

Impacts of Constitutional Court's Judicial Determination No. 35 in 2012 on Customary Forests of Outer Small Islands in Indonesia

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<https://hdl.handle.net/2324/4496103>

出版情報 : Kyushu University, 2021, 博士 (農学), 課程博士
バージョン :
権利関係 :



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Outer Small Islands in Indonesia**

IMAM BUDIMAN

2021

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No. 35 in 2012 on Customary Forests of Outer Small Islands
in Indonesia**

A Dissertation

Presented to

The Graduate School of Bioresource and Bioenvironmental Sciences

Kyushu University, Japan

In Partial Fulfillment

Of the Requirement for the Degree of

Doctor of Philosophy

IMAM BUDIMAN

2021

ACKNOWLEDGEMENTS

First, I would like to express my gratitude. It has been a great privilege for me to work under the supervision and counsel of Prof. Dr. Noriko Sato, and also for her warm welcome, great support during my stay at Kyushu University. My sincere thanks are going to Dr. Takahiro Fujiwara during my stay in the Forest Policy Laboratory. Throughout my time as a graduate student, they have been consistent and paid much attention to my research work and have never failed to provide support whenever possible. I especially thank them both for their kind patient and endurance. I could never achieve the doctoral dissertation without their kind support, helpful advice, and spirit boost during my study in the Forest Policy Laboratory, field research in Indonesia, and writing a dissertation in Japan. I would also like to deliver my deep appreciation to Dr. Kimihiko Hyakumura and Dr. Masahiko Ota as my final defense referee for their constructive, critical, and valuable comments in my Ph.D. thesis.

I am indeed grateful to the head officer and staff in Balai Besar Konservasi Sumber Daya Alam and Provincial Forestry Office of East Nusa Tenggara, Indonesia, for their kindly technical support during my period in collecting the supporting data and deep interviews with both officer and local people. I express my sincere thanks to all prominent people as local representatives in Ende, Alor, and South Timor Tengah District for their support during my research visit in ENT, Indonesia.

I also wish to thank Dani Pamungkas, Abdul Malik, Azis Umroni, and all those who helped that I cannot mention one by one, for their kind support and assistance during my field observation and collecting the data. I am useless without their help. Without thanking my colleagues in Forest Policy Laboratory, Kyushu University, for their warm welcome, help, and friendship over the days and years, I will be remiss. I will always remember all the kindness and the journey in our lab.

I also give my sincere thanks to Prof. Dr. San Afri Awang for his recommendation and constructive advice during our meet in Indonesia. Most importantly, his generosity in assigning a recommendation letter lead me to further study in Japan. I deliver my deep appreciation to Dr. Bambang Supriyanto, a senior officer of the Ministry of Environment and Forestry, Republic of Indonesia, for his kindness and critical support in discussing all aspects related to my research in Indonesia. I also deliver my sincere thanks to the Head of Research and Development Institute of Kupang (Balai Litbang LHK Kupang) and all officers for their kind support and unlimited assistance.

I owe very much to some sponsors and supporters for funding my study. I am grateful to JASSO Honor Scholarship from Monbukagakusho and Kyushu University Scholarship as the main supporter for my study. Furthermore, I am much indebted to ITTO Fellowship Award 2018 Ref Number 063/18A to finance my data collection to East Nusa Tenggara. The initial field research, article publication, attending an international 4th Agroforestry Conference 2019 in France also supported together by JSPS KAKENHI Grant Numbers JP15H05122, JP17K15340, and ICRAF-CIRAD. All of those sponsorships would not be obtained without the generosity of my two supervisors in signing every sponsorship proposal.

To my family, My Dad, my beloved Mom, my siblings Arti and Asri, there are not enough words for how lucky I am to be your son and brother. Your prayers and encouragements are very meaningful to build up my spirit in my hardest time in Japan. To my dearest wife, Novitri Hastuti, I dedicate this work to you because you have traveled this road alongside me, with love, patient, and devotion, going through difficult months to support me in completing this doctoral.

My kids, Syahida and Syauqi, for your sincere understanding of papa's time. You are truly heroes for papa. Thank you for enduring the long hours we have spent away and all the tough times we have been through in Japan. May Allah always bless you. To all my colleagues from Indonesia in Fukuoka, there are too many names to mention individually, but I deeply thank you all.

The last but the most important, praise for my God, Allah SWT, who granted me healthy, patience, guidance, and blessing during my Ph.D. time.

Fukuoka, August 2021

Imam Budiman

ABSTRACT

Forest has a vital role in local people's livelihood, and many customary communities (CC) have existed inside and surrounding the forests for generations in many tropical countries. However, their existence is often marginalized in the long colonial history and development challenges. As one of the ex-colonized countries, Indonesia inherited many norms and institutions of colonial patterns. One of them is the forest land management system. In this context, the fall of the Suharto regime in 1998 and the Constitutional Court Determination (CCD) in 2012 are essential milestones to restore the rights of CC.

The state accommodates the spirit of CC revivalism through various agrarian reform programs and social forestry. The new concept of collaborative forest management schemes covers not only the management of state forest areas but also forest areas managed by CC. With their local wisdom, the CC often manage forests more successfully when the state authorizes them to manage their lands communally.

This study focused on customary forest (CF) management in Indonesia after the CCD 2012, particularly in the small outer islands. Outer islands in Indonesia are often identified not only with remote access and poverty but also multi-ethnicity, hidden endemic species, and high vulnerability of natural resources. Therefore, the analysis of territorialization and legal pluralism, a common phenomenon on customary lands, are two important concepts in this study. Besides, how the CC struggle in getting recognition from the government is also an important research question for discussion in this dissertation.

This dissertation consists of six chapters. Chapter I figures out a general introduction to the current issues of the CF. It also highlights the recognition of the CF in Indonesia through the CCD, which is a milestone of CF recognition in Indonesia. Furthermore, it explores literature and current research related to the CF, particularly in Indonesia. Through the reviews, this chapter provides an overview of the current research status composed of topics: (1) institutional dynamics, actor, supporter, and inhibitor, (2) contestation, conflict, and land crisis, and (3) contribution to livelihood, ecology, and local knowledge. Afterward, The description of the methodology, including the study site, is explained in Chapter II.

Chapter III and Chapter IV draw the three case studies in the East Nusa Tenggara Province. Chapter III is devoted to exploring territorialization and legal pluralism as essential aspects of land tenure system establishment. The analysis showed that the customary legal system coexisted with the national legal system and worked well for sustainable forest management in the Mutis area. This hybrid system ensures extracting stable NTFPs, grazing activities, and preventing forest

fires. However, increased pressure on forests due to future population growth appears to impact the traditional system. Legal pluralism is essential to sustainably manage forest resources and harmonize society between state and people, especially in places where local customs and laws are still well-maintained.

Chapter IV discusses the CF and the local community's struggle to gain recognition. The findings showed that there are different responses of CC related to the institutional development towards CCD. Assisted by indigeneity NGO, Nua Wologai CC proposes their forest as CF, and Baranusa CC proposes their area as a customary area. However, Mollo CC did not desire to obtain the legal status of their CF (*suf*) if their access to the forest is guaranteed. In addition, two main obstacles in the development of the CF in the ENT province are (1) complicated political process in the district government and (2) the competition of the CF program with other central government programs. This chapter also revealed that the role of indigeneity NGOs is very important in negotiating and advocating CF recognition.

Chapter V summarizes the relationship between the recognition of CF with the primary goal of the process. It concludes that the most important thing for the CC is access to livelihoods while keeping the forest sustain as a livelihood asset. It is in accordance with the initial idea of social forestry (SF), where CF becomes a part of the SF program, which aims to improve the local people's livelihood. All stakeholders must have the same goals from this CF acknowledgment program for a sustainable forest and prosperous society.

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Chapter I

General Introduction

1.1. The Global Context

In ex-colonial countries, tenurial conflicts often arise after the country gains its independence. Land conflicts occur because indigenous people occupied the land before the imperialist came (Asaaga, 2021). Indigenous people live in a place from generation to generation by maintaining the norms they have.

