

A New Paradigm of Indonesian Forest Management Based on Local Wisdom

Rachmad Safa'at

Faculty of Law, Brawijaya University, Veteran Street, Postal-code 65145, Malang, East Java, Indonesia

ABSTRACT

At present, Indonesia still applies the state-based paradigm of forest management. When the State takes full control of the forest management, it causes mismanagement, such as forest degradation and deforestation, displacement of local communities from their lands, loss of biodiversity, and forest fires. This paper proposes a new paradigm of forest management in Indonesia that is based on local wisdom. A review of the literature was carried out in which the following were discussed in detail: local wisdom, the decentralization of forest management in the era of autonomy, and the status of tribal peoples in relation to forest management. This paper argues that there are several challenges to the paradigm shift in forest management, which include (a) a narrow interpretation of Article 18B, Paragraph 2, and Article 33, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia; (b) regional regulation of the legalization of tribal peoples; (c) the strong influence of the principle of state-owned property (*domein verklaring*); and (d) the lack of participation of tribal peoples. Four solutions are proposed toward building a new paradigm of forest management in Indonesia: (a) a broader reinterpretation of Article 18B, Paragraph 2, and Article 33, Paragraph 3, of the 1945 Constitution of the Republic of Indonesia; (b) simplification of the legalization procedure for tribal peoples; (c) mechanism implementation of the state owned principle; and (d) optimization of the participation of tribal peoples in a co-management system.

ARTICLE INFO

Article history:

Received: 27 September 2017

Accepted: 29 March 2018

Published: 28 March 2019

E-mail address:

safaat.rachmad@gmail.com

* Corresponding author

Keywords: Community-based forest management, forest management in Indonesia, local wisdom, new paradigm

INTRODUCTION

For more than 50 years, the management of forest resources in Indonesia has experienced Dutch disease, that is, the excessive exploitation of natural resources without regard for their sustainability. The government tends to address political policies on forest management as a zero-sum game, thus resulting in authoritarian forest management by either the government or businesses in the forestry sector (Runggandini, 2015).

Authoritarianism in forest management leads to massive ecocide practices that threaten the source of life of human beings and negatively impact the national economy. Moreover, ecocide practices result in the loss of both human rights and ecosystem rights, as well as endangering the sustainability of human life, the next generation, and biodiversity (Saleh, 2005).

Forest exploitation continues to increase due to the demands of expanding capital for more profit. The policies and political-economic system of a country also result in practices that are destructive to nature. In the present work, "country" refers to an exploiter and capital hunter, along with the massive power it possesses. Over time, natural resources diminish, water becomes polluted, lands become arid, pollution levels increase, and natural ecosystems deteriorate (Saleh, 2005).

The inappropriateness in managing forests is probably caused by the lack of concern for involving parties in understanding the essence of the representatives and the detailed principles

of regulations and procedures that have to be carried out. Thus, the existing regulations achieve the opposite of their intended effect, resulting in more problems (Kartodihardjo, 2002).

The innovation for community-based forest development is hampered by a linear approach, which is not innovatively interpreted in either the Constitution or government regulations. When the legislation is not clear and effective enough to provide solutions to the problems that occur, the policies will not produce their intended results (Kartodihardjo, 2002).

Paramita Iswari, the Head of Circle for *Agrarian* and *Rural* Reform, agrees that indigenous people have suffered considerably from the impact of policies regulating development in the New Order. Their existence and life sustainability have been paralyzed and destroyed by unjust development policies. The intimidation has been legally done by intentionally reinforcing that it is all for the sake of development (Thamrin, 2015). The government tends to ignore the fact that there is plurality between the legal institutions among societies and the existence and role of tribal peoples in the development of the nation (Nurjaya, 2012a, 2012b).

The bottom line is that the unfairness is felt by most tribal peoples, as follows: (1) unfairness in owning natural resources; (2) unfairness in using natural resources; and (3) unfairness in decision-making related to the ownership and use of natural resources. This creates conflicts that inevitably lead to the destruction of the environment, on which

social production and cultural reproduction are based (Malik et al., 2003).

The government is exerting efforts to bring back the roles of communities living around the forests through several alternative models, such as Forest Management with Community, Community Forests, Empowerment of Villagers of Forest Areas, and Social Forestry. However, these efforts have not been maximally carried out.

