



Legal Protection Of The Economic Rights Of Tengger People Regarding The Partnership Pattern With Bromo Tengger Semeru National Park Office

Shrimanti Indira Pratiwi^{1*}, I Nyoman Nurjaya², Imam Koeswahyono³, Djumikasih⁴

^{1,2,3,4}Faculty of Law, Universitas Brawijaya, Indonesia

Correspondence: thitaindira89@gmail.com^{1}

Email: thitaindira89@gmail.com^{1*}, inyoman@ub.ac.id², imam.koes@ub.ac.id³,
kimujd@ub.ac.id⁴

Abstract

Tengger people are allowed to carry out activities in the Bromo Tengger Semeru national park area through a conservation partnership mechanism that includes traditional zones and religious, cultural and historical zones. Based on regional zoning data owned by the Bromo Tengger Semeru national park office, the total area of the both zones where the conservation partnership is carried out is only ± 84 hectares, while the Tengger people's main livelihood is a farmers and that policy has a big impact on the economic rights of the Tengger people. One of the unresolved problems is how to change the government's paradigm which is only oriented towards economic growth for development to a paradigm which prioritizes the economic rights of traditional communities around the national park. This research is normative legal research with a statutory, conceptual and analytical approach. The conclusion of this research is that the conservation partnership is not enough to guarantee the economic rights of the Tengger people because the pattern is based on ecological sensitivity method and is carried out unilaterally by the national park office. There is a need genuine public participation from Tengger people, starting from the formulation of policy regulations to the evaluation level so that the economic rights of the Tengger people can be guaranteed.

Keywords: legal protection; tengger people; partnership pattern; bromo tengger semeru national park





1. INTRODUCTION

Legal conditions in Indonesia tend to result in inconsistent use of legal principles. Many of the acts and regulations made are out of date. That is because objectively changes in society in the economic, social, cultural and political fields are moving quickly so that applicable law is easily abandoned. Policies are only made to overcome current condition and pay little attention to future needs. The reality of natural resource governance shows that business actors, state-owned enterprise both national and foreign private companies, ignore the principle of good governance and ignore the principles of good environmental governance. Natural resource management only relies on economic benefits, ignoring elements of social justice and environmental sustainability. The current national resource management show resource depletion, taking unlimited profits, social inequality, conflict, poverty of indigenous communities, identity crisis, environmental pollution. Government paradigm is impact of development oriented towards W.W. Rostow's ideas of modernity which refer to economic growth as the main goal of development. (Hasibuan & Tumuyu, 2023)

In almost all national political decisions, the existence of indigenous people has not been accommodated or systematically removed from national political process and agenda. Unfair treatment can be seen clearly through the unilateral categorization and definition of customary law community as isolated, shift cultivators, and vulnerable community which results in accelerated destruction of system their patterns of economic, legal, social and cultural aspects. The founding fathers of the nation were aware from the beginning that Indonesia was a pluralistic archipelagic country, both regarding the political, legal, social, culture and religion systems. The motto *Bhinneka Tunggal Ika* philosophically shows the Indonesian nation's respect for social, cultural, political, religious pluralism or diversity. It's just that the building of a pluralistic state that was initiated by nation's founders was betrayed by their successors, by systematically usurping rights of customary law communities. (Sembiring, 2017)

Tengger people is a Javanese ethnic group that has customs and culture that have existed since ancient times. Javanese people are not taught to control nature, but how to adapt themselves to the supranatural life of nature and emphasizing how to maintain harmony with nature (Triyoga, 2010). From perspective of customary law community, land is not only considered to have economic value, as in western understanding which is individualistic and materialistic. However, the customary law community view land from a macro cosmos and micro cosmos perspective as a complete, comprehensive relationship, unified between individuals and each other, with society, with nature and god. That conception is holistic, *patriciferent*, *magisch* religious. Tengger people are a traditional law





community who have occupied Bromo and Semeru mountain areas long before the area was designated by the government as a national park. The Tengger people has all the qualifications as a customary entity that has its own legal institutions. To determine the parameters of customary law communities, I Nyoman Nurjaya state that distinctive characteristics of traditional adat community as a legal entity are particularly as follow (Nurjaya, 2008):

- 1) The patterns of customary community life are closed, familiar community and communal, and harmony-oriented.
- 2) The way of thinking of customary law community is magic-religious, meaning that communal society always oriented to the equilibrium and harmony between *skala* (physically), *niskala* (spiritually) world views.
- 3) Any decision making conducted within village. The perspectives on properly or improperly principles becomes common standart to value speech and behavior of the community members.

