

RESTORING CUSTOMARY FOREST RIGHTS THROUGH AGRARIAN REFORM: CASE STUDY OF THE KAMPAR COMMUNITY, INDONESIA

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Abstract

Approximately three-quarters of Kampar Regency is designated as state forest, despite the historical presence of indigenous communities for generations. Accordingly, this study examines on analyzing the framework for restoring the customary forest rights of these through agrarian reform, emphasizing social forestry. Employing a socio-legal research method, the study combines textual analysis of legal frameworks and case studies of Kampar's indigenous communities. The research examines two key issues: (1) the presence of indigenous communities and the concept of customary forest utilization in Kampar Regency, and (2) the importance of restoring indigenous communities' rights to forests through social forestry initiatives. The findings reveal that indigenous communities in Kampar Regency maintain a strong connection to their ancestral heritage, viewing customary forest as inalienable heritage. The restoration of indigenous communities' rights to these forest territories is considered essential. Social forestry is identified as a critical component of agrarian reform in Indonesia, with existing regulatory frameworks explicitly acknowledging indigenous communities as beneficiaries. Several areas of customary forest in Kampar Regency have also been identified as having potential for designation through social forestry programs.

Keywords: Agrarian Reform, Customary Forests, Indigenous Peoples, Kampar, Social Forestry

1. Introduction

Recorded by the Indonesia Statistics of Kampar in 2017, Kampar Regency had a forest area covering 846.958 hectares.¹ Meanwhile, the administrative area of Kampar Regency spans approximately 11.289 km², equivalent to 1.128.900 hectares.² This indicates that the forest area in the regency accounts for 75% of the total administrative area. Based on the Indonesia Statistics of Kampar, no classification of customary forest areas was found, indicating that 75% percent of the forest is considered “state forest.”³

Meanwhile, indigenous communities can still be found in almost all administrative regions of Kampar Regency, forming part of the long-standing *Kedatuan Andiko Nan 44*, which predates Indonesian independence.⁴ Unfortunately, the inadequate implementation of legal pluralism in

¹ BPS-Statistic of Kampar Regency, “Area of Forestry by Kind and District, 2015,” 2017, <https://kamparkab.bps.go.id/statistable/2017/06/08/56/-luas-hutan-menurut-jenis-hutan-dan-kecamatan-2015.html>.

² BPS-Statistic of Kampar Regency, “Kampar Regency in Figures 2024” (Bangkinang, 2024), <https://kamparkab.bps.go.id/publication/download.html?nrbfveve=ZTMzNWQzNDdkOGFkMTY3N2FjMjBjMDcz&xzmn=aHR0cHM6Ly9rYW1wYXJrYWluYnBzLmdvLmlkL3B1YmtpY2F0aW9uLzIwMjQvMDIvMjg1ZTMzNWQzNDdkOGFkMTY3N2FjMjBjMDczL2thYnVwYXRlbiIrYW1wYXItZGFsYW0tYW5na2EtMjAyNC5odG1s&t>.

³ Mizuno Kosuke et al., *Creation of the State Forest System and Its Hostility to Local People in Colonial Java, Indonesia, Southeast Asian Studies*, vol. 12, 2023, https://doi.org/10.20495/seas.12.1_47.

⁴ Ali Akbar, *Kemitraan Adat Tali Berpilin Tiga Daerah Kampar-Riau* (Bangkinang: LKATIKA Kabupaten Kampar, 1996).

Indonesia has posed significant challenges to the recognition and protection of indigenous rights. While the 1960 Basic Agrarian Law recognizes indigenous peoples and their customary rights, such recognition often fails to fully accommodate their unique and social context. The rights of indigenous communities are conditionally acknowledged, provided they do not conflict with national interests, state policies, or legislation. This creates an unequal relationship, wherein the legal status of indigenous communities remains contingent upon government approval.⁵

The lack of recognition of indigenous communities' existence within forest zoning policies has resulted in conflicts over forest claims between state-designated forest estates and the customary forest rights claimed by indigenous communities in Kampar Regency. For instance, the dispute arose between the customary forest rights of the Sibiruang Indigenous community and the designation of state forest areas, leading to a lawsuit filed by Jikalahari and Yayasan Menata Nusa Raya, civil society organizations in Riau. These organizations argued that the Indigenous community had managed oil palm plantations within a protected forest area. Meanwhile, for the Indigenous community, the forest was considered part of their customary forest.⁶ Furthermore, a similar dispute over customary forest rights versus state forest occurred between the Indigenous Senama Nenek Kampar community and PT Perkebunan Nusantara V.⁷

The failure of development policies to recognize and protect indigenous people's rights to their customary territories have led to prolonged tenure conflicts between indigenous communities, the government, and private companies. In 2011, the Indigenous Peoples Alliance of the Archipelago (*Aliansi Masyarakat Adat Nusantara/ AMAN*) recorded around 48 conflicts affecting 947 households, encompassing a total land area of 690,558 hectares. The conflicts persisted, as AMAN's data indicated that between October 2012 and March 2013, at least 224 indigenous people were arrested, with five of them were found guilty in court.⁸

More than a decade later, AMAN's year-end report in 2023 still recorded that approximately 2.578.073 hectares of indigenous territories had been seized by the state and corporations in the name of investment. At least 100 indigenous houses were destroyed, 247 people experienced

⁵ Mirza Satria Buana, "Development as a Threat to Indigenous Peoples' Rights in Indonesia," *International Journal on Minority and Group Rights* 27, no. 3 (2020): 442–71, <https://doi.org/10.1163/15718115-02703003>.