The return of the forest—to which the native communities have the right (*ulayat*) and which is seen as valid according to Customary law—to the hands of the tribal peoples is stipulated in the Decision of Constitutional Court No. 35/PUU-X/2012. Tribal peoples are considered as legal subjects with the right to cultivate natural resources. However, this Constitutional Court Decision has yet to succeed in creating a paradigm of fundamental and thorough forest management. Hence, there is a need for a comprehensive study of the challenges and strategies required to transform the paradigm of forest management from state-based to community-based according to the local wisdom in Indonesia.

Theoretical Framework

The Concept of Local Wisdom.

Etymologically, local wisdom consists of two words. “Wisdom”, *kearifan* or *bijaksana* in Indonesian, refers to the love of wisdom and intelligence (Echols & Shadily, 2017). “Local” may mean *setempat* (locally), *komunitas tertentu* (particular communities), or *wilayah tertentu* (particular regions) in Indonesian (ibid). Thus, local wisdom as a

whole can refer to wisdom and wise ideas from particular communities or regions.

Sibarani found that local wisdom can be viewed from two different perspectives: (1) *Kearifan* (wisdom), or the original knowledge of communities, which stems from noble values of cultural traditions in the rule of communities. In this context, local wisdom is emphasized on *kearifan* (wisdom) or the sharpness required to organize social life formed by noble values; and (2) Local wisdom comprises values of local cultures that are involved to create the safety needed by communities in a wise way. In this case, local wisdom is seen as the cultural values that are involved to control social life (Erwany et al., 2016).

Furthermore, the international legal instrument on the local wisdom concept can be found in the ILO Convention No.169 of 1989 on Indigenous and Tribal Peoples. According to this Convention, the scope of local wisdom, especially in managing natural resources, can be divided into two categories, indigenous and tribal.

The existence of local wisdom cannot be separated from the existence of tribal peoples. Local wisdom is passed on from generation to generation by a leader or an influential person among the tribal peoples. In relation to forests, local wisdom contributes to the protection of forests and natural environments, which are central habitats in the communities and play an important role toward human survival. If people fail to maintain their natural environment, they will surely fail to survive (Sungkharat et al., 2010).

Tribal peoples have collective rights regarding the natural resources of the forests in their regions. These may include (a) the right to rule; (b) the right to use the lands; (c) the right to provide; (d) the right to take care of the lands; and (e) the right to decide the relationship of law with its people and natural resources (Konradus, 2015).

These collective rights can be viewed from two perspectives: structural and cultural. Structural collective rights are known as given rights. It is the responsibility of the state to guarantee, protect, and meet these rights, including the right to political participation in deciding on all forms of development for the communities in terms of enjoying what nature can give them. Collective cultural rights are known as innate rights. These rights are naturally brought together in a system related to environment management and its resources (Saleh, 2005).

Local wisdom is often applied as a solution to several problems faced by a community. In general, local wisdom can also serve as a means to solve environment-related problems in a community in a way upon which all the members of the community can agree. However, Indonesian laws, to some extent, often override and marginalize the rights of the local communities, known as tribal people or “adat” communities, in particular with regard to control over the natural resources. Here, the overlapping between the state law and the law of local communities emerges (Nurjaya, 2014).

Forest Management Decentralization under Autonomy. Article 1, Paragraph 8, Law No. 23, Year 2014, on Local Government defines decentralization as delegating the responsibility of the central government to certain regions that are in the hierarchy of the autonomy. Manan (2005) asserted that the local government system in Indonesia only adopted the principle of autonomy and its supplementary tasks. He agreed that decentralization could not be regarded as a principle but as a process or method of carrying out a task.

Article 9, Paragraph (1), Law No. 23, Year 2014, on Local Government divides government responsibilities into three categories: absolute, concurrent, and general. Concurrent responsibility comprises two categories, namely, compulsory and optional responsibility. Compulsory responsibility is further broken down into two categories—basic services and non-basic services.

The authority to rule and determine tribal peoples is under compulsory responsibility for non-basic services related to community and village empowerment. The forest sector, however, falls under the concurrent optional responsibility, which is carried out collaboratively by the provincial government and the local regency/municipal government.

Furthermore, according to the scope of the authority, an essential aspect can be centralized to the regions; that is, administrative, fiscal, or political decentralization can be implemented. Administrative decentralization involves giving authority to local governments

regarding the delivery of public services. Fiscal decentralization is related to the financial balance between the central and local governments in terms of a general allocation fund, specific allocation fund, and revenue sharing fund. Political decentralization focuses on delegating authority to local governments with regard to public policy (Nurrochmat, 2010).