According to Moh. Fadli, no written norm or formal laws have been found regarding the Tengger people, because legal institutions are based on mutual agreements among the Tengger people themselves. Although there are no written records, it is understood that the Tengger people have been integrated into their cultures for centuries. The issue or norm, rules or values that Tengger people uphold is based on traditional rules so that they form their own characteristics regarding attitude, outlook on life and social structure of the community. (Fadli, 2017)

Indonesian government's current paradigm is reflected in legislation in the natural resource sector, in responding to the existence of local or indigenous community in and around the national park areas is by placing them as user of natural resources or part of the potential attraction in tourism activities. Sometimes they are even positioned as parties at odds with conservation interests. The use of natural resources within national park area by customary law communities to fulfill their living needs, which is tradition passed down from generation to generation is considered a pressure or threat to the ecological integrity of forest areas that are claimed to belong to the government. In fact, in several acts and regulations, there is the government's view that forest areas are *terra nullius* (nobody's land). (Subono, 2017)

According to Moh Fadli, Indonesia has 448 traditional villages that was spread across 28 provinces of Indonesia. Even though there are many traditional communities, that does not make customary law above state law. The traditional right of customary law community over their territories with various formal regulations which essentially override the customary law. Indigenous community have experienced many materials, spiritual losses





due to the implementation of development politics over few decades. That oppression occurs in economic, legal, social and cultural aspects. That condition is ironic because in reality indigenous peoples are the largest element of structure of Indonesian nation. (Fadli et al., 2023)

Even though there are various regulations governing natural resources, conservation efforts do not necessarily make the parties who should be able to implement the respond positively to these decisions. That is because in every policy making, the community are considered as an object and not a subject. In that case, humans are not considered part of the ecosystem. That condition causes main objectives of conservation to be ineffective, which are protecting life support systems, preserving the diversity of plant and animal species, sustainable use of biological natural resources and its ecosystems and improving welfare in a fair manner in use of biological natural resources. Many regulations related to national parks management are made unilaterally by state or government, so that at the implementation level, it creates many structural conflicts with customary, local and traditional communities because the decree is carried out without legitimacy from people. (Kartodihardjo, 2017)

Even though there are special regulation in the field of biological resources which is Act Number 5 of 1990, that policy does not produce a solution to the inequality of control and horizontal use of natural resources. The majority of people live in a state of poverty and helpless. In many cases, local, traditional and customary communities do not feel involved and do not receive a benefits of natural resource management pursued by the government, so they are reluctant to participate or tend to reject efforts to conserve living natural resources. The instruments of natural resource management that have been present over the past few decades are symbols of deception, because they are empirically unable to solve problem of injustice and real damage to the natural resources.

Tengger people makes its main livelihood as farmers, and in Bromo and Semeru mountain areas, the type of soil is not suitable for rice field farming, so the Tengger people relies on field farming. However, agricultural land in the Bromo Tengger Semeru area is included in the jungle zone which is prohibited to be accessed and used for the daily needs. This research will discuss form of legal protection for the economic rights of the Tengger people as a result of the zoning-based management system implemented by the Bromo Tengger Semeru national park office.

2. RESEARCH METHOD

This research uses normative legal research methods whose material object is legal norms, includes research on legal principles, legal systematics, level of legal synchronization,





all of which are combined in a conceptual research approach (Permadi et al., 2023). The focus of problem studied is the legal regulation regarding the management of the Bromo Tengger Semeru national park which refers to the Act Number 5 of 1990 regarding Conservation of Biological Natural Resource and Ecosystems and its implementing regulations which are used to establish a conservation partnership pattern with Tengger indigenous people. This research uses statutory approach, conceptual approach, and an analytical approach. (Bachtiar, 2021)