The general pattern that applies in almost all ex-colonial countries is that the colonial government determines forest areas with a centralistic designation/gazettement system without consent or discussions with indigenous communities. This phenomenon is what Peluso calls the Political Forest (Vandergeest & Peluso, 2015). The political forest has been considered an instrument needed by the scientific forestry concept to achieve the desired results while remaining sustainable.

As part of the concept of sustainable forest management in the scientific forestry regime, forests are required to have a sustainable yield. It can only be achieved if the forest is safe from interference from other parties and focuses on timber production as the main product. It brings the consequence that the pure forest without disturbances is the fundamental requirement for good forest management. Its system was commonly generated in forests managed and controlled by the Dutch and British colonial governments, such as Thailand, the Malay Peninsula, and Indonesia (Peluso, 2001).

The global contestation on natural resources is a common trend in the post colonialism era. Each country is competing to get income from its natural resources that can be easily extracted as development capital. Forests are one of the natural resources that are easily available and used for various purposes, extracted on a large scale in countries, especially Asia and Africa (Njoh & Akiwumi, 2012). In this context, local people, or commonly referred to as indigenous people, are often marginalized in development, even by their own nation.

The traditional community lands annexed into national lands are increasingly widespread. After independence, land previously managed by the colonial government was annexed by the national government. The typical pattern of appropriation happened to the forest areas in developing countries, where the forest areas are used commercially

for national interests. Land and forest management practices still continue with the old pattern, designation of forest – territorialization – demarcation, and determination of area.

ITTO (2009) and FAO (2020) show the significant level of tropical forest land ownership by the government. The trend shows that the big forest area managed by the government in Africa, Asia Pacific, and Latin America, which are 97.9 %, 68%, and 36%, respectively. Meanwhile, the land designated for use by communities and indigenous people is 32% (Latin America), 25% (Asia Pacific), and 1.6 (Africa). The Ownership by the communities and indigenous people shows the big portion in Latin America (25%), Asia Pacific (4%), and Africa (0.4). The portion of individual and firms ownership was very small in those three areas, which was only below 10%.

The impetus for recognition of the rights of indigenous peoples has grown stronger in recent decades. It happens not only at the international level through international agencies in mainstreaming this issue but also at the national level. Various regulatory products are increasingly accommodating the existence of local communities.

Almeida (2015) summarizes various forms of initiation of state recognition on indigenous communities. He revealed that countries in the world use various legal instruments to recognize indigenous peoples' sovereignty. Most of these legal instruments were implemented in the 1990s. In general, there are three types of legal provisions that regulate the rights of indigenous peoples: (1) aimed at recognizing the customary right of indigenous people and other customary communities (CC), (2) aimed at regulating the conservation of natural resources, including forests; and (3) aimed at regulating the use and exploitation of forests and resources. In addition, further development also considering indigenous people and community rights to forest resources and lands, which happen in Cameroon, Congo, Malaysia, Nigeria, Peru, and Zambia.

The United Nations Declaration on the Rights of Indigenous People (UNDRIP) adopted in the United Nations General Assembly on 13 September 2007 was one of the critical turning points to raise awareness of indigenous peoples' rights in the countries. Of the 143 countries that voted, only four former British colonies (i.e., the USA, Canada, Australia, and New Zealand) refused it (UNDRIP, 2020). The UNDRIP raised the initial awareness of the rights of indigenous peoples at the global level (Almeida, 2015). The UNDRIP shows five fundamental rights related to indigenous peoples' rights: 1) right of self-determination, 2) right of property, 3) right of culture, 4) right of health, education,

and work, 5) right of free informed prior consent (Jampolsky & Carpenter 2015).

Furthermore, some developing countries also show advanced development on the indigenous peoples' rights to lands, territories, and resource acknowledgment. The south countries such as Panama, India, Congo, and Indonesia, become countries that implement special acts and regulations on managing indigenous peoples' position and traditional land and forests (UN, 2020).

1.2. Defining Indigenous People and Customary People

Some ambiguous terms often meet at the various documents to define similar or related things. In this case, the indigenous people, tribal people, and customary people often appear alternately. This section tries to describe the genealogy of some of these definitions briefly.

In a global context, the concept of indigenous people is converging on a definition discussed in the Workshop on Data Collection and Disaggregation for Indigenous Peoples (New York, 19-21 January 2004) by the Department of Economic and Social Affairs (UN, 2004). The document, entitled *The Concept of Indigenous Peoples*, briefly explained the origin of indigenous people and tribal people simultaneously:

“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system” (p. 2).

Thus, this concept refers to the situation before the colonialization era by western countries against colony countries scattered throughout the world, especially Asia, Africa, Latin America, and Australia.

Previously, two terms were also known and always used separately, *indigenous people* and *tribal people*, summarized in the ILO Convention No 169 of 1989/ILO 1989. However, in the subsequent discussion in international forums, this concept is united with the same technical understanding: "people are concerned with identifying themselves

under the indigenous agenda." They are also used as synonyms in the UN system (UN, 2004).

1.3. Indonesian Overview

Customary forest (CF) has not been adequately recognized in the state forest management in Indonesia for a long time. The Agrarian Law of 1870 (*Agrarische Wet*) and the Forestry Special Act of 1927 (*Boschordonnantie*) eroded land rights of indigenous people and CC in Indonesia (Asmin, 2016; Bedner & Arizona, 2019). They also systematically and structurally marginalized the roles of indigenous people and CC in forest management. The domain statement (*Domeinverklaring*) in the Agrarian Law 1870 only recognized private lands with certificates but not customary lands based on customary rights. Consequently, CC were incorporated into an integral part of the socioeconomic system of Indonesia. In the colonial era, Van Vollenhoven, a Dutch Scholar, divided Indonesia into 19 customary law areas across the archipelago. Presently, the explanatory section of Chapter VI of the Constitution of Indonesia states that there are at least 250 areas under the sultanates, kingdoms, and customary peoples in Indonesia (Sirait, Fay, and Kusworo, 2000).

After the independence of Indonesia in 1945, two laws of the colonial era were replaced with new ones: The Basic Agrarian Law of 1960 (hereafter, the BAL) and the Basic Forestry Law of 1967. The BAL has been valid to date, and it has acknowledged the existence of indigenous and tribal peoples (Krishna, 2017). Soemardjan (1962) mentions that the BAL has at least three essential points: (1) accordance with the interests of the Indonesian people, especially farmers, (2) simplification of the dualism of the agrarian system related to the customary law of indigenous peoples, and (3) provision of legal guarantee for people who have agrarian rights. When the BAL was implemented, there were two land systems in Indonesia: a traditional hereditary system and a market system through titling or certification (Suartika, 2007). Even though BAL abolished the Agrarian Law of 1870, it substantially recreated the different domain statements. In other words, the BAL gave the government power to regulate, handle, and determine the relationship between land and natural resources (Siscawati et al., 2017).

Equal opportunities for forest management were not brought adequately to indigenous people and CC during developmentalism by the New Order regime of President Suharto

(1966-1998). In the name of "development" or "national interest," the local conflicts were muted by emphasizing law enforcement through coercive approaches. Such lands management then became concession areas of private companies seeking extensive land for their businesses. Hidayat et al. (2018) mention that two relevant policies made indigenous people marginalized in the era of the New Order regime: concession system and transmigration program. The concessions system was purposed to improve the income from the forestry and mining industry. At the same time, the transmigration program was carried out to overcome the population explosion problem and control the population growth rate in Java island. The vast demands for extensive lands created both policies.

Fundamental policy changes occurred in the Reformation era after the end of the New Order regime, and those have gradually recognized the roles of local communities in forest management. The Indonesian Indigenous People Alliance (*Aliansi Masyarakat Adat Nusantara*, hereafter AMAN) has been leading the struggles for the indigenous people and CC to return customary property rights held by the state. They have the slogan: "if the state does not recognize indigenous peoples, then indigenous peoples also do not need to recognize the state" (Guest, 2017). The revival of the indigenous people's movements is triggered by not only anti-colonial movements but also changes in international intellectual life (Hidayat et al., 2018).