By virtue of the autonomy principle stipulated in the Law of Regional Government, the local government is able to create several legal products in the regions to help guarantee the existence of tribal peoples and villages, along with their *ulayat* rights. Moreover, the local government has autonomy in managing the forests in its region and has the right to create legal products in the region as long as the forest is within the region.

The Status of Tribal peoples in Forest Management. After an examination of Law No. 41, Year 1999, on Forestry, the Constitutional Court Decision No. 35/PUU-X/2012 made significant changes related to the status of tribal peoples in tribal forest management. The decision led to some juridical consequences, as follows:

1. Tribal peoples are acknowledged as legal subjects.

In accordance with Article 18B, Paragraph (2), of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court states that tribal peoples are legal subjects, constitutionally acknowledged and are respected as individuals with rights and obligations. The decision made by the

Constitutional Court affirms that there are three legal subjects in the Forestry Law: (a) The State; (b) Tribal peoples; and (c) Individuals.

2. Customary forests are under the forests-subject-to-rights grouping.

According to the Constitutional Court, the management of customary forests, which are part of state forests, has led to some acts of discrimination, unfairness, and uncertainty in the Law. Therefore, the Constitutional Court agrees that Law Article 5, Paragraph (1), is contradictory to the 1945 Constitution of the Republic of Indonesia with conditions applied. Thus, customary forests are no longer under the category of state forests but instead are classified as forests subject to rights, which consist of customary forests and privately owned forests or those owned by legal bodies.

3. Tribal peoples have the right to manage how customary forests are used.

The rights owned by tribal peoples are stated in the Law Article 67, No. 41, Year 1999, on Forestry, as follows:

“As long as they still exist and their existence is acknowledged, tribal peoples have the right to:

- a) earn money from forests to meet their daily needs;
- b) cultivate forests according to customary law and not in contradiction to the Law of the Republic of Indonesia; and
- c) be empowered to help improve their welfare.”

After the decision made by the Constitutional Court, as stated in Decision No. 35/PUU-X/2012, both local and central

governments have made several regulations under the legislation. There are at least 10 regulations under the legislation on strengthening the existence of tribal peoples:

a. Law No. 6, Year 2014, on Villages

Under the Law of Villages, a tribal village is defined as an option. When there are tribal villages, the government should carry out both general and tribal tasks, which may include (a) managing tribe-related governance, (b) carrying out the development of tribal villages, (c) holding social training for the government of tribal villages, and (d) empowering tribal peoples. In terms of development, tribal peoples have the right to apply local wisdom and use the natural resources of their villages, including the produce obtained from tribal forests.

Generally, Article 97, Paragraph (1), subsection (a), of the Law of Villages states that one of the requirements in determining tribal villages should be territorial, genealogical, or functional. In addition, tribal villages should have the following facultative and cumulative requirements: (a) tribal peoples should have the feeling of community (in-group feeling), (b) there should be structures of government, (c) there should be wealth and/or tribal valuable things, and (d) there should be a set of legal norms in the community.

b. Regional Regulation

As stated in Law No. 6, Article 98, Paragraph (1), Year 2014, on Villages, the determination of a tribal village (tribal peoples) is implied in the Regional Regulation. Therefore, the Regional Regulation plays an important role in

making tribal peoples legal subjects. Since the implementation of Constitutional Court Decision No. 35/PUU-X/2012 until February 2017, the Epistema Institute has recorded that there have been 65 legal products of new regions regarding tribal peoples with the following substances: (a) tribal institutions, (b) tribal courts, (c) determining tribal peoples, (d) determining tribal regions, and (5) tribal forests. Unfortunately, regarding tribal forests, only 213,541.01 hectares of lands and forests have been determined as tribal areas (Arizona et al., 2017).

c. Other Laws

1. Ministry of Forestry Regulation No. P.62/Menhut-II/2013, regarding the change in Ministry of Forestry Regulation No. P.44/Menhut-II/2012 on the Inauguration of Forest Regions. The essential part of Ministry of Forestry Regulation No. P.62/Menhut-II/2013 is found in Article 24A, Paragraph (3), which states that "when the areas which tribal peoples are entitled to are partially or entirely within forests, those areas are then excluded from the forest regions." Basically, this regulation is contradictory to the regulation of the Constitutional Court, in which such forests are deemed as part of forests subject to rights; thus, the areas are not excluded from forest regions. According to the Tribal Peoples Alliance of Nusantara (AMAN), the exclusion of forests subject to rights is against the principle stating that tribal peoples are regarded as legal subjects (Safitri & Uliyah, 2015).