3. RESULT AND DISCUSSION

3.1 The infiltration of neoliberalism in the governance of the Bromo Tengger Semeru national park

Article 33 paragraph (3) of 1945 Constitution of the Republic of Indonesia has a socialist dimension. The addition of paragraphs (4) and (5) in article 33 of the constitution means article no longer fully adheres to socialism or people's economics, but instead adheres to neoliberalism. That dualism means that the level of constitutionalism of article 33 gives a various interpretation between people's socialism with capitalism or neoliberalism. Syamsul Hadi stated that the infiltration of neoliberalism was a constitutional coup or white coup, meaning that all takeovers or rights and authority in exploiting natural resources were carried out legally (Hadi, 2012). The real implication is that there is no juridical basis that provide legal certainty for Constitutional Court in deciding cases (judicial review) of law deemed unconstitutional based people's economics in accordance with the provisions of the article 33 of constitution. The addition of paragraphs (4) and (5) reduces people's economy. The weakness of mixing various fundamental rights in one article causes the recognition of people's constitutional rights to be neglected and not become the attention of policy makers. (Rachmad Safa'at, 2022)

The formulation of article 33 paragraphs (4) and (5) of constitution clearly shows the role of the state in regulating economic resources, not only as regulator. The government has a role in the economy or can be direct actor if negative market mechanism fails, externalities arise, economic or social inequality. Article 33 paragraphs (4) and (5) of the constitution places efficiency and competition as priority, not a cooperative economy that prioritizes the small people. Even though the constitution was amended, the Orde Baru style pattern of fragmentation of natural resources legislation continued and more massive. Amendment to the constitution resulted in the emergence of various acts and implementing regulations covered by the spirit of liberalization, de-regulation and privatization which in many cases have provided very broad opportunity for foreign investors to dominate Indonesian economic policy. (Herdi Sahrasad, 2020)





The characteristics of the acts that emerged after Orde Baru era especially in the field of natural resource, still strengthen sectorization of natural resource, followed by a wave of commercialization and privatization of the public sector, which should be direct responsibility of state. The laws that emerged in this period facilitated greater private involvement in the use of land and natural resources while ignoring issues of human rights, justice, and ecological sustainability. Facilitation of greater private involvement is carried out by providing a number of permits and concessions that are easily accessible to investors. Apart from that, the legal products that exist provide justification for the theft of people's property (Noer Fauzi Rachman, 2017). Laws in field of natural resources in the reform era were influenced by neoliberalism, which made government's position shift and private legal entities had a big influence in determining the policies that were made.

Natural resources have been proven increase economic growth, but improper governance using the neoliberal paradigm has a direct impact on a continue of conflicts which in turn drag society into poverty and massive destruction of the natural resources (Zamrudin Hasid, 2022). Act Number 5 of 1990 regarding Conservation of Biological Natural Resource and Ecosystems is legal basis that used by state in managing Bromo Tengger Semeru national Park. The act focuses on regulating preservation of biological natural resources. That is because the act was formed to ensure preservation of biological natural resources and ecosystem balance. That was motivated by the many Orde Baru legal products in the forestry sector which caused degradation of natural resources and the environment.

Article 4 of Act Number 5 of 1990 state that: conservation of biological natural resources and its ecosystems is the responsibility and obligations of the government and society. However, the largest part of the act's content is only related to the dominant role of state. That regulation even chooses to hand over the management of utilization of national park, grand forest park and natural tourist park by granting control rights to cooperative, state owned enterprises, private companies, and individuals rather than indigenous or local people who already have local wisdom values of conservation (in explanation of Article 34 paragraph (1) of Act Number 5 of 1990) (Negara, 2011). The motivation for handing over area exploitation is not just to protect biodiversity, but it is driven by the values of capitalism, commercialism which leads to privatization of national park where conservation areas become concession to international institutions, as well as forget existence of people who have lived for a long time compared to national parks.

The Indonesian government is currently still using an approach that adopted Yellowstone conservation in the United States of America where conservation areas must be sterile from people. The government considers that communal ownership of shared the natural resources will bring these natural resources to destruction, and the best method to





protect nature is by privatization of state control and access to natural resources is limited. The high level of conflict in conservation areas, especially national parks is caused by the government carrying out forced evictions of indigenous people. The escalation of conflict in national parks arises from unilateral determination of using a fort conservation approach, by positioning local communities as a threat to conservation effort. The value of capitalism and commercialism of national park to the private sectors is due to several reasons: direct management by government tends to be very expensive, the government assumes that the private sector has far more opportunities to generate funds for the area and to improve better management the funds are obtained from environmental services and tourism develops by private sector. (Fandeli, 2018)

Until now, the practice of laws and regulation in natural resources sector including national parks, tends to result in poor governance. That condition is confirmed by the results of United Nations Development Program study in ten provinces in Indonesia which shows an average forest and land governance index of 2,33 out of maximum value of 5. Meanwhile, natural resource management practices at the central level, provincial and district average indexes are only 2,78, 2,39 and 1,80. There are at least five natural resource management practices that significantly hinder equitable, sustainable developments target, includes (Kartodihardjo, 2017):

Natural resource laws and regulations controlled by state. However, in fact it is not managed and information regarding wealth and its control is very minimal, so that *de facto* it is open to anyone.