The forest tenure reforms for CC in Indonesia have been more actively addressed after enacting Constitutional Court Determination No. 35 in 2012 (hereafter, CCD). Until that moment, there was only two status of forests in Indonesia according to the Forestry Law of 1999: state forest (*hutan negara*) and right forest (*hutan hak*). The state forest is defined as the forest located on land that is not encumbered with land rights. On the opposite, the right forest is the forest located on land that is encumbered with land rights. The right forest also has the same meaning as "privately-owned forest" (Fujiwara et al., 2011).

The forestry law also defined CF (*hutan adat*) as "state forests" within an area of customary law communities. However, the CCD removed the word "state (*negara*)" from the forestry law and declared that CF was forest within an area of customary law communities. Consequently, the CF became one of the independent statuses that are neither state forests nor rights forests in the forest management of Indonesia.

Before the enactment of the CCD, there were no specific laws that prescribed the property rights of indigenous peoples and CC (McWilliam, 2006). However, after enacting the CCD, the government has been raising awareness of the rights of indigenous peoples and CC to CF and institutionalizing them. There are two categories of CF: inclusion (*penetapan/pencantuman*) and reserve (*pencadangan*). The difference is that the inclusion designates an area derived from the non-forest area (i.e., other use areas/*areal penggunaan lain*) as a CF. In contrast, the reserve designates an area derived from the forest area (*kawasan hutan*) as a CF. Therefore, in the case of the reserve, forest management rights are transferred from the MoEF to the CC. On the other hand, the inclusion changes the land status (i.e., from non-forest area to forest area) and increases the forest area.

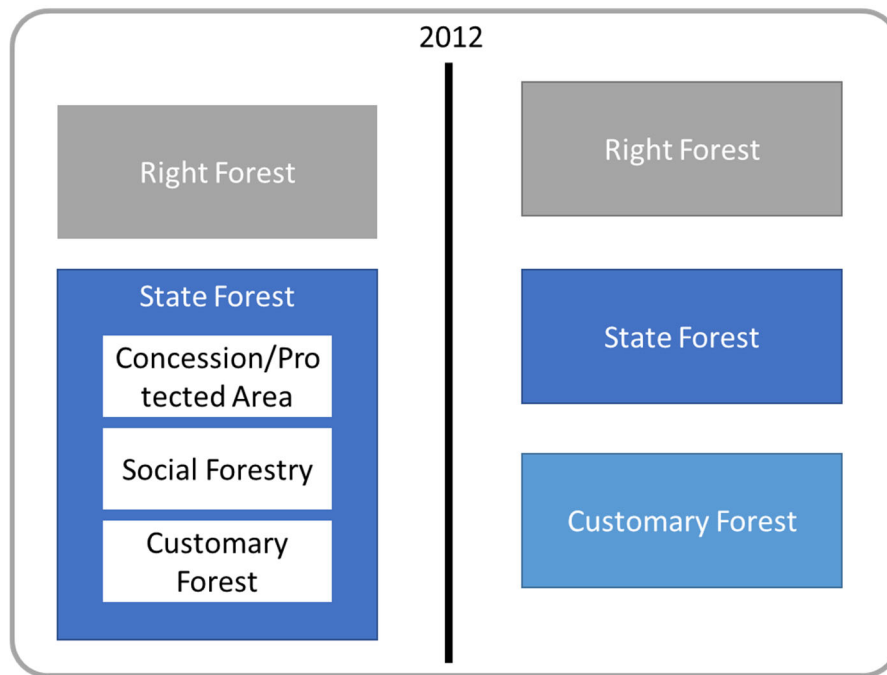


Figure 1.1. Position of the customary forest before and after CCD 2012

The initiation process of CF and CC area registration in Indonesia is inseparable from the presence of NGOs that have been actively facilitating CC to fight for their rights. AMAN and the Customary Region Registration Agency (*Badan Registrasi Wilayah Adat*, hereafter, BRWA) are the foremost NGOs actively registering and mapping customary lands of CC in Indonesia. The BRWA has been actively working on it since 2011, two years before the enactment of the CCD. After the enactment of CCD, more indigenous people have taken the initiative to map their territories through BRWA and AMAN

initiations. According to BRWA, in total, 11,164,146.09 ha customary area had been claimed by CC until December 2020. However, until the end of 2019, The MoEF had acknowledged 65 units of CF covering 950.129 Ha, which consisted of 35,202 ha had been declared (by MoEF decree), and 924.927 ha designated as CF (by MoEF Indicative Map of CF) (KLHK, 2019).

1.4. The CCD as a Milestone

Many regulations regarding CC existence acknowledgment have been established since Indonesian independence. However, the regulation exclusively referring to the land right acknowledgment is still very few. Nevertheless, the regulations and derivative rules are growing significantly after the reformation era, particularly after CCD enactment (episteme Institute, 2020). Thus, CCD becomes a milestone of implementing indigenous land right at the root level (Hidayat et al., 2018). After CCD, many technical regulations administered by both central government and local regulation were established to acknowledge the customary community existence. This local regulation was then used as the basis to apply the status alteration of the forest area from state forest to the customary forest as mandated by the CCD.

Table 1.1. Customary Right Development until CCD 2012

Year	Political Regime/ Main Regulation	Adat Position on Agrarian System
Before 1870	• VOC (East Indies Company) • Dominated Empire & Local Kingdom • Local Authority « Customary People »	Existed in their territory
1870-1945	Undang Undang Gula (Sugar Act)	Neglected, and their territory become state own, except for certified region
1945-1960	Transition Era	The existence is acknowledged, but their territory become state own.
1960	UUPA (Agrarian Act 1960)	The existence is acknowledged, but their territory not explicitly explained
1967 1999	Forestry Act 1967 Forestry Act 1999	Customary Forest is a part of State Forest
2012	UUPA (Agrarian Act 1960) MK Decree no.35/2012	Customary forest out of State Forest

Source : (Komnas HAM, 2016; Safitri, 2017; Siscawati et al., 2017)

1.5. Small Outer Islands and Adat culture

Since the ratification of CCD 2012, the research on indigenous peoples and their relationship to CF has become one of the new fields in scientific research. Most researches are carried out by social scientists, including both local and foreign scientists.

Outer islands in Indonesia are often identified not only with isolated access and poverty but also multi-ethnicity, hidden endemic species, and high vulnerability of natural resources, including many endemic species. One of the characteristics of the small outer islands is that the changes in the ecosystem of an island directly affect the inhabitants of the island. Furthermore, local people who live on the island have minimal access, and changes to the forest can bring about lifestyle changes.

Government Regulation No. 62 of 2010, concerning the use of the small outermost island, designated the small outer islands as a national strategic area. In addition, it has not only the potential for natural resources and environmental services but also has a strategic role in maintaining national sovereignty. In Presidential Decree No. 6 of 2017 concerning the determination of the small outermost islands, there are 92 small outermost islands in Indonesia. Seven of them are in the ENT Province. The Alor Islands are one of the outermost groups of islands in NTT. Moreover, the South-Central Timor Regency, located on Timor Island, is also one of the outermost regencies directly adjacent to the Republic Democratic of Timor Leste (RDTL).

1.6. Relationship between SF, CF, and Current Research Development

The social forestry program is believed to be a panacea and antidote for forest land conflicts in many countries, including Indonesia (e.g., Macqueen, 2013; Moeliono et al., 2015). Some research also proves that various social forestry and community forestry have succeeded in activating local communities to be more empowered (Fujiwara et al., 2012), prosperous (Hyde & Kohlin, 2000; Sanudin et al., 2016), and reduce disturbance to state forests (Gebreegziabher et al., 2021; Lu et al., 2020). Wiersum (2004) explains that the main idea of the social forestry concept is the involvement of local people in forest management to improve their livelihood. In addition, he explains that social forestry in the world consisted of several steps: (1) experiential phase (the late 1970s to mid-1980s), (2) consolidation phase (the late 1980s), and (3) diversification phase (early 1990s) (Wiersum 2004).

Meanwhile, Fisher et al. (2019) classified the social forestry phase into several phases: (1) first generation (the 1970s-1980s), (2) second generation (the mid-1990s-2012), (3) 2012-present. He also explained that the third period has been “strongly influenced” by the Joko Widodo administration to implement his campaign promise to increase indigenous land rights advocacy. It includes large-scale program land redistribution for rural communities (through land reform and five schemes of new SF) and adat/CC to regain their right to manage the forests.

