Vol. 21 No. 2 September 2025 **YURISDIKSI**
Jurnal Wacana Hukum dan Sains
Universitas Merdeka Surabaya

ISSN print 2086-6852 and ISSN Online 2598-5892

Legal Certainty In The Granting of Land Rights To Indigenous Law Communities In Coastal Areas

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Article History: Received: Agustus 12, 2025; Accepted: September 22, 2025

ABSTRACT
The Indonesian Constitution, through Article 18B paragraph (2), Article 28I paragraph (3), and Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, expressly mandates the recognition and respect of indigenous legal communities (MHA) and their traditional rights, and places natural resources under the control of the state for the greatest prosperity of the people. However, current positive legal practices show inconsistencies, particularly in the provisions of Article 22 of the Coastal Areas and Small Islands Law, which has been amended through the Job Creation Law with Article 138 paragraph (4) of Government Regulation Number 21 of 2021. This inconsistency has an impact on legal uncertainty in MHA management areas, the potential for criminalization of coastal indigenous communities, conflicts of authority between ministries, and the neglect of the principle of legal pluralism guaranteed by the constitution. This research uses a normative juridical method with a statutory and conceptual regulatory approach, supported by primary, secondary, and tertiary legal materials that are analyzed prescriptively through systematic and teleological interpretation. The research findings indicate that an ideal formulation of ius constituendum is needed through a paradigm shift in natural resource management from state-based to community-based, automatic recognition of indigenous peoples' (MHA) management areas, legal certainty in the RTRW (Regional Spatial Plan), preventive and repressive legal protection, and the establishment of customary territory management institutions. These regulations are crucial for realizing a national legal system that guarantees legal certainty, substantive justice, social benefits, and the sustainability of coastal ecosystems.

Keywords: Customary Law Communities, Coastal Areas, Legal Certainty, Land Rights, Ius Constituendum.

1. INTRODUCTION

Indonesia is a large and diverse nation, a diversity divided into several categories, including various ethnic groups with distinct customs, languages, beliefs, and customs. Speaking of regional cultures in Indonesia, one of these is the customary law community (MHA), which lives above sea level.

As a community that has lived in coastal areas for centuries, the Sea Tribe has spread throughout the archipelago, including several villages in Muna Regency, Southeast Sulawesi, the Bone region, South Sulawesi, several regions in Eastern Indonesia, and so on. In fact, the Sea Tribe has also spread across several Southeast Asian waters. Various sources of literature indicate that

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the Sea Tribe is identified as sea nomads or boat people, meaning they live freely wandering the vast ocean (Ali, 2010).

The Sea Tribe's distinctive characteristics can be seen in aspects of their lives, both in the physical and social contexts. This uniqueness, both in the social and physical dimensions, contains elements of local wisdom that have the potential to become a regional attraction and resource. This phenomenon is manifested in individual attitudes and behaviors in interacting with the sea, involving the processing, maintenance, and use of marine biological resources. This process is based on existing cultural norms and values, which are followed and maintained through social control mechanisms. This is rooted in a knowledge system derived from local wisdom (indigenous knowledge) passed down from generation to generation. Therefore, the concept of housing in coastal areas and small islands cannot be separated from the existence of the surrounding sea.

Van Vollenhoven provides a view that states that beschikkingrecht (customary rights) have their own characteristics, namely; (1) MHA has free authority over virgin lands; (2) Foreigners outside the local MHA community can use the land with their permission; (3) For outsiders, it is certain, and sometimes also for MHA members to pay a recognition fee; (4) Collective (territorial) responsibility towards outsiders; (5) Authority over the land being controlled (permanent power over the land); (6) Perpetual community rights (Arisaputra & Sh, 2021).

Based on the Djuanda Declaration made by the Prime Minister of Indonesia, Djuanda Kartawidjaya on December 13, 1957. The principle of this declaration focuses on the marine or coastal territory as a complete unity for the sovereignty of the Unitary State of the Republic of Indonesia (NKRI) in the management and utilization patterns. This has long been used by the MHA Suku Laut in coastal areas with a pattern of traditional management by prioritizing local wisdom whose main goal is to maintain the existing ecosystem, so that it becomes a cultural custom that gives rise to a tradition itself and is the forerunner as customary land for the Suku Laut.