- 1) Weakness in the content of statutory regulations, low bureaucratic capacity in permit control procedures, incomplete natural wealth information makes it is easier for state capture to occur and high economic costs in almost the entire licensing chain. In addition, in terms of supervision by central and regional government officials, it is customary for business entities to reimburse the costs of assignment orders.
- 2) Low level of public services, especially for indigenous and local people in the form of access to legality in utilizing natural resources, is *de facto* limited and only provide for large businesses, and indigenous or local people are unable to pay. Even though the government has provided business opportunities for local or traditional or indigenous communities through various forest management schemes such as community plantation forests, village forests, financially the communities cannot afford them. That fact can be seen from the unchanged role of indigenous communities in increasing economic resilience of their households. The following problem in every matter of resolving conflicts over use of state forest areas concerns who has the most rights, which are only those who can show proof of legality in accordance with the law.





- 3) Government institutions, their cultural and mental blocks, especially those with authority to issue permits, are trapped only in serving administrative needs and short-term work indicators and the rules and regulations that are interpreted are not in accordance with the conditions, capacities and needs of the indigenous community. The support for indigenous peoples that is needed at that time is over ridden by the interests of groups trying to reap maximum profits individually. (Kartodihardjo, 2017)

Based on these empirical facts, there has been a process of liberalization of control and management of natural resources. The liberalization process is made worse by three situations: First, absence of regulation that provide control and boundaries of controlled areas as well as legal regulations that require genuine attention to ecological interests. Second, there is no consolidated authority, controlled within one authority door. There are many parties who have an authority, each of them expanding their own authority with sectoral egos. All the authority possessed is also not based on and controlled by the parties who manage each natural resource sector. Third, all of these authorities are faced with interest of profitization over control and management of natural resources as well as high political costs of election process. As a result, there is a commodification of the authority of the black market in providing natural resource management concessions. (Widjojanto, 2017)

3.2 Implementation of partnership patterns in management of Bromo Tengger Semeru National Park

In article 29 paragraph (1) of Act Number 5 of 1990, national park is classified as nature conservation areas. Further provisions about the designation of an area as a region nature conservation and designation of areas border it as Buffer areas are regulated through the Government of the Republic of Indonesia Regulation Number 28 of 2011 which has been partially amended through Republic of Indonesia Government Regulation Number 108 of 2015 concerning Management of Natural reverses and Nature Conservation Areas. Furthermore, article 49 of Republic of Indonesia Government Regulation Number 108 Of 2015 states that:

- 1) The government, provincial government district/ city government must empower communities around nature reverse area and nature conservation area to improve their welfare;
- 2) Community empowerment as intended in paragraph (1) includes developing community capacity and provide access to the use of nature reverse areas and nature conservation areas.
- 3) Community empowerment as intended in paragraph (2) is carried out through:





- a. Development of conservation village;
 - b. Providing access to collect non timber forest products in traditional zones or blocks or traditional uses;
 - c. Partnership facilities between forest utilization permits holders and the community and/or;
- 4) The granting of access as intended in paragraph (3) letter (b) is given by the Head of Management Unit in accordance with management plan.

Bromo Tengger Semeru National Park are managed by institutions called national park office, a technical implementation unit of the Directorate General of Natural Resources and Ecosystems Conservation of the Ministry of Environment and Forestry, formed based on Minister of Forestry Regulation Number P-03/Menhut-II/2007 about the Organization and Work Procedures of the National Park Technical Implementation Unit which was amended by the Minister of Forestry Regulation Number: P.52/ Menhut-II/2009. Based on the Decree of Director of Nature Conservation Pattern and Information, a special directorate under the Ministry of Environment and Forestry Number: S.138/ PIKA/PNK/KSA-0/4/2019, Bromo Tengger Semeru National Park has seven zones which are core zone, jungle zone, utilization zone, traditional zone, religious, cultural, historical zone, rehabilitation zone, and special zone. Based on regulations, Tengger people inside and around Bromo Tengger Semeru national park are allowed to carry out activities in religious zone and traditional zone through a conservation partnership pattern.