⁶ Bangkinang District Court, Bangkinang District Court Decision No. 41/Pdt.G/LH/2021/PN.Bkn (2022); Administrative Court, Pekanbaru Administrative Court Decision No. 38/G/TF/2022/PTUN.PBR (2023).

⁷ Mhd Zakiul Fikri, *Reforma Agraria Tanah Ulayat* (Sleman: STPN Press, 2021).

⁸ Yance Arizona and Erasmus Cahyadi, "The Revival of Indigenous Peoples: Contestations over a Special Legislation on Masyarakat Adat," in *Adat and Indigeneity in Indonesia*, ed. Brigitta Hauser-Schäublin (Göttingen: Universitätsverlag Göttingen, 2013), 43–62.

violence and criminalization, 204 were injured, and one person was shot dead.⁹ This indicates that indigenous communities in Indonesia, not just in Kampar Regency, consistently face potential difficulties in accessing their customary forests due to forest governance policies that fail to recognize and protect their rights because of a legal system that permits such circumstances.

In order to address agrarian conflicts or disputes in forest areas, the government established an agrarian reform scheme in the form of social forestry. Social forestry provides a mechanism to address forest rights claims by indigenous communities, recognizing their customary territories through the *adat* (customary) forest scheme. However, a study conducted by Tarigan and Karuniasa revealed that, out of 29 agrarian cases in the forestry sector resolved through social forestry between 2013 and 2018, 28 were settled through the forestry partnership scheme, while only one case was resolved through the customary forest scheme.¹⁰ This indicates certain challenges that have limited the use of the customary forest scheme in implementing agrarian reform in forest areas through social forestry.

A case study on social forestry in Kampar Regency has not been previously found, especially not a specific study addressing issues related to customary forest schemes. This research builds upon on the work of Budiono, Nugroho, Hardjanto, and Nurrochmat, who conducted research on the *Andiko Nan 44* indigenous community. However, this study specifically focuses on one of the indigenous communities that is currently located within the administrative area of Pelalawan Regency, while the previous research investigated the implementation of village forest schemes.¹¹ Based on this background and a review of several studies, this research aims to investigate two aspects: to investigate the current perceptions regarding the existence of indigenous communities in Kampar Regency and to explore the implications of utilizing their customary forests and asses the necessity of restoring indigenous people's rights to customary forests in Kampar Regency through social forestry.

2. Method

This research adopted a socio-legal research method. Nalle suggests that the term of 'socio-legal' refers to the intersection of social issues and law, or the study of how social factors and legal

⁹ Aliansi Masyarakat Adat Nusantara, "Catatan Akhir Tahun 2023, Masyarakat Adat Di Tahun Politik: Di Tengah Hukum Represif & Cengkraman Oligarki" (Jakarta Selatan, 2023), <https://www.aman.or.id/publication-documentation/239>.

¹⁰ Abetnego P.P. Tarigan and Mahawan Karuniasa, "Analysis of Agrarian Conflict Resolution through Social Forestry Scheme," *IOP Conference Series: Earth and Environmental Science* 716, no. 1 (2021), <https://doi.org/10.1088/1755-1315/716/1/012082>.

¹¹ Rahmat Budiono et al., "The Village Forest as a Counter Territorialization by Village Communities in Kampar Peninsula Riau," *Jurnal Manajemen Hutan Tropika* 24, no. 3 (2018): 115–25, <https://doi.org/10.7226/jtfm.24.3.115>.

systems interact and influence one another.¹² Meanwhile, it is also emphasized by Irianto that this type of research cannot be reduced to empirical legal research, a domain of legal studies typically associated with field studies.¹³ This indicates that a socio-legal study can be conducted through a textual analysis. Articles of legislation, regulations, and policies can be critically examined based on their meaning and implications for legal subjects. In this context, it can be explained whether the meanings embedded in these articles are detrimental or beneficial to certain societal groups in specific circumstances.¹⁴

Based on the previous explanation, the data utilized in this study is classified into three categories: primary, secondary, and tertiary legal data. Primary legal data were obtained from legislation issued by both central and regional legislative bodies, as well as court decisions. Secondary legal data were derived from various previous research reports, academic journals, and books relevant to the topics examined in this study. Then, tertiary legal data were sourced from encyclopedias and legal dictionaries.¹⁵

Additionally, the data collection for this study focused on gathering information related to the case study of the indigenous community in Kampar Regency, Riau. The collected data were then analyzed using the inductive reasoning method, a method employed to arrive at certain conclusions through the aid of a sufficient number of concrete examples. Inductive reasoning was proceeded from the concrete to the abstract, from the specific to the general, and examples to general rules.¹⁶

3. Results and Discussion

3.1. Indigenous Communities of Kampar Regency and Their Customary Forests

The indigenous communities in Kampar Regency are organized under the traditional confederation government of *Kedatuan Andiko Nan 44*.¹⁷ Several regions of this confederation are now within the administrative area of West Sumatra Province, such as the VII Koto Bungo

¹² Victor Imanuel W. Nalle, "The Relevance of Socio-legal Studies in Legal Science," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 27, no. 1 (February 15, 2015): 179, <https://doi.org/10.22146/jmh.15905>.

¹³ Sulistyowati Irianto, "Memperkenalkan Kajian Sosio-Legal dan Implikasi Metodologisnya," in *Kajian Sosio-Legal*, ed. Adriaan W Bednerd et al. (Denpasar, Jakarta: Pustaka Larasa, Universitas Indonesia, Universitas Leiden, Universitas Groningen, 2012), 1–18.

¹⁴ Bambang Herry Purnomo et al., "Empirical and Socio-Legal Approach of a Legal Research (Legal Research Perspective in Indonesia)," *Journal of Tianjin University Science and Technology* 54, no. 07 (2021): 86–97, <https://doi.org/10.17605/OSF.IO/5J4Q2>.