Based on the identification of the elements of customary rights, as the rights of the customary law community unit (rechtgemeenschaap), the marine communal rights (marine communal right) are an authority held by the rechtgemeenschap in coastal jurisdiction as an exclusive right intended as an economic value and at the same time confirms and asserts the limits of customary law jurisdiction in coastal waters. "The 1945 Constitution of the Republic of Indonesia". Hereinafter referred to as (UUD NRI 1945). As a basic norm that concretizes the values of Pancasila, the 1945 UUD NRI operationalizes several things, one of which is in Article 18B paragraph (2) in conjunction with 28D paragraph (1), and based on the contents of the

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Universal Declaration of Human Rights (DUHAM), explains that every person born on earth including indigenous peoples has inherent rights as God's creatures that must be respected, upheld and protected by law, the state and every member of society for the sake of honoring human dignity and honor (Harsono, 2007).

All natural resources contained within the territory of the Republic of Indonesia constitute national wealth, including the earth's surface and its contents, as well as everything beneath the water. This is a manifestation of the concept of "State Control Rights" over all natural resources inherent in the sovereign territory of the Unitary State of the Republic of Indonesia (NKRI). At the Ministry of ATR/BPN level, land rights in coastal waters can be granted, but must meet the following standards:

> "The community can prove that if they have settled and resided in the waters for two decades or more continuously, both the person concerned and their predecessors will be given land rights."

"Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 8/PERMEN-KP/2018 concerning Procedures for Determining the Management Areas of Indigenous Legal Communities in the Utilization of Space in Coastal Areas and Small Islands, State Gazette of the Republic of Indonesia 2018 Number 330". In subsequent discussions, it will be referred to as Permen KP Number 8 of 2018.

Based on Government Regulation Number 21 of 2021 which mandates more operational regulations to regulate in more detail regarding the implementation of marine spatial planning, so that the issuance of "Regulation of the Minister of Maritime Affairs and Fisheries Number 28 of 2021 concerning the Implementation of Marine Spatial Planning, State Gazette of the Republic of Indonesia 2021 Number 701. Hereinafter referred to as Ministerial Regulation Number 28 of 2021". What is meant by KKPRL is the conformity between the planned marine space utilization activities with the RTR and/or RZ, so that prior confirmation or approval must be obtained (Muhammad, 1976).

As stated in Article 113 of Minister of Maritime Affairs and Fisheries Regulation Number 28 of 2021, it states that:

> "Every person who carries out Marine Space Utilization activities in Coastal Waters, water areas, and/or jurisdictional areas that are permanently located in a part of the Marine Space (sea surface, water pools, and/or seabed) must have a KKPRL that is carried out continuously for at least 30 (thirty) days."

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Such conditions indicate a normative antinomy against the provisions that have been codified in Article 138 paragraph (4) of PP Number 21 of 2021. This norm explicitly stipulates a condition without which it is impossible (conditio sine qua non), that in the case of KKPR being correlated with Spatial Utilization activities that have not been accommodated in the Spatial Planning Plan (RTR), Regional Zoning Plan (RZ KAW), and Certain National Strategic Area Zoning Plan (RZ KSNT) that apply to coastal waters, then a conditional condition is required in the form of KKPRL Approval.

Furthermore, the normative integration between the recognition of MHA through the allocation of management space in the RZWP-3-K with the spatial planning hierarchy embodied in the Regional Regulation on Provincial Spatial Planning (RTRWP) shows a very low level of synchronization. Vertical harmonization between the two planning instruments has only been realized in four provinces: Aceh, Southeast Sulawesi, Maluku, and West Papua (Syafaat, 2023).

Thus, a legal loophole exists that will create legal uncertainty for indigenous peoples (MHA) whose land is not included in the RTR and/or RZ. Questions will arise if there are no more operational regulations governing this issue: to what extent this will protect indigenous peoples who have traditionally utilized coastal waters as a basis for obtaining land rights.