2. Common rules of the Ministry of Home Affairs, Ministry of Forestry; the

Ministry of Public Works; and the National Land Agency in Regulation No. 79, Year 2014, PB Nos. 3/Menhut-II/2014, 17/PRT/2014, and 8/SKB/X/2014, regarding the procedures on the authorization of land within forest regions. These rules aimed to inaugurate forest regions to support legal certainty and justice. When there are conflicts related to land authorization within forest regions, including those areas subject to the rights of tribal peoples, a team will be formed to carry out an inventory of the authorization, ownership, and use of the land (IP4T).

3. Regulation No. 9, Year 2015, of the Ministry of Agrarian and Spatial Planning/ Head of National Land Agency, regarding the procedures of implementation of the rights to communal land of tribal peoples and communities within particular regions. This regulation replaced Regulation No. 5, Year 1999, of the Ministry of Agrarian and Spatial Planning, regarding the acknowledgement of *ulayat* rights. A new terminology, namely, communal rights, was introduced in this regulation. Communal rights related to tribal peoples will be published on behalf of the members of tribal peoples or tribal head after they are determined by the head of regency or municipality and officially registered to National Land Agency.

4. Regulation No. P.32/Menlhk-Setjen/2015 of the Ministry of Environment and Forestry, on Forests Subject to Rights. This regulation asserts that tribal peoples can propose the authorization of forest regions subject to rights to the Ministry of Environment and Forestry. However,

before the proposal is submitted, the local government is advised to acknowledge the existence of the tribal peoples through their local legal products.

5. The Presidential Regulation Number 88 Year 2017 on Lands Control in the State Forest Region Settlement. This Regulation aims to implement the Constitutional Court Decision No. 34/PUU-IX/2011, the Constitutional Court Decision No. 45/PUU-IX/2011, the Constitutional Court Decision No. 35/PUU-X/2012 and the Constitutional Court Decision No. 95/PUU-XII/2014. It mainly regulates the settlement of land disputes inside the forest areas between the state and tribal peoples through the Forest Area Designation.

RESEARCH METHODS

This research applies normative legal research using a statute approach. Data within the paper is based on authoritative legal resources, namely, the Constitution, Laws and Regulations, Constitutional Court Decisions, and other legal resources, such as books, journals and previous research reports.

Since the research was conducted in Indonesia, the literature used comprised primarily local resources. However, only relevant resources were referenced based on the similarity of the approach to the addressed topic. All primary and secondary resources were analyzed based upon the existing and relevant theoretical framework while examining the existing reality in managing forest both by local wisdom and government.

RESULTS

In general, efforts to transform the forest management paradigm from state-based to community-based and to improve the participation of communities toward forest co-management are made for the following reasons: (a) to improve the policy rationality of sustainable forest management, either at the level of constitution or the implementation of legal doctrine which is no longer applicable; (b) to guarantee the certainty of rights related to the authorization and use of forest resources by tribal peoples; and (c) to optimize collaboration among all parties toward achieving prosperity of societies.

DISCUSSION

Challenges to the Paradigm Shift in Indonesian Forest Management

The decision stated in Constitutional Court Regulation No. 35/PUU-X/2012 has principally led the shift in the paradigm of forest management from a state-based to a community-based forest. This decision, welcomed with open arms by the government, in turn resulted in the creation of laws to strengthen the position of tribal peoples in managing their forests.

However, the paradigm shift has not yet been fundamentally and thoroughly implemented due to some basic challenges:

1. The narrow interpretation of Article 18B, Paragraph (2), and Article 33, Paragraph (3), of the 1945 Constitution of the Republic of Indonesia.

The 1945 Constitution of the Republic of Indonesia has been the main challenge

in transforming the paradigm of forest management, particularly because the Articles of the Constitution cite four points related to the acknowledgement of tribal peoples: (a) as long as these remain, (b) in accordance with the societal development, (c) in accordance with the principles of the Unitary State of the Republic of Indonesia (NKRI), and (d) regulated by Law. With all of these four highlights, the villages that formerly had tribal peoples in them, but who decide not to obey the rules of tribal peoples, will no longer have their rights as tribal peoples. This is common because diverse interpretations will lead to diverse identities of the people (International Council on Human Rights Policy, 2009). In the provinces of East and Central Java, for example, the governments have reported that there are no tribal peoples in their regions (Bahar, 2015).