The conservation partnership pattern in the Bromo Tengger Semeru National Park is further regulated in Minister of Environment and Forestry Regulation Number: P.44/Menlhk/Setjen/Kum.1/6/2017 about amendment the Minister of Forestry Regulation Number: P.85/Menhut-II/2014 about Procedures for Implement Cooperation in Natural Reverse Areas and Nature Conservation Areas. The form of conservation partnership cooperation is further regulated through implementing regulation, which is article 3 Regulation of the Director General of Natural Resources and Ecosystem Conservation Number: P.6/KSDAE/SET/Kum.1/6/2018 about technical instructions for conservation Partnership in natural reverse areas and conservation areas either takes form of conservation partnership in the context of community empowerment or a conservation partnership in the context of ecosystem restoration.

The Management of religious, cultural and historical zones in Bromo Tengger Semeru national park areas is carried out through a pattern of joint partnership with a certain period of time, must be extended when the specified period has expired. At Rondo Kuning Temple, the partnership is in the form of a Cooperation Agreement Number: PKS.





06/T.8/TU.2/KDN/08/2021, a Cooperation Agreement Number: B.49/ PHDI-LMJ/VIII/2021 dated August 31 with a period of five years starting from August 31, 2021 to August 31, 2026. In Pura Luhur Poten, the partnership is in the form of a Cooperation Agreement Number: PKS.05/T.8/TU/TU.2/ KDN/08/2021, and Cooperation Agreement No: 064/PKS/PHDI-KAB/08/2021 dated on August 31, 2021 with a period of five years starting from August 31, 2021 to August 31, 2026. The cooperation area is in the Tengger Laut Pasir national park Management Resort covering an area of 2 hectare. (Laporan Kinerja Direktorat, 2021)

Management of traditional zone is located in Ranu Darungan national park management resort area with a total area of \pm 84 hectares. However, the area was managed using a community partnership system is 80 hectares. The 4 hectares area does not carry out partnerships with the community because the land location is hill. The area of traditional zone has experienced a reduction, initially in the Bromo Tengger Semeru national park management zone documents the area was 89,76 hectares to 80 hectares. The total area of these zones is not able to cover 36 Tengger traditional village in Bromo Tengger Semeru national park area. For example, during the *Yadnya Kasada* or *Kuningan* ceremonies, the number of Hindus praying at Pura Luhur Poten was more than 15.000 people, so with limited space, they had to pray in turns.

In the Bromo and Semeru mountain regions where population growth is occurring rapidly, the farming system does not the ecological resilience of the rice farming system. If dry land is cultivated intensively, it will lose its fertility and be susceptible to wind, rain and erosion. If land cultivate continuously will become a breeding ground for fungi and pests. If the Tengger people wants to collect forest products outside the traditional zone, then that is a violation of the law and will be dealt with firmly by the Bromo Tengger Semeru national park office (Purnomo, 2015). Determining zone and conservation partnership patterns through formal criteria in a national park area that intersect with territory and living space of Tengger people results in limited community access to the use of national resources. That is because the zones are structured with the interests of preserving biodiversity from a scientific and global perspective, as well as an orientation towards utilization for external interests so that they are not in line with the interest of lives of the Tengger community. Determining zones using that method has led to the perception among the Tengger people that their lives are not important compared to preserving wild plants and animals.

The executive director of Indonesian Forum for Environment East Java Province gave a statement that the approach to tourism area within Bromo Tengger Semeru national park still focused on manage infrastructure so that the existence of community is still neglected. There are various long-stand tenure conflicts occur in the Tengger mountain area due to





structural inequality and ownership history. Conservation areas were established in 1982, and it should be remembered that forest area provisions have been in place since the Dutch colonial era. After the independence of the Republic of Indonesia, the area was declared a state forest, that treatment continues to this day. From a historical perspective of owner ship, the agrarian policy structure has not favored indigenous and local peoples to date. Mass infrastructure development encourage mass tourism actually threatens sustainability of national park. (Ahsinin et al., 2020)

3.3 Legal protection of the Economic Rights of the Tengger people through ecologically sustainable conservation partnership