2. RESEARCH METHODS

The research method used is Normative Juridical Research (Legal Research). The approach used in this research is carried out using the Legislation Approach and Conceptual Approach methods. Types and Sources of Legal Materials are Primary Legal Materials, Secondary Legal Materials, and Tertiary Legal Materials. In collecting legal materials in this research, it is done by means of library research. The researcher will conduct a study of various problems relevant to this research by using legal sources in this research. By using systematic interpretation and teleological interpretation in this research, it shows whether there is coherence in the current Indonesian ius constitutuntum related to the recognition of the existence and respect of MHA along with their traditional rights and cultural identity in the utilization of coastal areas from generation to generation, as the legal ideals contained in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia in conjunction with Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia in conjunction with Article 33 of the 1945 Constitution of the Republic of Indonesia.

3. RESULTS AND DISCUSSION

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Legal Consequences of Inconsistencies in the Regulation of Indigenous Legal Communities in Regional Spatial Planning

1) Philosophical Analysis

The constitutional basis for the regulation of customary law communities (MHA) is contained in Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The state recognizes and respects the existence of MHA and its traditional rights, provided that its existence is still real, in line with the development of society, and does not conflict with the principles of the Unitary State of the Republic of Indonesia. This recognition is both philosophical and normative, affirming the state's obligation to protect and empower MHA within the framework of a democratic state based on the rule of law.

In addition, Article 33 paragraph (3) affirms the State's Right to Control (HMN) over natural resources for the prosperity of the people, which is also related to the protection of MHA rights. The existence of MHA is seen as an integral part of national identity and a manifestation of legal pluralism in Indonesia. Therefore, constitutional regulations must not stop at the declarative level, but must be realized through consistent legal policies to guarantee certainty, protection, and respect for MHA rights, in line with the principles of constitutionalism and collective human rights.

2) Legal Analysis

The development of legislation in Indonesia continues to face inconsistencies. Many regulations do not comply with the principles of legal formation as stipulated in Articles 5, 6, and 7 of the Law on the Establishment of Legislation. This situation is even more evident in the context of the recognition of Indigenous Peoples (MHA), where regulations that should protect them often overlap and contradict each other.

The philosophical and constitutional basis for the recognition of MHA has been affirmed through MPR Decree No. XVII/MPR/1998 and MPR Decree No. IX/MPR/2001, which regulate the protection of legal pluralism in social life. Constitutional Court Decision No. 31/PUU-V/2007 even provides further interpretation regarding the constitutional requirements for the existence of MHA. These requirements include a real existence, harmony with societal developments, conformity with the principles of the Unitary State of the Republic of Indonesia, and explicit enshrining in legislation (Efendi & Susanti, 2015). This means that recognition of MHA is not merely declarative, but must obtain formal legal legitimacy.

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In relation to the State's Right to Control (HMN) as stipulated in Article 33 paragraph (3) of the 1945 Constitution, the state has the authority to regulate and manage land, water, and natural resources for the greatest prosperity of the people. This HMN is the basis for recognizing the customary rights of indigenous communities as long as their existence is still real and does not conflict with national interests. Thus, recognition of MHA cannot be separated from the state's obligation to manage resources, including providing legal protection for the traditional rights of indigenous communities.

However, in practice, various inconsistent sectoral regulations have emerged. In the maritime and fisheries sector, for example, Article 22 of the Coastal Areas and Small Islands Law, as amended by the Job Creation Law, provides an exemption for Indigenous Peoples (MHA) from the requirement for Compliance with Marine Spatial Utilization Activities (KKPRL), provided they have been recognized through statutory regulations. Furthermore, Ministerial Regulation No. 18 of 2018 and Ministerial Regulation No. 28 of 2021 emphasize that Indigenous Peoples (MHA) can manage coastal areas and small islands if their recognition has been determined by the regent or mayor. After obtaining this recognition, MHA management areas can be included in zoning plans, both at the provincial level through the RZWP-3-K, and at the national level through the RZ KSN, RZ KSNT, or inter-regional RZ.