Law No. 5, Year 1979, on Village Government has changed and negatively affected the structure of communities, in which their togetherness with their diverse uniqueness was transformed into an institution with uniformity across Indonesia (Safa'at, 2016). With this change of structure, the state as an institution should be responsible for protecting, acknowledging, and respecting tribal peoples, as well as fixing the community structure.

The paradigm shift is also hampered by the narrow interpretation of Article 33, Paragraph (3), of the 1945 Constitution of the Republic of Indonesia, which states that "the land, the waters and the natural resources within shall be under the power

of the State and shall be used to the greatest benefit of the people.” In this Article, “State” is interpreted to mean only the government and not the government *and* the people. This misinterpretation leads to a super-subordination relationship between the government and the people, which results in repressive laws.

Repressive law is believed to cause victimization and dehumanization of tribal peoples, with some groups living in rural areas being evicted due to rural development. Moreover, forests are destroyed due to exploitation and unplanned development. The cultures of communities are also systematically affected when the lives of these communities depend on the use of the natural resources of the forests.

2. Local Government Regulation of the Legalization of Tribal Peoples.

Law Article 67, Paragraph (2), on Forestry and Article 98, Paragraph (1), on Villages states that the acknowledgement of tribal peoples is subject to the Regional Regulation. However, because the process is time-consuming and costly, most tribal peoples are hampered in their bid to gain legal status as tribal communities, more so when the regulation is legalistically and narrowly interpreted. In addition, such a principle is much too flexible and thus open to any interpretation. It is worrisome when the enforcement of customary law and the creation of regional regulation consider only regional interests, which are momentary and biased; such a situation could give rise to primordiality and chauvinism in a tribe, religion, race, or group (Safa’at, 2016).

In some regulations, such as the Ministry of Home Affairs Regulation No. 52, Year 2014, it is stated that the acknowledgement of the existence of tribal peoples can be decided by the regional head. To a certain extent, there is confusion as to how the rule should be implemented, which may result in legal uncertainty.

3. The Principle of *Domein Verklaring*.

The influential existence of *domein verklaring*, which has been around since the Dutch East Indies to the era of reformation, contributes to the failure of proving the ownership of lands so that they are claimed by the State. Tribal peoples do not have any certificate to prove their ownership of the lands they occupy; thus, the State claims ownership of these lands (Bahar, 2015).

Before the Constitutional Court issued Decision No. 35/PUU-X/2012, *ulayat* forests were categorized as forests of the State. Thus, the *ulayat* rights of tribal peoples were transformed into *ulayat* rights of the State. These rights have long been regarded as a constitutional disavowal, resulting in the destruction of forests and disregard for the rights of tribal peoples. Narrow Access to Participation for Tribal Peoples.

The government has yet to provide enough opportunities for tribal peoples to get involved in policy making. For several decades now, the existence of tribal peoples has been marginalized and disregarded. Thus, these groups seem to have no sensibility and capability to know and understand the issues they are facing and to take the necessary actions to effect

changes. As a consequence, tribal peoples have no sense of ownership of their *ulayat* forests.

The lack of collaboration among parties toward reinforcing the benefits for each other could be one of the factors that contribute to the lack of participation in societies. In several forest management programs held by the government, the successful sustainable forest management programs were always supported by the intention and active participation of the people living within or outside the forest regions.

A New Paradigm of Indonesian Forest Management based on Local Wisdom

Community-based forest management has been gaining increasing popularity as a forest management method in the last two decades. There are approximately 15% of community-based tropical forest managements in the world (Arts & Koning, 2017). The ability to organize tribal peoples plays an important role toward achieving balance, strengthening accountability, and obtaining a higher bargaining position (Harper et al., 2011). A paradigm shift to forest management based on local wisdom will bring about a massive change in sustainable forest conservation. Local wisdom comprises some basic principles and natural management strategies toward the ecological balance that has existed for centuries. Local wisdom is not restricted to abstract things; rather, it is a norm and reflected in day-to-day behavior or the behavior that determines further human civilization (Mahmud, 2015).

For the paradigm shift from state-based forest management to fundamental and thorough community-based forest management, four solutions are proposed:

1. A reinterpretation Article 18B, Paragraph (2), and Article 33, Paragraph (3), of the 1945 Constitution of the Republic of Indonesia.