Social forestry is a new concept for old practices in Indonesia. In the past, this concept refers to mainly keeping the forest resources gives more productivity, state charity, and minimize the forest disturbance that might be caused by the people or nature (Santika et al., 2017). However, under Jokowi's first administrative government (2014-2019), its concept developed into massive programs comprising five types of social forestry. Under MoEF, customary forest management also becomes a part of Social Forestry Schemes.

In 2016, MoEF acknowledged the eight CF for the first time. Afterward, the MoEF regularly designated the CF every year. In 2019, MoEF made a breakthrough in accommodating the increasing number of CF proposals, launched a Map of CF Indicative Area of Indigenous Forest. This map intends to ensure/guarantee and accelerate the recognition of CF from the government. The indicative map of CF at least shows the government's commitment to systematically realizing the 2012 CCD mandate.

Many fora have been discussed the topic of CF in Indonesia actively. The related research is discussed in not only the forest science field but also other academic fields, particularly in anthropology, economic development, geography, and other social science. I used Google Scholars to explore the literature with some criteria: (1) *Customary Forest and Indonesia*, (2) 2013 – 2020, and (3) *most relevant*. The year 2013 is the year that the 2012 CCD began to be implemented. The most relevant follow the google scholar option to sort the references, while another option is to *sort by date*. As a result, 943 pieces of literature were found. Following the keyword searches, 10 % (around 94) of total results were identified. The entire accessible text of the literature then was skimmed analyzed carefully.

Moreover, the articles were written in Indonesian and published in several Indonesian national journals, such as *the Journal of Forestry Science of Gadjah Mada University*, *Journal of Tropical Forest Management of Bogor Agricultural University*, and *Forest*

and Society of Hasanuddin University were also investigated. The keywords of *hutan adat* and *customary* were used to find related articles. As a result, 32 articles were found, then all manuscripts were utilized for analysis. Table 1 shows the number of the publication reviewed.

Table 1.2. Paper reviewed in the study

Sources	Year (2013-2019) Results	Sample
Database (Google Scholar) • “Indonesia,” “customary forest,” “2013-2020”, and “most relevant”	943 articles	94
National Jurnal • Keyword: "hutan adat", and "customary"	3 articles	all
• UGM (Gadjah Mada University), “Journal of Forestry Science”	7 articles	all
• IPB (Bogor Agricultural University, “JMHT”	22 articles	all
• UNHAS (Hasanuddin University), “Forest and Society”		

The CF study mainly can be categorized into three aspects: (1) institutional dynamic, actors, supporters, and inhibitors, (2) contestation, conflict and land crisis, and (3) contribution to livelihood, ecology, and local knowledge.

(1) Institutional dynamics, actors, supporters, and inhibitors

As the early stage of CF implementation began in 2013, Indonesia has made many improvements in the structure, norms, and regulations in implementing the CF program. From the government’s perspective, the CF is institutionalized as a part of the social forestry program across the national level to the municipal level.

The paper mainly analyzed the topic of institutional development regarding CF implementation, particularly in the early stage, e.g., Dhiaulhaq & McCarthy (2020), Subarudi (2014). There are some important factors at the national level that become an opportunity of adat revivalism carried out by indigenous activists: (1) the 2014 election agenda, which succeeded in inserting the agenda into the elected president, (2) the existence of a conscious strategy, and (3) coalition between key figures in government which is pro-towards customary movements. The process of institutional initiation in the

formation of CF is also influenced by the closeness between customary activists and local bureaucrats who can facilitate the initiation process (Afiff & Rachman, 2019; van der Muur, 2018a). The legal umbrella regulation, which constitutes locals, formalization on land administrative, and appropriate responsabilization process, also play an essential role in ensuring the sustainability of the institutional existence of customary people (Erbaugh, 2019; Safitri, 2017; Simarmata, 2019).

Implementing the CCD brings hope of changes for indigenous people living in the area/around the forest; however, some parties do not benefit from this new implementation. They include (1) claims of CF outside state forest areas, (2) claims of CF in conservation areas, (3) claims in concession areas, (4) claims in statutory management rights, (5) transmigrants who are not local indigenous people even though they have occupied the area for decades (Myers et al., 2017b).

The NGOs and indigeneity organizations, such as AMAN and its networks, play a significant role in accelerating the recognition of CC. For example, in Jambi province, the WARSI, NGO supporting the Anak Dalam indigenous community and other local communities for an extended period, has become the determining factor in forming the village forest and CF scheme (Sari, 2013). The same thing also happened in the Dayak community of Borneo in fulfilling the requirement of customary right recognition (Reinholdt, 2019) and in participatory mapping through the participatory action research (PAR) in the Kajang Community of Sulawesi (Fisher et al., 2017). The PAR is a robust approach to collaborating with various stakeholders and decision-makers at several levels.

In 2015, amidst still disputed and unclear regulations that have only been running for two years, Workman (2015) stated the vital role of local governments in strategic steps to establish CF. Using bureaucrat political analysis, Sahide & Giessen (2015) also found that one of the factors for the success of CF development is an active and positive coalition between customary leaders and local communities, and actors in government or outside the government (i.e., NGO).

Meanwhile, Safitri (2017) highlights some gaps that the delays of CC implementation might bring. She argues that the dualism of government authority over land tenure and some inconsistencies in national laws as the main obstacles. These two factors cause the local government to take a position as a safety player by not recognizing the territory of CC. Arizona et al. (2019) explain the role of NGOs in accelerating the recognition of

indigenous peoples in several regions in Indonesia. Although it does not always result in success, NGOs have a dominant role in recognizing indigenous peoples' sovereignty. A comprehensive article on the CCD effect was written by Hidayat et al. (2018). This article introduced a case of the Kajang CC, which is one of the role models in the designation of CF by the MoEF. He urges the active role of the central government and local government in initiating the formation of CF.

While some study discusses the institutional development on the CF, several studies discussed the methodology (i.e., how to) to accelerate the process in the local level. Setiajiati et al. (2019) explore the implementation of social forestry projects during five years in Kalimantan. Some people prefer village forest schemes provided with government project assistance (e.g., Forclime FC). They perceived the village forest as more straightforward and easier to implement. Bettinger et al. (2014) describe some critical points on the political process by indigenous systems. In addition, he exemplifies the rise of the indigenous movement affected by changing political-administrative landscape.

(2) Contestation, Conflict, and Land Crisis

The contestation between CF and other stakeholders is also one of the most critical policy issues. The literature study revealed the typical conflicts: (1) between CF and oil palm industry or forest concession corporations, particularly in Sumatra and Kalimantan, and (2) between CF and conservation area, particularly in the form of national parks.

CC often faces various conflicts of interest in the use of forest resources. It generally occurs with other parties, such as companies and concessions supported by local authorities, like what happened in Talang Mamak (Charin & Hidayat, 2019). In addition, conflicts of interest occur in their internals between the elderly and young generation. For example, Mutolib et al. (2017) explain the forest land grabbing in West Sumatra. In the name of CF and legal pluralism, local people occupy forest areas controlled by the state. They then converted forest into rubber and oil palm plantations, which can directly contribute to their income.

Meanwhile, Ifrani et al. (2019) revealed the potential for land conflicts between business people with concession permits due to overlapping areas claimed as customary lands in the Dayak community of Kalimantan Island. van der Muur (2018) also informs

that the role and cooperation between actors for the continuity of the recognition of CF in the regions. His result is similar to what happened to CF in Kajang and West Java (Arizona et al., 2019; Lund & Rachman, 2018). Dhiaulhaq & McCarthy (2020) explains the frame on two forest land conflicts in Sumatra, mainly indigenous rights and agrarian justice

Consistency/inconsistency of law and regulation and resistance from bureaucrats and others also become obstacles in recognizing CF and formalization in the formal legal system (Simarmata, 2019). Murray Li (2020) explains why the trajectory of appropriation development is still unchecked. She urged the new strategies for forging broad alliances which can infuse social justice at the main issue of Indonesian development.