¹⁵ Khadijah Mohamed, "Combining Methods in Legal Research," *Social Sciences (Pakistan)* 11, no. 21 (2016): 5191–98, <https://doi.org/10.3923/sscience.2016.5191.5198>.

¹⁶ Shunuram Sonen, "Legal Research Methodology: An Overview," *Journal of Emerging Technologies and Innovative Research (JETIR)* Vol. 8, no. 10 (2021): d443, <https://www.jetir.org/papers/JETIR2110354.pdf>.

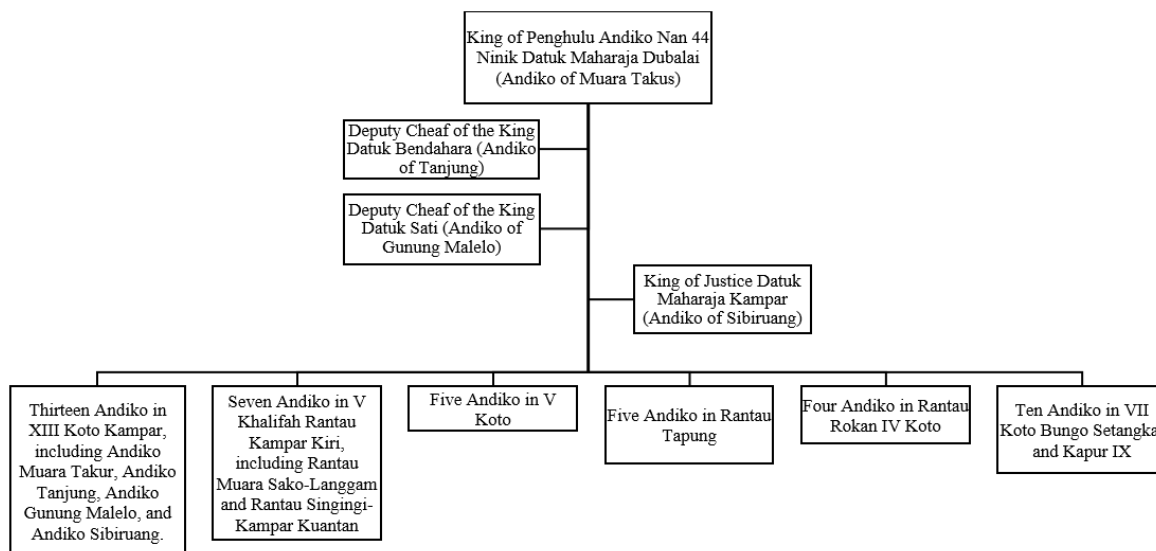
¹⁷ Zainal Abidin, *Silsilah (Otok Cacao) Ninik Mamak Dalam Masyarakat Kampar*, ed. Zainal Abidin (Bangkinang: Dinas Pendidikan dan Kebudayaan Kabupaten Kampar, 2014).

Setangkai Confederation and the Kapur IX Confederation, which consist of ten *kenegerian* (traditional villages). Furthermore, there is a confederation that currently falls under the administrative jurisdiction of Rokan Hulu Regency, known as the Rantau Rokan IV Koto Confederation, consisting of four *kenegerian*.

The remaining distribution of confederations in Kampar Regency includes the following: the XIII Koto Kampar Confederation (Koto Kampar Hulu Subdistrict and XIII Koto Kampar Subdistrict), the V Koto Confederation (Kuok Subdistrict, Salo Subdistrict, Bangkinang Subdistrict, Bangkinang Kota Subdistrict, Rumbio Jaya Subdistrict, Kampa Subdistrict, Kampar Subdistrict, Kampar Utara Subdistrict, and Tambang Subdistrict), the Rantau Tapung Confederation (Tapung Subdistrict, Tapung Hulu Subdistrict, and Tapung Hilir Subdistrict), and the V Khalifah Rantau Kampar Kiri Confederation (Gunung Sahilan Subdistrict, Kampar Kiri Subdistrict, Kampar Kiri Hilir Subdistrict, Kampar Kiri Hulu Subdistrict, Kampar Kiri Tengah Subdistrict, Perhentian Raja Subdistrict, and Siak Hulu Subdistrict).

Figure 1.

The Structure of *Kedatuan Andiko Nan 44*



(Sources: Akbar, 1996; Sumarsono, Lindyastuti, & Widyanto, 1997; Fikri, 2021).

The Confederation comprises several *Kenegerians*, each led by a *Pucuk Andiko* (see **Figure 1**) and organized by *penghulu*, *ninik mamak*,¹⁸ and *dubalang*¹⁹ within specific territories. In total,

¹⁸ *Penghulu* and *Ninik Mamak* have the responsibility to maintain customs, resolve conflicts, and provide advice to community members. See Mustafid Mustafid et al., “Alternative Legal Strategies and Ninik Mamak Authority: Dual Administration of Malay Marriage in Koto Kampar Hulu, Riau,” *Journal of Islamic Law* 5, no. 1 (January 29, 2024): 1–18, <https://doi.org/10.24260/jil.v5i1.1972>.

¹⁹ *Dubalang* has a role as an enforcer of customary law and a guardian of security within the community. See Multhahada Ramadhani Siregar, Sitti Rahma, and Alemina Br. Perangin-angin, “The Application of Feminism in Minangkabau Matrilineal System,” *Talenta Conference Series: Local Wisdom, Social, and Arts (LWSA)* 3, no. 4 (December 4, 2020): 100–103, <https://doi.org/10.32734/lwsa.v3i4.1141>.