Rahardjo (2016) suggested that Article 18B, Paragraph (2), of the 1945 Constitution of the Republic of Indonesia had functioned as a positive law in Indonesia. However, it is essential that the Article not be translated word for word; rather, the contextual meaning should be taken into account to obtain an in-depth meaning that is in line with the growth of societies. Furthermore, in interpreting Article 18B, Paragraph (2), of the 1945 Constitution of the Republic of Indonesia, highlighted the following points:

- a. As long as these remain:

The phrase “as long as these remain” requires careful interpretation. It should not be measured based solely on the quantitative-rational aspect; rather, it should also emphasize empathy and participation. Empathy is related to how the government can delve deeper into people’s feelings by involving participation.

- b. In accordance with the societal development:

Thus far, the phrase “in accordance with the societal development” has been interpreted based on economic and political aspects. Thus, large-scale enterprises and governments have played a dominant role, leading to disregard for the existence of tribal peoples. The interpretation of this

phrase, however, should be based on the perspective of the local communities.

c. In accordance with the principles of the Unitary State of the Republic of Indonesia:

The Unitary State of the Republic of Indonesia (NKRI) and tribal peoples are united and inseparable; they are not against each other. Tribal peoples are part of the whole NKRI itself.

d. Regulated by Law:

Indonesia is a state of law. In such, in the implementation of the law, the legal texts in the Law should be interpreted carefully and more meaningfully towards its implementation in society.

The spirit implied in Article 33, Paragraph (3), of the 1945 Constitution is related to the wealth of natural resources in Indonesia, and these natural resources are to be used to enable the society to prosper. Therefore, the government and societies in this state should be equal and not be in a super-subordination relationship.

Any policy that focuses more on the growth of the economy, such as the paradigm of government-based development, needs to be immediately transformed into the paradigm of development, which focuses on the welfare of the entire society.

2. Simplification of the legalization procedures for tribal peoples:

According to its content, regional regulation is divided into three types: (a) regional regulations made purely to manage; (b) regional regulations made to decide; and (c) regional regulations made to manage the organizational structure and

work scheme in the region. To simplify the procedures in the legalization process for tribal peoples, regional regulation focusing on the decision of tribal peoples in general should be made, and everything related to the details of custom territory, customary institutions, and other requirements should be managed based on the decision made by the regional head.

3. Reformulation of the *Domein Verklaring* Principle:

Following the issuance of Constitutional Court Decision No. 35/PUU-X/2012, customary forests are no longer categorized as state forests but are now considered as forests subject to rights. The statement of the Constitutional Court has brought about positive effects in terms of the protection of *ulayat* forests. Balanced perception of central government, regional government, and tribal peoples to avoid any possibility of despotic action of the governments is necessary to acknowledge the rights of tribal peoples and to empower the peoples as a productive asset for the prosperity of societies. In addition, it is the responsibility of the State to guarantee the rights of tribal peoples, especially their right to use and cultivate the resources in the areas of the *ulayat* forests.

4. Strengthening of the Participation of Tribal Peoples:

Thus far, in forest management, people are involved only in the decision-making process. However, it is essential to involve the people also in the planning, implementation, and utilization of forest resources. Therefore, an institutional

revitalization of tribal peoples is necessary. Alternative models of institutional and legal empowerment of tribal peoples could be carried out in several stages (Safa'at, 2015):

- a. Mapping and identification
- b. Dialogue to raise awareness and mapping of natural resources
- c. Formulation of alternative models
- d. Advocacy of policy and legal change
- e. Introducing a model
- f. Institutional and legal existence of tribal peoples that is responsive and has a higher bargaining position in managing natural resources.

Moreover, some academic activities should be offered, and economic infrastructures should be provided to help tribal peoples to more readily welcome the transformation in forest management. According to Lestari et al. (2015), highly educated people have more initiative and greater capability to actively participate at the managerial level. When most tribal peoples have firm laws, established institutions, high education levels and good economic status, forest management based on a co-management system, such as equal collaborative management between the government and tribal peoples, can be achieved.