Problems arise when regulatory authority overlaps with other sectors. The Ministry of Maritime Affairs and Fisheries (KKP) is responsible for KKPRL affairs, while the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) regulates land rights and management based on Ministerial Regulation No. 18 of 2021. This regulation even provides the possibility of granting land rights in waters if there is evidence of hereditary residence for at least twenty years. This difference in perspective and authority creates regulatory dualism and complicates the implementation of recognition of indigenous peoples (MHA), particularly indigenous marine communities such as the Suku Laut.

In terms of implementation, the facts on the ground also show quite serious limitations. As of 2024, 28 provinces had passed the RZWP-3-K Regional Regulation, but only 14 provinces had actually allocated space for fishing settlements. Even more minimal, the integration of recognition of indigenous peoples' management areas into the RTRWP has only been achieved in four provinces: Aceh, Southeast Sulawesi, Maluku, and West Papua. This demonstrates the gap between progressive legal norms and the reality of implementation in the regions.

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Ultimately, there is a clear vertical legal conflict. Higher-level laws such as the Coastal Zone Law and the Job Creation Law exempt Indigenous Peoples from the obligation to establish a Marine Protected Area (KKPRL). However, Article 138 paragraph (4) of Government Regulation Number 21 of 2021 mandates the establishment of a KKPRL for any marine spatial utilization activity not covered by the Spatial Planning (RTR) or Regional Planning (RZ). This conflict demonstrates a serious weakness in the consistency of legal development in Indonesia, as lower-level regulations are inconsistent with the provisions of higher-level laws.

Thus, it can be emphasized that regulatory inconsistencies, overlapping authority between ministries, and minimal regional implementation are the main factors hindering the recognition and protection of Indigenous Peoples in coastal areas. The legal pluralism promised by the constitution has not been fully realized in practice, leaving Indigenous Peoples often vulnerable to state intervention and economic interests.

3) Sociological Analysis

In today's reality, the existence of indigenous communities, particularly Sea Nomads, presents a profound irony. For centuries, they have inhabited and utilized Indonesia's vast waters as a living and management space. For them, the sea is not simply a fishing ground, but also a vital part of their identity and survival, providing a place to rest, settle, and provide a socio-cultural space inherited from their ancestors.

However, at the same time, those in authority have failed to provide clear legal protection for the Sea Tribe's management areas. The absence of concrete regulations for their rights has led to the potential "slow death" of this indigenous community in its own homeland, which truly upholds the motto "Bhinneka Tunggal Ika" (Unity in Diversity).

Several previously issued MPR Decrees can be viewed as starting points, both philosophically, juridically-constitutionally, and historically. Philosophically, these decrees represent a transformation of national legal orientation from an exploitative paradigm to a sustainable resource management paradigm, which prioritizes ecological justice and intergenerational equity. This means that economic development must be in harmony with the protection of natural resources and the rights of indigenous peoples as part of sustainability.

From a sociological perspective, this decree affirms the state's obligation to accommodate legal pluralism within society. This is crucial in the context of the control and utilization of natural resources, where customary law and traditional practices need equal

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standing with positive law. Thus, the MPR Decree serves a fundamental function in providing direction for national legal policy while affirming the constitutional mandate for legal diversity.

However, in practice, inconsistencies persist, both philosophically, legally, and sociologically. This inconsistency creates significant legal uncertainty, resulting from centralized, ego-sectoral, and discriminatory policies and legal products. Consequently, the Sea Tribe customary law community often loses access to and exercise of their communal rights, which are still alive and thriving within the community.

Within the constitutional framework, the House of Representatives together with the President as the holder of the power to form laws have a moral and legal obligation to present regulations that are in line with Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The Constitution clearly emphasizes the recognition and respect for the existence of indigenous legal communities along with their cultural identities and traditional rights. Therefore, both the executive and legislative branches must consistently refer to the constitution in designing applicable positive legal regulations (Mertokusumo & Pitlo, 1993).

Furthermore, every legal product drafted must adhere to general legal principles and the principles for establishing statutory regulations, as stipulated in the Law on the Establishment of Legislation. This is an absolute requirement for providing real protection for indigenous legal communities, including the Sea Tribes, so that their existence is not only formally recognized but also substantively guaranteed in the practical life of the nation and state.