Pucuk Andikos 44 form the *Kedatuan Andiko Nan 44*. The highest leader, Raja Pucuk Penghulu Andiko Nan 44 Ninik Datuk Maharaja Dubalai, is based in the *Kenegerian* Muara Takus. His leadership is supported by two deputies: Datuk Bendahara from Tanjung and Datuk Sati from Gunung Malelo. Moreover, judicial responsibilities are overseen by a royal judge, *Naghoco Nan Gonok*, as titled of Datuk Maharaja Kampar from Sibiruang.²⁰

The correlation between the indigenous community of *Kedatuan Andiko Nan 44* and tangible assets—such as land, houses, forests, gardens, and so on—has evoked to a concept known as *Harta Pusako*, which consists of two forms: *pusako tinggi* and *pusako rendah*. *Pusako tinggi* is believed to originate from ancestral inheritance for the descendants and nephews of each tribe and village from the past until the present. Due to the existence of a mystical connection with the ancestors, *pusako tinggi* is often referred to in practice as *Harta Soko*.²¹

Harta Soko may be managed by both male and female descendants and nephews, as long as they belong to the same tribal lineage. However, on the concept of *pusako tinggi*, while granting usage and utilization rights to the descendants who manage it, precludes individual ownership or possession by a single family member.²² This communal ownership model is exemplified by assets, such as communal forests or land, residential land, rice fields, and gardens. The management of these assets resembles that practiced by the Minangkabau indigenous community, where the assets are neither sold nor mortgaged, as they represent the identity of the community.²³

Regarding *Harta Pusako Tinggi*, if anyone dares to sell or pawn it, they will be regarded as someone who has no respect for tradition and has undermined the dignity of their ancestors. On the other side, *Harta Pusako Rendah* refers to inherited property received from one's father and mother, which is the result of their own efforts. It can also be understood as property acquired by a husband and wife through their own work, whose origin is still clearly known.²⁴ This property is typically passed down to daughters within a household and may be sold by its heirs.

²⁰ Akbar, *Kemitraan Adat Tali Berpilin Tiga Daerah Kampar-Riau*; Y. Sigit Sumarsono, Sumarsono; S., Lindyastuti; Widyanto, *Sistem Pemerintahan Tradisional Di Riau* (Jakarta: Departemen Pendidikan dan Kebudayaan Republik Indonesia, 1997).

²¹ Ulfia Hasanah, Davit Rahmadan, and Hayatul Ismi, "Study the Position of Husband and Wife in Marriage Based on Customary Law in Kampar," *International Journal of Innovation, Creativity and Change* 10, no. 4 (2019): 246–59.

²² Dodon Alfiander, Ikhsan Azhari, and Irma Suryani, "Settlement of Pusako-Tinggi Property Disputes in Nagari Sungai Tarab," *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 20, no. 1 (2022): 1–11, <https://doi.org/10.32694/qst.v20i1.1140>.

²³ Ahmad Wira et al., "Legal Study of Dzurri Waqf and Its Implementation towards Strengthening High Heritage Assets in Minangkabau, West Sumatra, Indonesia," *Juris: Jurnal Ilmiah Syariah* 22, no. 2 (2023): 329–41, <https://doi.org/10.31958/juris.v22i2.9383>.

²⁴ Hasanah, Rahmadan, and Ismi, "Study the Position of Husband and Wife in Marriage Based on Customary Law in Kampar."

From the concept of *Harta Pusako Tinggi* and *Harta Pusako Rendah*, two forms of *ulayat* (customary) rights over forests have emerged for the Kampar indigenous community. The first is “joint rights” or “collective rights” for forests classified as *Harta Pusako Tinggi*. Forest management under this type of right can be carried out by all clans within a *kenegerian* but cannot be owned by individual households or specific persons. There are at least three types of communal forests categorized as *Harta Pusako Tinggi* under the customary legal structure of the Kampar indigenous community, including *Soko* forest), forbidden forest (*hutan larangan*), and protected forest (*hutan pencadangan*).

The “*Soko* forest” is a forest whose governance responsibility lies in the hands of the *ninik mamak* (clan elders) within a tribal group or under the responsibility of the *Pucuk Andiko*, as the head of the *kenegerian*. The redistribution of the *Soko* forest is carried out by the *mamak* or *Pucuk Andiko* to mothers, daughters, nieces, or nephews. This forest is used for daily necessities, including meeting the needs for food, clothing, and building homes. Moreover, the “forbidden forest” refers to a sacred forest, according to customary law, and is not allowed to be managed by anyone. The purpose of this forest is to preserve the biodiversity of the flora and fauna within it in a sustainable manner. Lastly, the “protected forest” is a type of forest that is generally prohibited from being managed. However, under certain circumstances and based on mutual agreements among the *ninik mamak*, it may be utilized.²⁵

Table 1.
The Difference between Characteristics of *Kenegerian* Customary Forest and Tribal Customary Forest

No	<i>Kenegerian</i> customary forest	Tribal customary forest
1	The authority over customary forest rights is held by vise of <i>Pucuk Andiko</i> , typically the <i>Pucuk Godang Kadalām</i> of a particular <i>Kenegerian</i> .	The authority over the customary forest is held by one of the <i>Ninik Mamak</i> from the tribal members.
2	Customary forest rights must be recognized by all the <i>Ninik Mamak</i> , <i>Pucuk Andiko</i> , and <i>Pucuk Godang Kadalām</i> from neighboring <i>Kenegerian</i> as the bordering parties.	The tribal customary forest must be recognized by the neighboring <i>Ninik Mamak</i> and also acknowledged by the <i>Pucuk Andiko</i> as the head of the <i>Kenegerian</i> .
3	The forest management permission is granted to the <i>Ninik Mamak</i> entrusted with managing the customary forest, usually the <i>Pucuk Godang Kadalām</i> . This permission must be acknowledged by the <i>Ninik Mamak</i> of all tribes within the <i>Kenegerian</i> through deliberation in an indigenous council.	Management of the tribal customary forest must first obtain permission from the tribal <i>Ninik Mamak</i> .