One of most important indicators in assessing the democratization of natural resources governance is to look at the extent of civil society participation. With the majority of participation at the tokenism level, especially in the national park governance, there is no guarantee whatsoever that the aspirations of the Tengger people in the Bromo Tengger Semeru national park area will be considered by the national park office. Safa'at stated that traditional, local people generally prioritize harmonize and interdependence between humans and nature in forms such as land, forests, mountain, air, animals, and so on. The sustainability of their lives depends on the environmental conditions in which they live, so when nature is damaged, it is a sign of the destruction of their survival. Therefore, if other parties, in this case the state, manage the nature they live in without giving them the opportunity to be involved, the wisdom values they believe in will be lost, followed by damage to their source of livelihood due to restrictions for conservation reasons. (Rachmat Safa'at, 2023)

I Nyoman Nurjaya stated that government policy in natural resource management must accommodate the principle of democracy, justice and sustainability with the following explanation (Nurjaya, 2022):

- 1) The principle of justice refers to national park governance which must be planned, implemented, monitored, and evaluated continuously to fulfil intergenerational needs.
- 2) The principle of democracy refers to the governance of national park by provide access to information and genuine public participation, protecting the rights of local and traditional community around the national park, and
- 3) The principle of sustainability refers to national park management that provides real benefits to the community in the proportional manners and provides an understanding of the limited carrying capacity of the environment.





The policy parameters and legal substance of responsive natural resources management must have the following characteristic: First, the management must be oriented towards preservation and sustainability for inter-generational interests. Second, the approach used is comprehensive, integrated by treating natural resources as an ecological unit. Third, the natural resource management paradigm adopted is community-based by providing more proportional space public participation and transparency. Fourth, natural resource management are carried out according to regional characteristics using a bio-region approach and the socio-cultural conditions of traditional, indigenous or local communities. Fifth, acknowledge the existence and provide access for indigenous communities to the use of local natural resource. Sixth, full recognize and accommodate proportionally the legal pluralism that grows and develops in society into state law. (Rachmad Safa'at, 2022)

Viewed from an ecological aspect, humans see themselves as an integral part of a system or living space with an inseparable functional relationship between social and biophysical systems. The lives of community, especially indigenous and traditional peoples are highly dependent on ecosystem functions. In the context of indigenous peoples, traditional social institutions such as rituals are not only related to social system, their actions towards nature are intended as maintenance of the environment. (Suharno & Sartini, 2022)

In relation to the protection of the economic rights of Tengger people in Bromo Tengger Semeru national park area, state has position as the holder of obligation. The obligation carried out by the state is to protect, fulfil, and protect the human rights of its citizens. The obligation to respect is state's obligation to refrain from intervening except under valid law. The obligation to fulfil is an obligation of state to take legislative, judicial, practical, and administrative measures to ensure the implementation of human rights to greatest extent possible. The obligation to protect is state's obligation to protect not only violation committed by state, but also against violation or actions carried out by entities that will disrupt these protection efforts. (Rahayu & Erwanti, 2012)

The operation of law in the society involves several element or aspect that are interrelated as a system. Some of these aspects include law-making institution, role holders, sanction implement institution, personal social forces, legal culture, and elements or feedback from the legal working process. The successful implementation of statutory regulations is very dependent on the substance, structure, legal culture. In the field of natural resources, there has never been a single regulation that specifically regulates the legal culture of indigenous peoples (Suteki, 2010). The experience of interact and adapt to nature has provided that Tengger people with in-depth knowledge in managing their local natural





resources. They have local knowledge to manage land, plants and animals to meet all their living needs. It must be acknowledged that Tengger people who have lived for centuries are the scientists who know best their natural environment. (Rachmad, 2011)

Legal reformulation is very important for the realization of *ius constituendum* which can fulfil the economic rights of Tengger people. In that regard, Werner Menski stated: law is only a means to fulfil the need of society, and the goal its essential characteristic to promote and protect the interest of society. However, human desires and social interest are not always in line with individual interest. The big problem of society is how to reconcile personal interest with social goal or suppress personal interests when they are conflict detrimentally with social goal that inherently exist within each individual, one of the main methods being to identify self-interest with larger social interests. (Menski, 2019)

The law-making process determines how legal practice is carried out. The mistake in implementing legal policies have an impact on the creation of underlying regulations. When viewed from critical legal studies, Act Number 5 of 1990 regarding Conservation of Biological Natural Resources and Ecosystem and its implement regulations contain many a conflict of interests and superficiality in the meaning of the rights of state authorities. The legal culture of state administrators also determines this process. Law is a relatively closed building system that has special logic, has specific way of work, special procedures, and operates special institutions that are not easily controlled freely by anyone (Tanya, 2011). If the Bromo Tengger Semeru national park office continues to implementing the conservation partnership pattern by referring Act Number 5 of 1990, the economic rights of the Tengger people will be increasingly eroded and drag these indigenous community entities into the abyss of poverty.