(3) Contribution to Livelihood, Ecology, and Local Knowledge

As a vital part of the daily life of local communities, many researchers have examined the livelihood aspects and the role of forests in contributing to the lives of indigenous peoples and local communities (Kristiansen & Sulistiawati, 2016; Putraditama et al., 2019; Riggs et al., 2016a; Viet Quang & Nam Anh, 2006). Not only tangible assets but also the forests provide intangible benefits. Most of these intangible benefits are in the form of pride, dignity, and spirituality (Budiman et al., 2020; Fitzmaurice, 2017; Kriswoyo et al., 2019). Those include the CF, whose status is under state forest (*de facto*) or recognized by the government through ministerial decrees (*de facto* and *de jure*). One of the fundamental things is the basis for maintaining the existence of indigenous peoples and local wisdom. Local wisdom can also be interpreted as tacit knowledge (Aksa, 2020).

In Kajang, one of the most popular sites for the CF, Sahib et al. (2019) revealed that the informal knowledge system is mainly preserved by the strength of oral tradition inherited across generations. Azwar & Mulyadi (2020) conducted a sustainability index analysis in Kenegerian Rumbio, one of the CF in Riau province. Their research shows that the management of CF was quite good, and one of the driving factors was local wisdom practices carried out from generation to generation.

Although there are not many, the ecological aspects and species in CF have also been studied by several scholars, particularly those related to endemic species in the Indonesian archipelago. Susanti et al. (2019) conducted a vegetation analysis of the *Nephentes* species in the Kerinci lake area of Langkat district in North Sumatra province. This

species is one of the endemic plants that get much disturbance due to its economic value as an ornamental plant, forest destruction, and exploration. Robiansyah & Rahadianoro (2020) revealed that the torem species (*Manilkara kanosiensis*) as endangered species in the Yamdena archipelago excessively harvested due to their high-quality value.

Mahbub et al. (2018) explain the dialectic of indigenous knowledge of the Kajang community with those outside the Kajang. Before the CCD, the local knowledge was mainly from teaching *pasang* (customary rules in Kajang) and outside knowledge mainly from government agencies and the private sector.

In Papua, Polontoh (2018) gives good examples of protection and management of forests by CC. He explained that horizontal conflicts often happened in traditional societies about territories. Therefore, it requires protection and management based on the local wisdom of the Papuan people. Susanti & Sebastian (2017) highlight ethics and morality that are still strong and rooted in the life of traditional communities in Indonesia. Religious law and traditional law, in some cases, are preferred to solve problems.

Using GIS analysis in Kandilo Sub-Watershed of West Kalimantan, Nugroho et al. (2018) found that land disturbances are relatively small in areas with steep slopes and far from human settlements. Besides, deforestation and land degradation can be more controlled with the existence of customary laws in force. Murdiati (2017) emphasizes that customary knowledge and principles are factors that can support forest sustainability in Kajang. She also examines how CF knowledge can convey the development of current forest policies, management, and laws/regulations. Meanwhile, Wulandari (2016) proposes several factors that affect sustainability in CF. In the past, one of the factors causing land degradation was shifting cultivation in Lampung Province. Labor adequacy, nitrogen soil, social acceptability index, and soil texture are also contributing factors to preserving CF.

1.7. The Study Justification and Problem Statement

From the previous section, we can see the majority of the study employed the historical approaches and provided an understanding of the conception of CC and CF (e.g., Peluso, 2001; Vandergeest & Peluso, 2015, 2016) and the development of CF at the national level (e.g., Peluso et al., 2008; Subarudi, 2014). In addition, those studies mainly focused on cases of big and well-known areas in Indonesia, such as Java (e.g., Lund &

Rachman, 2018), Sumatera (e.g., Hartanto et al., 2000), and Sulawesi (e.g., Wibowo et al., 2014). Those studies reveal that the awakening, resurrection, revivalism, or another similar term that refers to the presence of traditional society in Indonesia is a historical necessity that cannot be avoided, particularly after the downfall of the authoritarian-repressive-centralistic government of the Suharto Era in 1998.

Decades ago, previous studies of CF were conducted widely in other countries. Fingleton (1998) reported that the Philippines and New Zealand had already made formal legal rules that accommodated the existence of indigenous people at the country level. The Philippines enacted the “indigenous people rights act” in 1997. Meanwhile, New Zealand passed the “Ture Whenua Maori Act” in 1993. Both laws provide space for indigenous people to collect data on their “ancestral lands” through mechanisms regulated by laws and derivative rules.

There are some reasons why this study focuses on the topic of CF. *At first*, because it is one of the forms of social forestry scheme in Indonesia. Indonesia made many fundamental changes in the field of agrarian and forest governance during the first period of the Joko Widodo administration (2014-2019). Through two national land policy schemes (i.e., agrarian reform and social forestry), Joko Widodo's government tries to present a land redistribution program and open the broadest possible opportunity for the community to access forest land. Also, 12.7 million hectares of forest land on paper are allocated for social forestry programs under the five schemes. Among the five schemes, the CF only involves indigenous peoples who have lived and resided around the forest for a long time.

Secondly, since the CCD, CF have become an essential part of the forest governance system in Indonesia. In parallel with these two major programs, Joko Widodo's government also has been carrying out the CCD mandate, which was the homework of the previous president's era. The CCD was issued to change the status of forest ownership in Indonesia. As mentioned above, through the CCD, CF has become a separate category in forest ownership rights. The increasing number of proposed CF by years, including those legalized by indigenous NGOs (indigeneity NGOs), requires more attention from related parties.

Lastly, when I started researching this thesis, no CC in the East Nusa Tenggara province (hereafter, ENT province) had received CF legal recognition from the central

government. Therefore, it is interesting to learn from the perspective of the process until the approaching recognition. At the time of writing this thesis, the recognition of the rights of indigenous peoples as a legal entity entitled to manage forest areas has been going on for more than eight years. However, among 22 municipalities in ENT province, only three municipalities have been made regulations related to the protection of indigenous peoples. This district regulation is one of the initial prerequisites for recognizing indigenous peoples, but the legal rule has recognized no one CC or CF.

1.8. Research Questions and Objectives

This study aims to investigate the development of recognition of customary land and CF in Indonesia after the implementation of CCD 2012 and future challenges, particularly in ENT Province. This study has two specific research questions.

The first questions are regarding the territorialization process as one of the big problems in the state forest area and the legal pluralism in Indonesia. How is the historical territorialization process happening? What are the challenges of the traditional land tenure system to manage forests sustainably and policy methods to harmonize legal pluralism?

The second question is associated with analyzing the process of CC on gaining recognition of the customary land and CF. How the CC gets the acknowledgment? What are the policy challenges on the CCD implementation?

1.9. The Thesis Structure

This thesis is composed of six chapters (Figure 1.2.). Chapter I is the General Introduction Section and figures out the national context of CF issues nowadays. It also highlights the recognition of the CF in Indonesia through the CCD, which is a milestone of CF recognition in Indonesia. This chapter also shows the result of literature reviews of previous research on the CF.

The methodology, including the description of the study site, is summarized in Chapter II. This chapter explores more characteristics of the study sites and methods used in this study.

Chapter III is then devoted to discussing the topic of territorialization and legal pluralism in CF. This chapter explores another law system in Indonesia, where the

customary land tenure system coexists with state order in Mutis Forest. Following Chapter III, Chapter IV discusses the local community's struggle to gain recognition. Finally, Chapter V provides a summary and conclusion.