Source: Lestari & Sukisno, 2021

Based on its governance responsibilities, customary forest rights in the indigenous community of Kampar can be categorized into two types: the tribal customary forest rights and the

²⁵ Devi Anggraini, *The Impact of Religious and Customary Laws and Practices on Women’s Inheritance Rights in Indonesi* (Bogor: Sajogyo Institute, 2015).

Kenegerian customary forest rights (see **Table 1**). *Ulayat* forest rights of the tribe are held by the *Ninik Mamak* of a specific tribe; however, this authority must be recognized by the *Ninik Mamak* of other tribes within the same *Kenegerian*. Moreover, this authority must also be acknowledged by the neighboring *Ninik Mamak* whose *Ulayat* forests border the area. As a result, the authority of a *Ninik mamak* over the tribal *Ulayat* forest must also receive recognition from the *Pucuk Andiko* or the head of *Kenegerian* as the highest customary leader. Only then does the tribal *Ulayat* forest right become legitimate and can be exercised by the *Ninik Mamak* on behalf of their tribe.²⁶

The *Kenegerian* customary forest means a forest whose management authority rests with all *Ninik Mamak* (clan elders) within a given *Kenegerian*. They collectively delegate the management authority to one of their members, who serves as vice of *Pucuk Andiko*, often referred to as *Pucuk Godang Kadalām*. This delegation is carried out through an *adat* (indigenous) council deliberation. The issuance of management permits for the customary forest must be acknowledged by all *Ninik Mamak* who are members of the indigenous council.²⁷

The second category of customary forest rights is private collective rights. This type of right allows an individual, household, or clan to own a forest for the benefit of their family or clan members. The examples of forests included under this right are those acquired through: a) *Harta pencarian*, which refers to forest assets acquired by a married couple during their marriage; b) *Hadiah*, or gifts, which refers to forest assets given by parents to their children or nieces and nephews through the maternal line; c) *Harta bawaan*, referring to forest assets acquired by men or women before marriage; and d) *Harta tempatan*, which refers to forest assets owned by a clan but lent to a family.²⁸

Clan property, known as *Harta Soko* or *Pusako Tinggi*, may not be taken by the *Ninik Mamak* to the home of his wife or children. Based on the customary law in Kampar, Indonesia, a husband's position is defined as "*ughang sumondo*" or "*limbago*," which means he is considered a guest in his wife's household and does not bear responsibility for his wife and children. Furthermore, the husband's role in his own household is limited, as the role of the *Ninik Mamak*, or maternal uncle, is more significant. Regarding property brought into the marriage, it remains a separate asset, and

²⁶ Rika Lestari and Djoko Sukisno, "Kajian Hak Ulayat Di Kabupaten Kampar Dalam Perspektif Peraturan Perundang-Undangan Dan Hukum Adat," *Jurnal Hukum Ius Quia Iustum* 28, no. 1 (2021): 94–114, <https://doi.org/10.20885/iustum.vol28.iss1.art5>.

²⁷ D. Haryono et al., "Legal Policy on the Protection of Ulayat Rights of Indigenous Peoples in Kampar Regency," *IOP Conference Series: Earth and Environmental Science* 1181, no. 1 (2023), <https://doi.org/10.1088/1755-1315/1181/1/012015>.

²⁸ Anggraini, *The Impact of Religious and Customary Laws and Practices on Women's Inheritance Rights in Indonesi*. 284

the husband cannot assert property rights within his wife's family.²⁹ The property also cannot be sold or mortgaged.

There are exceptions to the prohibition on selling or mortgaging the clan property or *Harta Soko*, under four specific conditions:³⁰ First, *ghumah godang katighisan* (repairing a large or traditional house), which refers to the need for funds to repair a clan house. Second, *mayat tabujunan nak diselamatkan* (a corpse that needs to be buried), referring to the inability to bury a deceased family member due to lack of funds. Third, *jando/gadi tuo nan ndak balaki* (an elderly widow or unmarried woman without a husband), which refers to the economic needs of a widow or an unmarried woman who lacks financial support. Fourth, *menogakkan adat jo pusako* (upholding customs and heritage), which refers to the need to establish customary leadership, maintain customary laws, or address specific issues within the clan for the collective benefit.

3.2. Restoring the Rights of Kampar Indigenous Community through Social Forestry

Law No. 41 of 1999 concerning Forestry stipulates that customary forests are part of state forests. This provision weakens the position of indigenous peoples in forest resource politics.³¹ In its development, the 2012 Constitutional Court Decision significantly shifted legal discourse surrounding customary forests in Indonesia. By declaring the provision in the 1999 Forestry Law, which categorized customary forests as state forests, unconstitutional, the Court recognized the legal subjectivity of indigenous people.³² The ruling recognized indigenous peoples as legal subjects, rights holders, and bearers of duties on par with other individuals and legal entities. Furthermore, the Constitutional Court Decision also stated that the land on which customary forests are located is considered customary land, not state land.³³ The shift in legal politics at the central level, which recognizes and guarantees the protection of indigenous peoples' rights to

²⁹ Fatahuddin Aziz Siregar et al., "Merantau in The Ethnic Tradition of Minangkabau: Local Custom Without Sharia Basis?," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (June 16, 2022): 115, <https://doi.org/10.22373/sjhk.v6i1.9954>.