4. CONCLUSION

Good law is policy that contains the principles of sustainability, justice and democracy. That can be achieved if the preparation includes a various related parties from start. The process of drafting democratic legislation is largely determined and colored by the structure of society, the political system and foundation of state values. To be able formulate democratic legislation, before enetering the juridical stage, one must first go througth the socio-political stage. The state legal products that implement the mandate of Article 33 paragraph (3) of the 1945 Constitution of Republic of Indonesia, such as Act Number 5 of 1990 regarding Conservation of Biological Natural Resources and its Ecosystems, at the implementation level do not enable millions of Indonesians to utilize the resources. Natural resources in a sustainable manner or to improve the welfare of society at large. Separate management to the element of natural resources and authority of the institutions occurred





because the Orde Baru government issued new regulations and negated the Orde Lama policies which had a socialist perspective.

The limited access of the Tengger people to forest resources in national park area with the implementation of a conservation partnership pattern based on an ecological sensitivity approach will cause a domino effect on the economic rights of the Tengger people. The government's paradigm of establishing conservation partnership unliterally is caused by law which regulates rights of indigenous peoples over management of natural resources which is always accompanied by the phrases "as long as it does not conflict with national interests" or as long as the reality still exists and is recognized". With that method, the government carries out a legal policy of ignoring plurality of laws that actually exist and apply in indigenous communities.

Therefore, the author suggests is that Act Number 5 of 1990 regarding the Conservation of Biological Natural Resources and its Ecosystem must be amended to reflect current conditions. In that Act, the rights of traditional or local or indigenous communities that reside in conservation areas must also be regulated in management of conservation areas, especially national parks, do not override the rights of indigenous communities and limit their rights to access the natural resources for realization of economic prosperity as mandated in the constitution. Then, article 33 paragraph (3) of 1945 Constitution of Republic of Indonesia must provide an explanation and limitations on the to control the state considering addition of paragraphs (4) and (5) in this article which suggest a neoliberalism paradigm which result in the destruction of people's economic rights on natural resources.

REFERENCES

- Ahsinin, A., Muttaqien, A., Setianti, B. L., Fuad, M. B., Nidyaningsih, P., Aji, S. B., Zakaria, S., & Yudhani, V. R. (2020). Memetakan Mozaik Pelanggaran Hak Asasi Manusia Dalam Konteks Pembangunan Pariwisata Berdasarkan Perspektif Bisnis dan HAM: Studi Empat Destinasi Bali Baru Yesaya Sandang (ed.).[online]. Jakarta: Lembaga Studi dan Advokasi Masyarakat (ELSAM).
- Bachtiar, S. H. (2021). Mendesain Penelitian Hukum. Deepublish.
- Fadli, M. (2017). Constitutional Recognition and Legal Protection for Local Religion in Indonesia: A Discourse on Local Religion of the Tengger and Baduy People. *Pertanika Journal of Social Sciences & Humanities*, 25(2).
- Fadli, M., Hadiyantina, S., Cahyandari, D., Liemanto, A., & Sholehudin, M. (2023). Inquiring into the sustainable tourism village development through the social complexity of adat peoples in digital era. *Legality: Jurnal Ilmiah Hukum*, 31(2), 181–200. <https://doi.org/10.22219/ljih.v31i2.26438>