CONCLUSION

State-based forest management has had negative impacts on the pristine forests in Indonesia and on the existence of tribal peoples as guardians of these forests. The paradigm shift to community-based forest

management based on local wisdom has not taken place fundamentally and thoroughly due to some challenges: (a) The narrow interpretation of Article 18B, Paragraph (2), and Article 33, Paragraph (3), of the 1945 Constitution of the Republic of Indonesia; (b) The regional regulation of the legalization process for tribal peoples; (c) The influence of the *domein verklaring* principle; and (d) The lack of participation of tribal peoples. To overcome these challenges, the following steps are proposed: (a) A thorough reinterpretation of Article 18B, Paragraph (2), and Article 33, Paragraph (3), of the 1945 Constitution of the Republic of Indonesia; (b) Simplification of the legalization procedures for tribal peoples; (c) A reformulation of the *domein verklaring* principle; and (d) Optimization of the participation of tribal peoples in a forest co-management system.

REFERENCES

- Arizona, Y., Malik, & Ishimora, I. L. (2017). *Pengakuan hukum terhadap masyarakat adat: Tren produk hukum daerah dan nasional pasca putusan MK 35/PUU-X/2012* [Legal recognition for tribal peoples: trend of national and regional legal products of post-constitutional ruling MK 35/PUU-X/2012]. Jakarta, Indonesia: Epistema Institute.
- Arts, B., & Koning, J. D. (2017). Community forest management: An assessment and explanation of its performance through QCA. *World Development*, 96, 315-325.
- Bahar, S. (2015). Harmonisasi hukum: Tantangan terbesar dalam perlindungan dan pemajuan hak masyarakat hukum adat dewasa ini [Harmony of law: The biggest challenge in protection and

- progress of rights of tribal peoples in recent times]. In *Relasi negara dan masyarakat adat: Perebutan kuasa atas hak pengelolaan sumber daya alam* [Relationship between nation and its tribal peoples: Usurpation of natural resources management rights]. Malang, Indonesia: Surya Pena Gemilang.
- Echols, J. M., & Shadily, H. (2017). *Kamus bahasa Inggris Indonesia* [English-Indonesian dictionary]. Jakarta, Indonesia: Gramedia Pustaka Utama.
- Erwany, L., Nasution, I., Sibarani, R., & Takari, M. (2016). Local wisdom in malam berinai tradition in Malay society. *Journal of Arts & Humanities*, 5, 68-77.
- Harper, E., Wojkowska, E., & Cunningham, J. (2011). Conclusion: Enhancing legal empowerment through engagement with customary justice systems. In *Working with customary justice systems: Post-conflict and fragile states*. Rome, Italy: International Development Law Organization.
- International Council on Human Rights Policy. (2009). *When legal worlds overlap: Human rights, State and non-State law*. Geneva, Switzerland: ATAR Roto Press.
- Kartodihardjo, H. (2002). Hutan kemasyarakatan dalam belenggu penguasaan sumber-sumber agraria [Community forest under the power of agrarian resources]. In *Menuju keadilan agraria: 70 tahun gunawan wiradi* [Approaching agrarian justice: 70 years gunawan wiradi]. Bandung, Indonesia: Yayasan Akatiga.
- Konradus, D. (2015). Kedudukan kearifan lokal masyarakat hukum adat dalam kebijakan hukum pengelolaan sumber daya alam pertambangan [The position of local wisdom of tribal peoples in legal policy of mining natural resources management]. In *Membangun politik hukum sumber daya alam berbasis cita hukum Indonesia* [Constructing legal and political systems of legal opinion-based natural resources in Indonesia]. Yogyakarta, Indonesia: Thafa Media.
- Lestari, S., Kotani K., & Kakinaka, M. (2015). Enhancing voluntary participation in community collaborative forest management: A case of Central Java, Indonesia. *Journal of Environmental Management*, 150, 299-309.
- Mahmud, B. (2015). Kearifan lokal dalam pengelolaan sumber daya alam [Local wisdom in natural resources management]. In *Membangun politik hukum sumber daya alam berbasis cita hukum Indonesia* [Constructing legal and political systems of legal opinion-based natural resources in Indonesia]. Yogyakarta, Indonesia: Thafa Media.
- Malik, I., Wijardjo, B., Fauzi, N., & Royo, A. (2003). *Menyeimbangkan kekuatan: Pilihan strategi menyelesaikan konflik atas sumber daya alam* [Balancing power: Strategies to settle conflicts in natural resources]. Jakarta, Indonesia: Yayasan Kemala.
- Manan, B. (2005). *Menyongsor fajar otonomi daerah* [Approaching regional autonomy] (4th ed). Yogyakarta, Indonesia: Study Centre of Law FH-UII.
- Nurjaya, I. N. (2012a). Is the constitutional and legal recognition of traditional community laws within the multicultural country of Indonesia a genuine or pseudo recognition? *Constitutional Review*, 1(2), 49-68.
- Nurjaya, I. N. (2012b). Prinsip-prinsip dasar pengelolaan sumber daya alam dan lingkungan hidup yang berkeadilan, demokratis, dan berkelanjutan: Implikasinya terhadap pembangunan hukum nasional [Basic principles of democratic and sustainable environment and natural resources management: Their implication in the development of national law]. In *Penemuan hukum nasional dan internasional* [National and international law finding]. Bandung, Indonesia: PT Fikahati Aneska and