³⁰ Evra Willya, Muh Idris, and Sabil Mokondenseho, "The Debate Between Religious and Minangkabau Traditional Figures About Pagang Gadai (Pawn) Land in Agam Regency, West Sumatra, Indonesia," *AHKAM: Jurnal Ilmu Syariah* 24, no. 1 (June 30, 2024), <https://doi.org/10.15408/ajis.v24i1.32101>.

³¹ Carly Boag, "A Comparative Study of the Legal Frameworks Facilitating Indigenous Land Management in Postcolonial Societies: Indigenous Australia and Indonesian Adat Law," *Brawijaya Law Journal* 3, no. 2 (November 1, 2016): 125–50, <https://doi.org/10.21776/ub.blj.2016.003.02.03>.

³² Herman Hidayat et al., "Forests, Law and Customary Rights in Indonesia: Implications of a Decision of the Indonesian Constitutional Court in 2012," *Asia Pacific Viewpoint* 59, no. 3 (2018): 293–308, <https://doi.org/10.1111/apv.12207>.

³³ Myrna Safitri, "Dividing the Land: Legal Gaps in the Recognition of Customary Land in Indonesian Forest Areas," *Kasarinlan: Philippine Journal of Third World Studies* 30, no. 2,1 (2017): 31–48, <https://journals.upd.edu.ph/index.php/kasarinlan/article/view/5705>.

customary forests, has provided opportunities for the restoration of their rights over their customary territories.

This restoration is of significant importance to indigenous communities, who have long been marginalized in forest governance politics and excluded from access to their traditional forest resources. According to Moffet, the restoration of rights is not solely focused on compensation for past mistakes, which often takes the form of financial compensation or restitution for rights violations. Rather, this restoration also includes efforts to reinstate the political and economic visibility of affected individuals or communities.³⁴ The justification for the restoration of indigenous peoples' rights through social forestry will be further explained.

3.2.1. Social Forestry in Indonesia's Agrarian Reform Programs

Social forestry entails the distribution and formalization of community access to state forest through permits or partnership agreements under the authority of the Ministry of Forestry (formerly the Ministry of Environment and Forestry).³⁵ This scheme also enables indigenous communities to obtain rights over customary forests.³⁶ Social forestry regulations were first introduced in 2016 with the issuance of Ministry of Environment and Forestry Regulation No. 83 of 2016, which grants the Ministry the authority to implement social forestry programs for customary forests.

Article 1 (1) of Ministry of Environment and Forestry Regulation No. 83 of 2016 defines social forestry as part of the agrarian reform political agenda, which seeks to restructure (access reform) forest management systems in Indonesia, including state forests, title forests, and customary forests. The regulation also clarifies that 'customary forests' refer to "forests located within the territory of indigenous peoples."³⁷ The stipulations of Article 50 in the Ministry of Environment and Forestry Regulation No. 83 of 2016 specify that customary forest status may be applied for by indigenous communities, with designation granted by the Minister. The regulation establishes social forestry as a key component of agrarian reform, a broad agenda aimed at restructuring forest management systems in Indonesia. This is in line with Indonesia's efforts to

³⁴ Luke Moffett, "Transitional Justice and Reparations: Remediating the Past?," in *Research Handbook on Transitional Justice*, ed. Cheryl Lawther, Luke Moffett, and Dov Jacobs (Cheltenham & Northampton: Edward Elgar Publishing, 2017), 377–400, <https://doi.org/10.4337/9781781955314>.

³⁵ Ida Aju Pradnja Resosudarmo et al., "Indonesia's Land Reform: Implications for Local Livelihoods and Climate Change," *Forest Policy and Economics* 108, no. April (2019): 101903, <https://doi.org/10.1016/j.forpol.2019.04.007>.

³⁶ T. Simarmata, R; Dewi, S. N.; Sasmitha, "Tenure Options : Toward the Recognition of Customary and Local Community Rights to Land and Forest," *Policy Brief Forest Peoples Programme*, no. 11 (2021): 1–10.

³⁷ Mhd Zakiul Fikri, *Dari Gerakan Sosial Menuju Pengakuan Hukum: Politik Hukum Hak Atas Tanah Masyarakat Adat Sibiruang Perspektif Lokal Hingga Internasional* (Jakarta Selatan: CELIOS Publishing House, 2024).

provide more equitable access to land and resources, particularly for marginalized groups, including indigenous communities.

As governed by Article 4 of the Ministry of Environment and Forestry Regulation No. 32 of 2015 on Title Forests, the implementation can be submitted either individually or collectively by members of the indigenous community. Following the granting of customary forest status, Article 54 (1) of the same regulation requires the establishment of a government institution to oversee the utilization of these forests, ensuring that their functions remain unchanged (Article 51 (5)). In addition, the management of customary forests must align with local wisdom as recognized and approved by the indigenous council (Article 52 (4)). Planting oil palm in customary forests is explicitly prohibited under Article 56 (5).

After the designation of a customary forest, the regulation establishes a government institution to oversee its utilization, ensuring that the forest's functions (conservation, protection, and production) unchanged. This oversight includes ensuring that the forest's use aligns with indigenous knowledge and practices. The establishment of oversight is essential to ensure that the forest management system respects both state interests (such as environmental protection) and indigenous rights. However, it also highlights the tension between state oversight and indigenous autonomy.

This regulation was later replaced by the Ministry of Environment and Forestry Regulation No. 9 of 2021 on the Management of Social Forestry. The new regulation distinguishes government legal actions according to the type of social forestry. Approvals are granted for Village Forests, Community Forests, People's Plantation Forests, and Forestry Partnerships, which do not confer ownership rights over forest areas (Article 7 (2)). For customary forests, the legal action involves designation (Article 6).