- Fandeli, C. (2018). Analisis mengenai dampak lingkungan dalam pembangunan berbagai sektor. UGM PRESS.
- Hadi, S. (2012). Kudeta putih: reformasi dan pelembagaan kepentingan asing dalam ekonomi Indonesia. (No Title).
- Hasibuan, H. S., & Tumuyu, S. S. (2023). Perencanaan Pembangunan Berkelanjutan. Universitas Indonesia Publishing.
- Herdi Sahrasad, M. A. (2020). Agama, Politik dan Perubahan Sosial. Freedom Foundation & Universitas Malik Saleh Press.
- Kartodihardjo, H. (2017). Analisis kebijakan pengelolaan sumberdaya alam: diskursus, politik, aktor, jaringan. Sajogyo Institute.
- Laporan Kinerja Direktorat. (2021). Perencanaan Kawasan Konservasi-Direktorat Jenderal Konservasi Sumber Daya Alam dan Ekosistem Tahun 2021. Ksdas.Menlhk.Go.Id.
- Menski, W. (2019). Perbandingan hukum dalam konteks global: Sistem Eropa, Asia dan Afrika. Nusamedia.
- Negara, P. D. (2011). Rekonstruksi kebijakan pengelolaan kawasan konservasi berbasis kearifan lokal sebagai kontribusi menuju pengelolaan sumber daya alam yang Indonesia. Jurnal Konstitusi, 4(2), 115544. <https://publishing-widyagama.ac.id/ejournal-v2/index.php/jk/article/view/330>
- Noer Fauzi Rachman. (2017). Petani dan Penguasa (Dinamika Perjalanan Politik Agraria di Indonesia). INSIST Press.
- Nurjaya, I. N. (2008). Memahami Potensi dan Kedudukan Hukum Adat dalam Politik Pembangunan Hukum Nasional. Makalah Pada Seminar Hukum Adat Dalam Politik Hukum Nasional. Diselenggarakan Oleh FH UNAIR Pada, 20.
- Nurjaya, I. N. (2022). Hukum tata kelola kepariwisataan nasional berkelanjutan alam dan budaya berbasis masyarakat hukum adat. Intelegensia Media.
- Permadi, I., Kamula, A. A., Sari, B. S. W., & Wiratmanta, A. (2023). HUKUM AGRARIA KONTEMPORER: Relasinya dengan Pembangunan Ekonomi di Indonesia. Pustaka Peradaban.
- Purnomo. (2015). Praktik-Praktik Konservasi Lingkungan secara Tradisional di Jawa. Universitas Brawijaya.
- Rachmad, S. (2011). ADVOKASI DAN ALTERNATIF PENYELESAIAN SENGKETA: Latar Belakang, Konsep, dan Implementasi. Malang: Surya Pena Gemilang.
- Rachmad Safa'at, et-al. (2022). Hak Warga Negara dan Kewajiban Negara dalam Pengelolaan Lingkungan Hidup dan Sumber Daya Alam. Intele gensia Media.





- Rachmat Safa'at, I. D. Q. D. A. Y. N. Y. E. (2023). Karakteristik dan Pertanggungjawaban Hukum Oligarki Dalam Tata Kelola Lingkungan Hidup dan Sumber Daya Alam. *Intelegensia Media*.
- Rahayu, E. F., & Erwanti, M. O. (2012). Kajian Yuridis Female Genital Mutilation (Fgm) dalam Perspektif Hak Asasi Manusia (Studi terhadap Praktik Female Genital Mutilation di Indonesia). *Diponegoro Law Review*, 1(4), 19517.
- Sembiring, R. (2017). Hukum pertanahan adat.
- Subono, N. I. (2017). Dari adat ke politik: transformasi gerakan sosial di Amerika Latin. *Marjin Kiri*.
- Suharno, S., & Sartini, S. (2022). Tribuana Manggala Bakti: Menjaga Lingkungan Alam Menoreh dalam Perspektif Fritjof Capra. *Jurnal SMART (Studi Masyarakat, Religi, Dan Tradisi)*, 8(2), 275–286. <https://doi.org/10.18784/smart.v8i2.1689>
- Suteki, R. H. H. A. A. (2010). Rekonstruksi Politik Hukum Hak Atas Air Pro-Rakyat. *Surya Pena Gemilang*, Malang.
- Tanya, B. L. (2011). Penegakan hukum: dalam terang etika.
- Triyoga, L. S. (2010). Merapi dan orang Jawa: persepsi dan kepercayaannya. (No Title). <https://cir.nii.ac.jp/crid/1130282271839430784>
- Widjojanto, B. (2017). Masa Depan Indonesia dikorupsi: Tantangan Pengelolaan Sumber Daya Alam. *Penguasaan Sumber Daya Alam Dalam Cengkraman Oligarki Dan Rezim Neoliberal*, 8–45.
- Zamrudin Hasid, et-al. (2022). Ekonomi Sumber Daya Alam Dalam Lensa Pembangunan Ekonomi. *Cipta Media Nusantara*.