- Bagian Hukum Internasional Fakultas Hukum Universitas Padjajaran.
- Nurjaya, I. N. (2014). Constitutional and legal recognition over traditional adat community within the multicultural country of Indonesia: Is it a genuine or pseudo recognition? *Jurnal IUS*, 2(6), 413-426.
- Nurrochmat, D. R. (2010). Dialektika kebijakan dan kelembagaan kesatuan pengelolaan hutan [Dialectics of policy and institutionalism of forest management unity]. In *Ekonomi politik kehutanan: Mengurai mitos dan fakta pengelolaan hutan* [Economics politics of forestry: Revealing myths and facts of forest management]. Jakarta, Indonesia: INDEF.
- Rahardjo, S. (2016). *Ilmu hukum di tengah arus perubahan* [Legal science in the middle of the wind of change]. Malang, Indonesia: Surya Pena Gemilang.
- Runggandini, C. W. M. (2015). Model pemberdayaan masyarakat untuk merevitalisasi kearifan lokal dalam pengelolaan sumber daya hutan yang berkelanjutan [Empowerment model to revitalise local wisdom in sustainable forest resources management]. In *Membangun politik hukum sumber daya alam berbasis cita hukum Indonesia* [Constructing legal and political systems of legal opinion-based natural resources in Indonesia]. Yogyakarta, Indonesia: Thafa Media.
- Safa'at, R. (2015). Alternatif proses pemberdayaan kelembagaan dan hukum berbasis pada masyarakat adat dalam pengelolaan sumber daya alam berkelanjutan (Kasus masyarakat adat Baduy, Tengger, dan Kedung Cowek) [Alternative model of institutions and tribal peoples-based law empowerment for sustainable natural resources management (The case of tribal peoples of Baduy, Tengger, and Kedung Cowek)]. In *Relasi negara dan masyarakat adat: Perebutan kuasa atas hak pengelolaan sumber daya alam* [Relation between nation and its tribal people: Usurpation of natural resources management]. Malang, Indonesia: Surya Pena Gemilang.
- Safa'at, R. (2016). *Advokasi dan alternatif penyelesaian sengketa: Latar belakang, konsep, dan implementasi* [Advocate and alternative to settling a dispute: Background, concept, and implementation]. Malang, Indonesia: Surya Pena Gemilang.
- Safitri, M. A., & Uliyah, L. (2015). *Adat di tangan pemerintah daerah: Panduan penyusunan produk hukum daerah untuk pengakuan dan perlindungan hak masyarakat hukum adat* [Custom in the hand of regional government: Guidelines to make regional legal product for the acknowledgement and protection of tribal peoples' rights]. Jakarta, Indonesia: Epistema Institute.
- Saleh, M. R. (2005). *Ecocide: Politik kejahatan lingkungan hidup dan pelanggaran hak asasi manusia* [Ecocide: Political crime of natural resources and human rights violation]. Jakarta, Indonesia: Walhi.
- Sungkharat, U., DOUNGCHAN, P., Tongchiou, C., & Tinpang-nga, B. (2010). Local wisdom: The development of community culture and production processes in Thailand. *International Business & Economics Research Journal*, 9, 115-120.
- Thamrin, S. (2015). Pemberdayaan hukum masyarakat adat dalam upaya mempertahankan tanah Ulayat sebagai sumber daya alam di propinsi Riau [Legal empowerment of tribal peoples for the sake of Ulayat land as natural resource in the province of Riau]. In *Membangun politik hukum sumber daya alam berbasis cita hukum Indonesia* [Developing political and legal systems of legal opinion-based natural resources in Indonesia]. Yogyakarta, Indonesia: Thafa Media.