8 of 2011 concerning the Government of *Gampong*. If there is a dispute in forest management, generally the Pawang Uteung (*uteun handler*) will convey it to the mukim who is also known by *gampong* (Nasir, n.d.). Although there is little possibility of disputes in the recognition of mukim customary forests, the entity that can resolve the dispute is the Wali Nanggroe institution (LWN), as stipulated in Law No. 11 of 2006. This also emphasized in Aceh Qanun Number 10 of 2019 concerning the Second Amendment to Aceh Qanun Number 8 of 2012 concerning the LWN.

CONCLUSION

The recognition of customary forests has been initiated since the Law Number 41 of 1999 concerning Forestry and Constitutional Court Decision Number 35 of 2012; but there has been no clear implementation of this Constitutional Court Decision in order to protect MHA which has been running customary forests since early on. Mukim meets the criteria as an MHA as specified in Article 67 of Law 41/1999 and Articles 64-65 of Minister of Environment and Forestry Regulation No. 9 of 2021. The mukim as MHA requires very complex discussion so far. This study refers to several regulations, covering: Law 11 of 2006, Qanun Aceh 4 of 2003, Qanun Kabupaten Pidie 7 of 2011 and Qanun Kabupaten Pidie 8 of 2011. The legal provision also reinforces that Mukim and Gampong are one entity, so the recognition of customary forests by mukim is appropriate, as forest areas are managed by mukim which is a unit of MHA whose government structure coordinates several villages. So the government should recognise mukim customary forests for better construction of MHA and avoid any potential conflict in the community.

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Interview

Ilyas, Mukim Beungga, Interviewed, 20 November 2022

Khalidin, Mukim Kunyet, Interviewed, 19 November 2022.

Muhammad Nasir, Mukim Paloh, Interviewed, 19 November 2022.

Zakaria, Pawang Uteun, Interviewed, 21 November 2022.