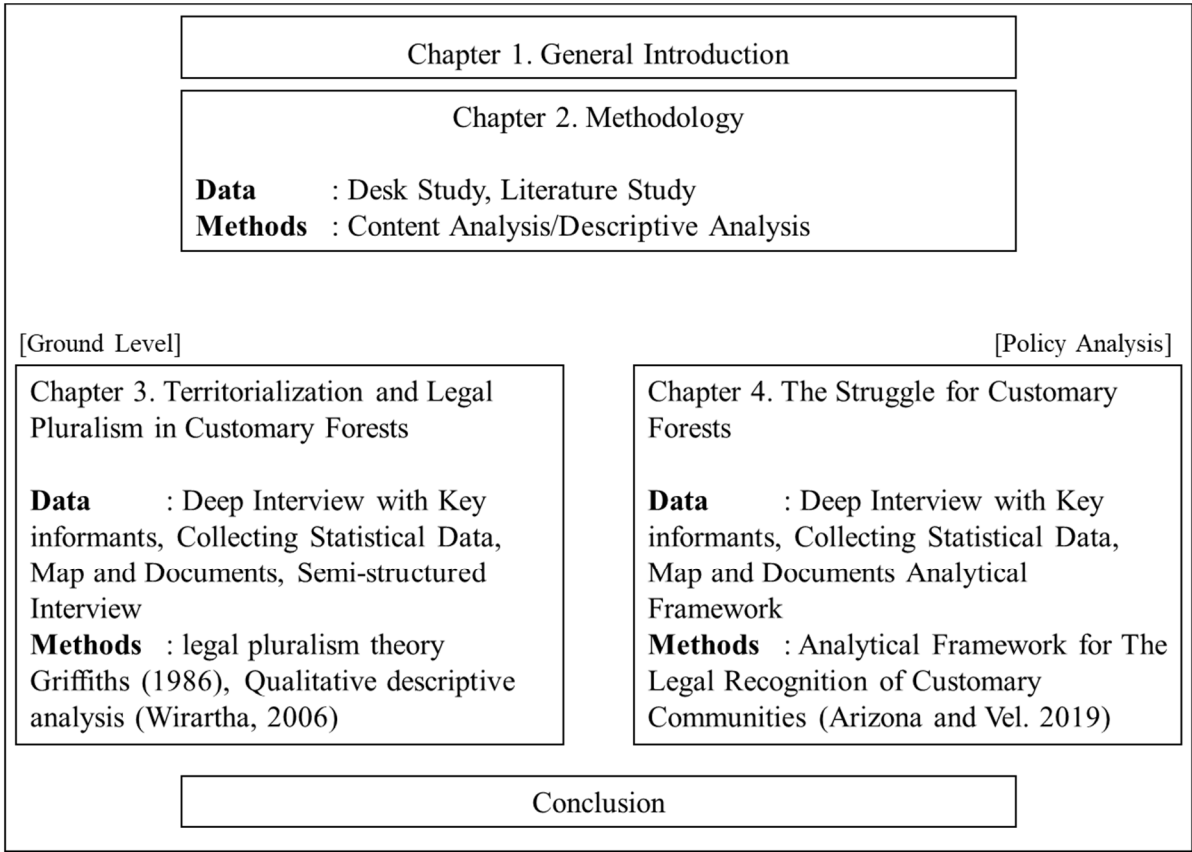


Figure 1.2. The structure and framework of the thesis.

Chapter II

Methodology

2.1. Forests in ENT Province

According to Minister of Forestry Decree No. SK. 3911/Menhut-VII/KUH/2014 concerning Forest Areas and Water Conservation in ENT Province, the forest area of East Nusa Tenggara Province is 1,784,751 Ha or 37.68% of the land area. The forest area is composed of the following forests: Conservation forest 516,701 Ha (28.95%), Protected forest 684,403 Ha (38.35%), and Production forest 583,637 Ha (32.70%).

Forest areas that can act as cultivation areas are production forest areas and community forest areas. The production forest area comprises the limited production forest area of 173,979 hectares, the permanent production forest designation area of 296,054 hectares, and the convertible production forest area of 113,604 hectares (Dishutprov NTT, 2018).

According to the report of 2018 of Dishutprov NTT, 23.81% of villages lived in and around forest areas. Meanwhile, the 2014 forestry survey (survey kehutanan/SKH 2014) showed that 206,765 households (951,602 people) lived around the forest area. Communities living around and within forest areas have a significant role in forest conservation. However, until the end of 2020, no forests have been designated or reserved as CF in the province.

2.2. Study Site

The ENT province comprises many small islands, and it is also well-known as the location where the languages, cultures, people, flora, and fauna meet each other (Grimes et al., 1997). There are 55 ethnic groups in the province, corresponding to about 10% of the total number of ethnic groups in Indonesia (Upton, 2017). They formed some small kingdoms in the past and firmly maintained the customary system for land ownership and distribution (Monk et al., 1997).

Until the end of 2020, some districts of ENT province have specific regulations to acknowledge the existence of CC. Those are Ende district (District Regulation No. 2 of 2017 about Implementation of Recognition and Protection of Customary Law Communities in Ende District), East Manggarai district (District Regulation No. 1 of 2018

Recognition, Protection and Empowerment of Customary Communities), and Alor District (District Regulation No.4 of 2018 about Recognition And Empowerment Of Customary Institutions). The data from BRWA explained that there are 35 proposals for customary areas in this province. Their status is certified (5 areas), verified (7 areas), and registered (23 areas).

Among the ethnic groups in the ENT province, this study selected three CC: (1) Baranusa CC in the Alor District of Pantar Island, (2) Mollo CC in the Timor Tengah Selatan District of Timor Island, and (3) Nua Wologai CC in Ende District of Flores Island.

Baranusa CC was a small kingdom in Pantar Barat District formerly. Administratively, it has two sub-villages which consisted of 331 households and 1078 people (BPS Alor, 2020). During my field research, the last King of Baranusa, Mr. Mangkup Rajabaso (16th king), gave detail information about the initiation process of the proposal of CC of Baranusa. He also explained that the former Baranusa Kingdom in Pantar Island had a local government structure in the past. It consisted of eight Sub-tribe group, which were Tamukung Baranusa, Tamukung Kalondama, Tamukung Leer, Tamukung Tubal, Tamukung Delaki, Tamukung Marica, Tamukung Mauta, and Tamukung Deing. However, the current proposal of CC to BRWA only covers the Tamukung Baranusa (Baranusa Village).

Mollo Customary Community is inhabited around Mountain Mutis in Timor Island. For this study, I choose Fatumnasi village, a strong tradition inherited from the former Mollo administrative area. It has four sub-villages which consisted of 431 households and 1,604 people (BPS TTS, 2020). When I conducted field research, I discussed extensively with the 4th generation king of Mollo, Mr. Willem Sonbai. He explained that the former Mollo kingdom had changed into an administrative area that followed the current form of government. Customary systems still exist and are maintained to this day include marriage, inheritance, and customary forest land management around the Mountain Mutis area.

The entire community's name of Nua Wologai CC is Nua Wologai Tanah Sigaria Watu Rembu Rewa CC. It means "land in the territory of Siga Ria's descendants." Administratively, it is located in Wologai village. The Wologai village is composed of two sub-villages with 105 households and 466 population (BPS Ende, 2019). The

traditional structures and modern village structures exist side by side. The village head is usually one of the descendants of the influential tribal chief in the village.

2.3. Data Collection

The study methods are literature review (desk study) and field survey. An interview is one of the main methods of this study.

I conducted fieldwork in Indonesia between 2018 and 2019. It began in February 2018 by conducting an in-depth interview in the headquarter of the Ministry of Environment and Forestry (Manggala Wanabhakti) in Jakarta. I interviewed with (1) Director General of Social Forestry and Environmental Partnerships, (2) Senior Advisor of Minister, (3) Head of Establishment of Forest Management Areas Sub Division, (4) Head of Recognition of Traditional Forest & Protection of Local Wisdom Division (5) Head of Information Sub Division, and (6) Directorate of Forest Gazettement and Management about national policy related to the CC, particularly the bureaucrat point of view related to the policy from a national level.