The relationship between the state and society always prioritizes order as the primary goal in social life. To achieve this state of order, norms are required to regulate human behavior, whether through morality, customs, or binding laws. From Gustav Radbruch's perspective, law is seen as an instrument that must embody three fundamental values: justice as a philosophical value, certainty as a legal value, and utility as a sociological value.

Legal certainty essentially ensures that positive norms can be understood, enforced, and implemented consistently. Radbruch emphasized that legal certainty contains several important dimensions: law must be understood as a written norm that is formally ratified; law must have a sociological basis in accordance with the realities and needs of society; and the formulation of regulations must be clear, concrete, and not open to multiple

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interpretations so that they can be implemented effectively. This is in line with the principle of due process of law, where the desired law (ius constituendum) is required to be formulated clearly, consistently, and guarantee the protection of citizens' rights (Erwiningsih, 2009).

In the context of Indonesia as a state of law as affirmed by Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the principle of legal certainty should be a guideline for state administrators. However, in practice there is still disharmony between laws and regulations both horizontally and vertically, one of which is related to the recognition and protection of indigenous legal communities (MHA). The Constitution has actually provided a basis for recognition through Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which emphasizes that cultural identity, traditional rights, and the existence of MHA must be respected as long as they are still alive in social reality and regulated in laws and regulations (Bonorino, 1999).

Regulatory disharmony is evident in sectoral regulations related to coastal areas and marine space. The Coastal Areas and Small Islands Law, in conjunction with the Job Creation Law, provides an exception for Indigenous Peoples (MHA) who are exempt from obtaining Marine and Coastal Area (KKPRL) approval as long as their management area is included in the Spatial Planning (RTR) and/or Regional Zone (RZ). However, this exception is conditional, as the area must first be accommodated by the local government through the RTR or RZWP-3-K. Conversely, Government Regulation Number 21 of 2021 still requires Marine and Coastal Area (KKPRL) approval if the spatial use plan is not yet included in the RTR, RZ KAW, or RZ KSNT. This procedural dualism creates confusion and legal uncertainty, which actually burdens the Sea Tribe community.

The situation is further complicated by the fact that only four Indonesian provinces have integrated the RZWP-3-K into their RTRWP. Consequently, most Sea Tribe communities are vulnerable, lacking legal certainty over the areas they have traditionally used. This situation is exacerbated by overlapping authority between the Ministry of ATR/BPN and the Ministry of Maritime Affairs and Fisheries. The ATR/BPN establishes land rights based on proof of hereditary domicile, while the Ministry of Maritime Affairs and Fisheries emphasizes a licensing approach (KKPRL) based on the logic of an administrative legal regime (Nugroho, 2001).

At this point, it is clear that the state has not yet fully consistently implemented its constitutional mandate. Sectoral, overlapping, and conditional regulations have actually

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created legal uncertainty and discrimination against indigenous peoples, particularly sea tribes, who have historically depended on marine areas for their survival and development. While Radbruch argues that legal certainty should guarantee justice and benefit, these inconsistent regulations violate these fundamental principles. The state should develop regulations that are aligned, consistent, and based on the principles of statutory law, so that the rights of indigenous peoples are not only formally recognized but also substantively protected in the practice of nationhood.

Regulation of Ius Constituendum to Address Inconsistencies in Regulations of Customary Law Communities in Regional Spatial Planning

1. **Principles of Ruling Ius Constituendum**

To understand the essential link between the true concept of the rule of law in Indonesia, the primary reference is the Preamble and the articles of the 1945 Constitution of the Republic of Indonesia. Both are sources of national legal policy that not only contain the objectives, foundations, and ideals of law, but also reflect the unique values of the Indonesian nation rooted in the cultural heritage of our ancestors. From this was born the concept of the Pancasila rule of law, namely a rule of law that makes Pancasila the rechtsidee (legal ideal), grundnorm (fundamental norm), and normative and constitutive ideology.