Under the revised regulation, customary forests may originate from both state and non-state forests, with their primary functions limited to conservation, protection, and/or production, managed by indigenous communities (Article 62). Recognition of indigenous communities is required for designation, either through regional regulations for state forest areas or through decrees by governors, regents, or mayors for non-state forest areas (Article 63). Article 64 of Ministry of Environment and Forestry Regulation No. 9 of 2021 further outlines the criteria for indigenous communities eligible to be recognized as subjects of the social forestry under the customary forest scheme, including: 1) the community must still exist as a social unit; 2) there must be an institutional structure in place, specifically traditional authorities; 3) there must be clearly defined boundaries of the customary territory; 4) there must be customary legal norms and

sanctions that are still adhered to; and 5) the community must still engage in forest product collection to meet daily subsistence needs.

Consistent with the provisions of Ministry of Environment and Forestry Regulation No. 83 of 2016, Ministry of Environment and Forestry Regulation No. 9 of 2021 similarly prohibits the planting of oil palm by indigenous communities on land designated as customary forest (Article 94). Furthermore, under Article 66 of Ministry of Environment and Forestry Regulation No. 9 of 2021, only the local customary leader may submit an application for customary forest designation. Ministry of Environment and Forestry Regulation, which allowed individuals from indigenous communities to apply, not just the customary leader.

Another important point from the Ministry of Environment and Forestry Regulation No. 9 of 2021 is that there are at least two legal products issued by the government regarding customary forest status: the customary forest status map and the indicative customary forest area (Article 74). This regulation is considered quite favorable for indigenous communities, as it explicitly states that areas designated as customary forests are excluded from state forests, and areas still forested are designated as customary forests (Article 75).

While established of social forestry through Ministry of Environment and Forestry Regulation No. 83 of 2016 and No. 9 of 2021 represents a positive development for the restoration of indigenous peoples' forest rights, both regulations embody a normative spirit that differs from Constitutional Court Decision No. 35 of 2012. The spirit of Constitutional Court Decision No. 35 of 2012 emphasizes the inherent recognition of the existence and rights of indigenous peoples without the need for state-administered mechanisms. In contrast, the subsequent regulations prioritize a more formalized approach, focusing on the formal process of recognition and the granting of management rights by the state. In this context, while these regulations may provide access to indigenous peoples, the principle of ancestral rights (rights that existed prior to state recognition) articulated in Constitutional Court Decision No. 35 of 2012 may not be fully respected.

3.2.2. Indigenous Communities as Subjects of Agrarian Reform

Given that the indigenous communities in Kampar Regency still possess traditional structures, customary territories, and customary laws, and agrarian reform through the customary forest scheme in Kampar Regency becomes highly relevant. Presidential Regulation No. 86 of 2018 on Agrarian Reform did not explicitly stipulate that indigenous communities were one of the eligible subjects for the agrarian reform program in Indonesia. Among the three subjects of

agrarian reform outlined in Article 12 of the regulation, namely individuals, community groups with collective ownership rights, and legal entities, indigenous communities were not included.

Although Presidential Regulation No. 86 of 2018 mentions that one of the subjects of agrarian reform is “community groups with collective ownership rights,” this subject cannot be equated with indigenous communities. Article 12 (4) of the Agrarian Reform Regulation clarifies that the term of “community groups with collective ownership rights” refers to a group of individuals who form a community, which are located within a specific area, and meet the requirements to receive redistributed land or forest. This indicates that the only clear criterion for identifying a “community group with collective ownership rights” in the regulation is that the group is unified by territorial factors, which are artificial in nature (formed for mutual interest), rather than as a social unity of indigenous communities. However, besides territorial factors, other criteria, such as genealogy and ideology are also necessary to determine the existence of indigenous communities.³⁸

Over a period, Presidential Regulation No. 86 of 2018 was partially revoked and replaced by Presidential Regulation No. 62 of 2023 on the Acceleration of Agrarian Reform Implementation. Presidential Regulation No. 62 of 2023 has now explicitly included indigenous communities as a separate subject, no longer equating them with community groups with collective ownership rights (Article 19). Furthermore, this regulation mandates the acceleration of legalizing customary forest assets owned by indigenous communities (Article 33, point c). Then, the authority to legalize customary forest assets has been delegated to the ministry responsible for land affairs, which will carry out the measurement, mapping, and registration of these forests (Article 38).³⁹ As a result, indigenous communities are now recognized and protected as eligible subjects of agrarian reform under Indonesian law.

3.2.3. The Potential of Customary Forests Designation in Kampar Regency

The Constitutional Court Decision No. 35 of 2012 has altered the legal-political direction regarding the recognition of customary community forest rights. This decision paved the way for agrarian reform in forests area that, according to indigenous communities’ claims, constitute their customary rights. Four years later, in 2016, this vision materialized with the implementation of a social forestry scheme within the forestry sector. This was regulated through Ministry of Environment and Forestry Regulation No. 83 of 2016 on Social Forestry.

³⁸ Fikri, *Reforma Agraria Tanah Ulayat*.

³⁹ Fikri, *Dari Gerakan Sosial Menuju Pengakuan Hukum: Politik Hukum Hak Atas Tanah Masyarakat Adat Sibiruang Perspektif Lokal Hingga Internasional*.