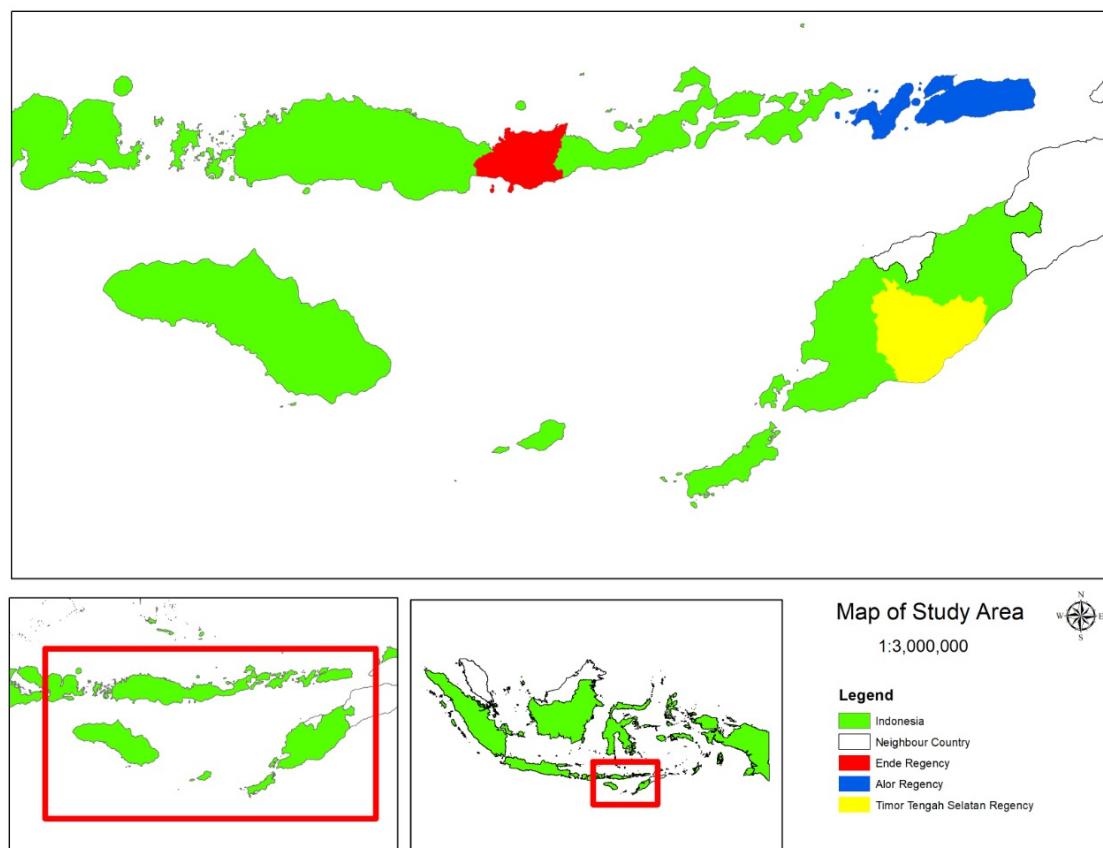


Figure 2.1. Research Site Location (Source: Indonesian Geospatial Information Agency, 2018)

I interviewed AMAN and BRWA, national-level NGOs that mainly focused on advocating and empowering the CC to gain their owner's right to the forest. The interview items were (1) the progress of CF' developments, (2) the process of advocating, mapping, and registration of CF, and (3) actual conditions of CC on managing their CF.

And then, I conducted field research at the provincial level (i.e., the ENT Province). I mainly interacted with stakeholders, such as government officers and NGO staff in Kumapng, the provincial capital. I collected the data by interviews with the ENT Province Forest Office staff and WWF ENT staff.

At the district level, I interviewed the head of Planning Agency (Bappeda) Alor District, the head of forest management unit (FMU/Kesatuan Pemangkuan Hutan) of Mutis Timau and Alor Pantar, and District Legislative Member of Ende Province. In order to update the current status of the CF, I revisited the study site and collected the latest data in late 2020. The complete list of respondents for this research is shown in Table 2.1.

Table 2.1. List of Respondents

Central Agency	Provincial/District Level Agency
Central Government Agencies • Head of Establishment of Forest Management Areas Sub Division • Head of Recognition of Traditional Forest & Protection of Local Wisdom Division • Head of Information Sub Division, Directorate of Forest Gazettement and Management NGO/CSO in Central Office • BRWA Customary Area Registration Office • AMAN Indigenous Peoples Alliance Senior official in Ministry of Environment and Forestry • DG in MoEF (DG of Social Forestry and Environmental Partnerships) • Senior Advisor of Minister	Provincial Agency in East Nusa Tenggara • BBKSDA NTT • ENT Province Forest Office District Agency in East Nusa Tenggara • KPH (Forest Management Unit) Alor Pantar • KPH Timor Tengah Selatan • Camat (Sub-district Head) of Pantar Timur • Bappeda (Planning Agency) Alor District • Bappeda TTS District • District Legislative Member (Legislative Member of Ende District) NGO/CSO in ENT • WWF ENT • AMAN Nusabunga • JMM (Jaringan Madu Mutis/Mutis Honeybee Association) Key Person in The Research Site • The Inheritant of Former Kingdom (3) • Head of Village (3) • Political Person in The Village (BPD) (3) • Adat Spokesman (3)

Chapter III

Territorialization on Customary Land Indonesia: A Study Case

3.1. Introduction

In the colonization era, forest areas were gazetted after the territorial declarations, and those forests were managed based on scientific forestry (Peluso, 1994; Sivaramakrishnan, 1995). Also, colonial governments designated some forests as protected areas without prior discussion with local communities—Vandergeest & Peluso (2015) term such forests areas as political forests.

In Indonesia, in the mid-19th century, the Dutch colonial government managed the forests to meet the timber needs of the shipbuilding industries (Nurjaya, 2005). At that time, there were many stands of teak along the north coast of Java island. However, after the depletion, several rules were issued to prohibit the cutting of teak trees. Then, teak had been used to make railroad tracks until the early 1930s (Stroomberg, 2018). The Dutch colonial government conducted forest management with a clear-cutting system and modern silvicultural rules derived from European countries, especially in Germany (i.e., scientific forestry).

The end of the 19th century was a moment of awakening of conservationists in the Dutch colonial government. Starting from pioneering conservation areas in several areas on Java island, a conservation area was established in the form of a nature reserve (*natuurmonumen*) (Yudistira, 2014). The conservation area on Java was initially established with an appointment system by forestry authority through the Dutch colonial government decree. On 22 July 1912, the Netherlands Indies Nature Protection Association was established. This organization consisted of a group of Dutch people dominated by scholars, especially in the field of biology (naturalists), researchers, and environmentalists in the Dutch East Indies (Indonesia at that time). With Dr. SH Koorders as a chairman, this organization actively approached the Dutch government to protect areas with the potential of the natural wealth of plants and animals. They proposed that the areas were to be designated as a nature reserve. As an initial stage, they proposed 12 locations in Java as the nature reserves at the beginning of its activities (MoEF, 2020).

After the independence of Indonesia in 1945, the Indonesian government inherited the nature reserve formed in the Dutch colonial era. The establishment of new

conservation areas was originated from government initiatives and supports of the conservationists with ideas to preserve animals and plants wildlife (Jepson & Whittaker, 2002). In addition to the new conservation areas, developmentalism changed the forest management regime in Indonesia. Initially, the new order government enacted the "unity in diversity" principle but gradually reduced the recognition of political rights that might protect the multi-cultural and ethnic diversity. The new order regimes took control of 70 % of Indonesian territory based on Mining Law 1967 and Forestry Law 1967, then gave the area for commercial utilization through concession (mining and timber company) and conservation area establishment. Heads of CC and villages who refused to release their CF lands for this primary objective of "development" were targeted for intimidation and often jailed. The new order regime often grabbed CC's lands without any written legal documents. Besides, massive small-scale agricultural activity through the transmigration program also eroded customary lands (Hidayat et al., 2018). Consequently, conflicts between the state and CC frequently happened.

The National Human Rights Commission (Komnas HAM) mentioned at least 39 major agrarian conflicts with indigenous people or CC over their customary territory within the forest areas (Komnas HAM, 2016). Some of them occurred between companies and indigenous peoples over the lands that the state granted concession rights to the companies (McWilliam, 2006). There were also many conflicts between indigenous peoples and state forest managers in the conservation areas in the name of professional conservation (i.e., managing protected areas based on scientific forestry systems characterized by the zonation system and prohibiting or strictly limiting human activities in the designated conservation area) (Lund & Rachman, 2018).