As a legal ideal, Pancasila occupies a normative position because it is the root of all positive law, and is also constitutive because it functions to direct the formation of law so that it always conforms to the values of Pancasila. The actualization of this principle can be seen in the Preamble to the 1945 Constitution, which functions as a staatfundamentalnorm, the philosophical foundation for state administration. However, the reality of legal regulations, particularly regarding indigenous legal communities (MHA), often does not reflect this spirit. For example, Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution have emphasized recognition and respect for the existence of MHA and their cultural identity. However, in practice, the regulations that emerge are often inconsistent, centralistic, and do not fully guarantee the communal rights of MHA.

The Pancasila rule of law has unique characteristics. First, it emphasizes the principle of kinship, balancing individual and collective interests within a national framework. Second, the laws enforced are prismatic, accommodating elements from various existing legal systems, including the Rechtsstaat, the Rule of Law, customary law, and religious law, with the aim of creating just legal certainty. Third, Indonesia stands as a religious, godly,

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and religious nation-state, where the law is always based on the value of the One Almighty God. Fourth, the law functions dually as a means of social transformation (law as a tool of social engineering) and a reflection of cultural values (law as a mirror of society), thus maintaining living law within society while formalizing it in positive law (Astriani et al., 2020).

The foundation of national legal construction must also be based on sound principles for the formation of legislation, such as clarity of purpose, appropriate hierarchy, usability, and clarity of formulation. Its substance must also reflect the principles of protection, humanity, nationality, kinship, the archipelago, Bhinneka Tunggal Ika (unity in diversity), justice, equality, legal certainty, and balance. All of these principles are derived from the values of Pancasila, thus making Pancasila the spirit and soul of Indonesian legal politics.

However, at the level of ius constitutum, legal practice in Indonesia is not fully consistent with the principles of the Pancasila state based on law. The direction of legal policy still tends to be sectoral, exploitative, and centralistic, which has implications for ignoring the rights of indigenous peoples (MHA), including the Sea Tribe community, which has traditionally managed its living space with local wisdom. Regulatory inconsistencies, overlapping authorities, and limited opportunities for MHA participation demonstrate that the state's presence remains normative-formal, not substantive.

To address this issue, ius constituendum is needed in the form of progressive legal reform, based on legal certainty, and upholding social justice. The direction of this reform must shift the paradigm of natural resource management from solely state-based to community-based resource management. This way, indigenous peoples, including the Sea Tribes, will gain a greater role in managing their territories in accordance with traditional knowledge and local wisdom, while the state functions as both administrator and facilitator.

Opening up space for public participation in policy formulation is essential to ensuring that the law is not merely an instrument of power, but a true reflection of the values of Pancasila and the living law that have developed within society. In this way, the legal ideals of a Pancasila-based state will not remain abstract, but will be truly present in protecting, respecting, and empowering indigenous communities as an integral part of the Indonesian nation.

2. Ius Consituendum Regulatory Framework

In developing a regulatory framework for the ius constituendum, it is important to emphasize that legal reform cannot stop at criticizing the current ius constitutum, but rather

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must be directed toward the development of normative formulas that are solution-oriented and relevant to the legal realities that exist within society. Law must be positioned as an integral component of social interaction capable of maintaining order, justice, and balance in human relations (Van Vollenhoven & Soewargono, 1975). This principle aligns with the Latin adage ubi ius ibi societas, which asserts that where there is society, there must be law. Law is not merely present textually but must also be alive in social practice, moving with the dynamics and developments of the times. Roscoe Pound, with his Sociological Jurisprudence school, emphasized that law functions to balance social interests and serve as an instrument of social engineering (law as a tool of social engineering). Therefore, the national legal policy developed going forward must provide concrete space for the protection, recognition, and empowerment of indigenous legal communities (MHA), including the customary rights of the Suku Laut community.

The normative formulation offered within the framework of ius constituendum must be rooted in the values of Pancasila, as mandated in Article 18B paragraph (2) in conjunction with Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This constitutional mandate demands that the state be present, not merely in a formal normative manner, but substantively in protecting the legal diversity that grows in society. In this context, the direction of legal reform must be able to answer the needs of the MHA with concrete steps.