Table 2.
Social Forestry in Riau Province

No	Type of Utilization	Number of Units	Area (ha)
1	HPHD (Village Forests)	21	53.120
2	IUPHKm (Community Forests)	10	5.898
3	IUPPPHK-HTR (Community Plantation Forests)	7	4.192
4	Partnership Forests	1	4.000
5	Customary Forests	-	-
Total Amount		39	67.210

(Source: Gusliana, Ikhsan, & Ferawati, 2020)

The social forestry scheme, initiated in 2016 to address forest rights conflicts among indigenous communities, the state, and private entities, had not led to the recognition of any customary forests in Riau Province, including Kampar Regency, by 2019 (see **Table 2**).⁴⁰ This is further supported by the 2019 indicative map of social forestry areas, developed based on Ministry of Environment and Forestry Decree No. 744/MENLHK-PKTL/REN/PLA.0/1/2019, which recorded that no customary forests in Kampar Regency at the Ministry level.

In contrast to the map established by the Ministry of Environment and Forestry, the Indigenous Territory Registration Agency (*Badan Registrasi Wilayah Adat/ BRWA*) has recorded twelve potential customary forest areas in Kampar Regency, recognized by the Kampar Regency Government. These potential areas consist of four parcels in the V Koto Confederation and eight parcels in the V Khalifah Rantau Kampar Kiri Confederation. For the entire Riau Province, at least 24 (twenty-four) potential customary forest areas have been identified, with a total area exceeding 281.586 hectares.⁴¹

Data from the BRWA will not hold strong legal standing unless it is synchronized with the status determination of titled forests by the Ministry of Forestry and registered with the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. This issue is quite complex. Once the BRWA maps the potential for customary forests, the authority to take further action on areas claimed as customary forests rests entirely with the Minister of Forestry. This is in accordance with Article 11 (3) of Government Regulation No. 43 of 2021 on the Resolution of Spatial, Forest Area, Permit, and/or Land Rights Discrepancies, as well as Ministry of Environment and Forestry Regulation No. 9 of 2021.

Furthermore, even if a decision from the Minister of Forestry has been obtained, the forest area cannot yet be considered as a customary forest of the indigenous community. The regulation

⁴⁰ Gusliana H.B., Ikhsan Ikhsan, and Ferawati Ferawati, "The Status of Indigenous Forest in Riau Province" 442, no. Ramlas 2019 (2020): 52–56, <https://doi.org/10.2991/assehr.k.200529.266>.

⁴¹ Badan Registrasi Wilayah Adat, "The Registration of Indigenous Peoples (IP's) Maps in BRWA," Badan Registrasi Wilayah Adat, 2019, <https://brwa.or.id/assets/image/rujukan/1589779756.pdf>.

mandates that indigenous community submit a formal request to the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency for the registration of their customary land rights in the national land registry. This is based on the provisions outlined in Ministry of Agrarian Affairs and Spatial Planning/National Land Agency Regulation No. 14 of 2024 on Land Administration and Registration of Customary Land Rights. This regulation is problematic, as it depends on the state's administrative mechanisms for registering customary land rights. According to this regulation, indigenous communities must go through the land registration process to obtain official recognition of their customary rights. Nonetheless, Constitutional Court Decision No. 35 of 2012 emphasized that the customary rights of indigenous communities existed before the state and should not require state administrative procedures to be recognized.

4. Conclusion

Several conclusions can be drawn from this article, including the following: First, the indigenous communities in Kampar Regency are part of a customary confederation known as *Kedatuan Andiko Nan 44*, which spans various regions, including West Sumatra, Rokan Hulu, and Kampar Regency itself. This *Kedatuan* has a traditional governance structure led by 44 *Pucuk Andiko*, who serve as customary leaders responsible for managing their respective territorial units.

Harta Pusako, consisting of *pusako tinggi* and *pusako rendah*, has a crucial role in the Kampar indigenous communities. *Pusako tinggi* refers to ancestral heritage managed collectively and is prohibited from being sold, while *pusako rendah* represents personal assets that can be inherited and sold. The management of *Ulayat* forest (customary forests), part of *pusako tinggi*, is governed by customary law, with different responsibilities for managing *Ulayat kenegerian* (kenegerian customary forests), and *Ulayat suku* (tribal customary forests).

Customary forests are also categorized based on the type of rights, including collective rights that involve joint management by tribes or communities, as well as private collective rights that allow forest ownership by specific families or tribes. Although *pusako tinggi* cannot be sold or mortgaged, certain exceptions permitted by customary law exist, such as for the repair of traditional houses, funerals, and other customary needs.

Second, although Indonesia possesses vast forest resources and is home to many indigenous communities, development policies that do not recognize the forest rights of these communities have led to prolonged conflicts. Indigenous communities frequently lose access to their forest resources, with much of their customary territory being transferred to private companies and the state under the guise of investment. Despite the Constitutional Court Decision No. 35 of 2012,

which recognized customary forests as belonging to indigenous communities rather than the state, the implementation of this policy continues to face numerous challenges.

The social forestry program introduced in 2016 provides indigenous communities with opportunities to manage their customary forests through legal mechanisms. However, its implementation in the field has remained limited. While several potential customary forest areas have been identified, the processes for legal recognition and formal management have yet to be fully realized, particularly in a region such as Kampar Regency. Recent regulatory developments, including Presidential Regulation No. 62 of 2023—which explicitly acknowledges indigenous communities as subjects of agrarian reform—offer renewed hope for a more comprehensive reclamation of their forest rights. Nevertheless, the restoration of these rights requires not only legal recognition but also the revitalization of the political and economic visibility of indigenous communities. Unfortunately, agrarian reform within the forestry sector remains far from achieving the full restoration of customary forest rights. Instead of offering clear and unambiguous recognition of indigenous rights, existing regulations frequently subject indigenous communities to complex state administrative procedures and impose rights that remain constrained under state control

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