First, the paradigm of natural resource management needs to shift from the current state-based, exploitation-oriented model to a community-based model. This shift aims to ensure that natural resource management reflects local wisdom and prioritizes sustainable resource management principles. This formulation also serves as an implementation of the agrarian reform agenda mandated by MPR Decree No. IX/MPR/2001.

Second, a mechanism for automatic recognition of indigenous peoples' management areas must be formulated in the Regional Spatial Planning (RTRW) document. This recognition process should begin with an anthropological study and field verification, involving multidisciplinary experts, traditional leaders, local governments, and civil society. The result should be a factual database on the existence of indigenous peoples that can serve as a guide for ministries and local governments in integrating information on indigenous peoples' management areas. This step is crucial for eliminating legal uncertainty and strengthening the legitimacy of indigenous peoples' living spaces (Apeldoorn, 2006).

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Third, the ius constituendum must provide concrete clarity regarding the legal status of customary management areas, particularly when these areas are not yet included in the RTRW (Regional Spatial Plan) or RZ (Regional Zone). In this regard, indigenous communities should be exempted from the obligation to obtain a KKPRL (Regional Spatial Plan), as long as the use of the space is for subsistence purposes and based on local wisdom. This provision is crucial given the hyper-regulation that often gives rise to conflict and criminalization of indigenous peoples due to overlapping regulations and licensing regimes.

Fourth, legal protection for indigenous peoples (MHA) must be provided both preventively and repressively. Preventive protection is realized through mandatory consultation in every development plan concerning customary territories and granting MHA veto power to reject activities that have the potential to damage the environment and culture. Meanwhile, repressive protection is realized through a dispute resolution mechanism based on customary law, with state legal recognition of the results of the mediation, thus granting them executive power. This step not only safeguards MHA rights but also confirms that customary law is truly alive and functioning, not merely normatively recognized.

Fifth, a dedicated regional institution is needed, in the form of a Customary Area Management Council, comprised of representatives from local government, indigenous communities, academics, and civil society. This institution will serve as a liaison and controller of spatial planning policies, while also ensuring the implementation of the constitutional mandate to protect the communal rights of indigenous communities.

With this framework, it can be concluded that the proposed ius constituendum is a concrete manifestation of Gustav Radbruch's theory of legal certainty, which emphasizes the importance of clear, concrete legal norms rooted in social reality. The concept of legal protection proposed by Philipus M. Hadjon is also manifested through the preventive and repressive instruments offered in this scheme. Furthermore, the acceptance of customary law as an instrument for conflict resolution reflects a recognition of legal pluralism as understood by John Griffiths.

Thus, the ius constituendum framework is expected to provide legal certainty, substantive justice, and social benefits for indigenous communities, particularly the Sea Tribe community. Furthermore, it emphasizes the state's presence in carrying out its constitutional mandate to protect, recognize, and respect the traditional rights of indigenous communities within the prismatic framework of the Pancasila rule of law.

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4. CONCLUSION

The Indonesian Constitution, through Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia, affirms the recognition and protection of indigenous legal communities (MHA) as a manifestation of the legal ideals of Pancasila. However, current positive law remains inconsistent, particularly between Article 22 of the Coastal Areas and Small Islands Law (amended through the Job Creation Law) and Government Regulation Number 21 of 2021. This inconsistency creates procedural dualism and creates legal uncertainty, which is evident in the unclear status of MHA management areas, the potential for criminalization of Sea Tribe communities, conflicts of authority between agencies, and the neglect of the constitutional mandate to protect legal pluralism.

Indonesia's rule of law rests on the values of Pancasila as its legal ideal (rechtsidee), which demands a balance between legal certainty, substantive justice, and social benefit, including accommodating legal pluralism. However, the current ius constitutum remains centralized and sectoral, thus failing to fully address the fundamental needs of indigenous communities. Therefore, an ideal ius constituendum is needed in the future, in the form of a paradigm shift in natural resource management from state-based to community-based, automatic recognition of MHA management areas, certainty of legal status in the RTRW (Regional Spatial Plan), preventive and repressive legal protection with direct MHA involvement in coastal development, and the establishment of customary management institutions that guarantee substantive justice and ecosystem sustainability.

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