In several regions in Indonesia, CC have their local customs and laws, and those customary laws have been coexisting with state laws. Historically, this situation was started on Java island since the Dutch colonial government introduced its Western Law in the 18th century (Fasseur, 2007). A similar situation can be found in the small Sundanese archipelago consisting of the provinces of Bali, West Nusa Tenggara, and ENT (Suartika, 2007; Sopian, 2015; Riggs et al., 2016). Legal pluralism is often contested in several sectors, mainly in the judicial system (Griffiths, 2015) and the tenurial system (Wibowo & Murdiati, 2013). For example, the national laws contested with Sharia law

based on the Islamic religion in Aceh special region and customary laws based on culture and local beliefs (Salim, 2010; Crouch, 2013).

The managing conservation area has been facing new dynamic challenges since the indigenous people and CC living mainly around the forest started struggling to restore their customary territorial rights. The people and communities facilitated by AMAN have been more active since the CCD in 2012. According to the Director-General of Nature Resources and Ecosystem Conservation, there was 777 CF located in state forest areas covering more than 1.7 million hectares across Indonesia until 2018 (Nugroho, 2018). Figure 3.1 shows the traditional land and its existence in Modern Indonesia.

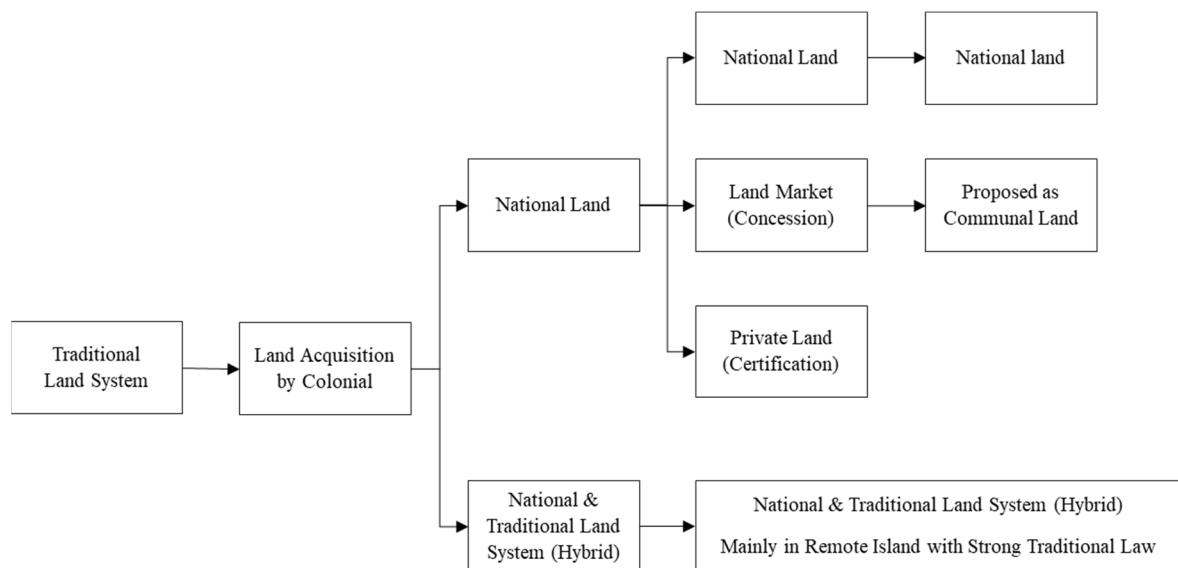


Figure 3.1. The traditional land and its existence in modern Indonesia.

Territorialization is one of the forms of colonial legacy related to the land ownership system. Some earlier studies discuss territorialization and legal pluralism in the ex-colonized country, particularly in Asia and Africa. For example, Griffiths (1986) and Merry (1988) laid the foundation of ideas about legal pluralism, especially in former colonial countries. There are also various studies about legal pluralism on water rights (Meinzen-Dick & Nkonya, 2005), fisheries (Jentoft et al., 2009), and forestries (Sivaramakrishnan, 1995; Graziani & Burnham, 2005; Benjamin, 2008).

The study topic of territorialization by the colonial government and legal pluralism has attracted scholars from more than one hundred years ago in Indonesia. According to Vandergeest & Peluso (1995), "territorialization" is defined as "excluding or including people within particular geographic boundaries, and about controlling what people do and their access to natural resources within those boundaries." The authority decided which activities are allowed and which are prohibited in the territorialized area through the territorialization process. When Indonesia was still the Dutch colony, Van Vollenhoven introduced the concept of legal pluralism to explain the coexisting of customary law (*adatretch*) and colonial law. Griffith (2015) defines legal pluralism as "the coexistence of more than one regulatory order in society."

Meanwhile, Burns (2004) calls it "Leiden Legacy." The concept of legal pluralism enables us to distinguish rules and procedures for specific groups, such as the indigenous people or ethnic groups (Merry, 1988). In Java, Peluso (1992) explored extensively about legal pluralism and territoriality. Meanwhile, Crouch (2013) classified studies on legal pluralism in Indonesia into three types: Islamic Law, religious courts, and customs and regional case studies.

The ENT province is one of the provinces where local customs and customary laws exist. The Mountain Mutis Nature Reserve is one of the strict nature reserves in the ENT province. A traditional land tenure system, called *suf*, exists in the nature reserve. This dual legal system (i.e., the coexistence of the state laws and customary laws) in Timor Island has been in place since the introduction of Western Law by the Dutch government.

The earlier studies in Mountain Mutis Area discussed the traditional agroforestry system, land-use change, and livelihood aspects of the native inhabitants. For example, Agu & Neonbeni (2019) classified the traditional high-land agroforestry model in the West Miomaffa area adjacent to the east side of the Mountain Mutis Nature Reserve into three models: *kono agrosilviculture* model, *suf silvopastur* model, and *poan agrosilvopastur* model. Pujiono et al. (2019) showed the land-use changes and deforestation in the Mutis area over three decades using GIS analysis. Riwo Kaho & Marimpan (2014) mapped land fire regimes according to fire patterns in the natural reserve. Dako et al. (2019) specified the benefits of the Mutis forest area for the community's income around the forest, such as firewood and carpentry wood; they also showed the food consumption patterns to maintain food security around the Mount Mutis

Nature Reserve. Meanwhile, Kurniadi & Rumboko (2016) focused on livestock grazing around the Mutis area and the acceptance of local people to the forest policy implemented by the forestry agency in the Mutis area. They reported that local communities refused the governmental regulation to ban silvo-pastoral activities in the state-protected forest because it was not following their customary laws inherited from generation to generation (Kurniadi & Rumboko 2016).

The study of traditional land tenure in the Mutis area is essential to establish effective forest policy for conservation and local livelihoods. However, the numbers of previous studies focusing on traditional land tenure are very few. Therefore, a study that clarifies the current situation and challenges of the traditional land tenure system is strongly required. Furthermore, it can contribute to a nationwide discussion on the CF in Indonesia.

The objectives of this chapter are (1) to organize the historical territorialization process in the Mutis area, (2) to clarify the traditional land tenure system and activities for livelihoods by local people in the Mutis area, and (3) to discuss the challenges of the traditional land tenure system to manage forests sustainably as well as policy methods to harmonize legal pluralism in Mutis Area.

3.2. Methodology

(a) Study site

The ENT province has approximately 1.3 million inhabitants, and their main occupation is agriculture and forestry. As of 2019, the average net monthly income from the informal sector (e.g., agriculture) was only about one million IDR (72 USD), and it was one of the lowest incomes in Indonesia (BPS, 2019). Thus, poverty is still a significant problem in the ENT province.

The Mountain Mutis Nature Reserve is located across the Timor Tengah Selatan district and Timor Tengah Utara district. The total area is 12,315.61 ha. The 80.29% area is located in Timor Tengah Selatan District, and the 19.71 % area is located in Timor Tengah Utara District. The top of Mt. Mutis is 2,427 m, and the reserve is mainly located between 1500 m and 2000 m. The dominant vegetations are *Eucalyptus alba* and *Casuarina junghuhniana* below 1500 m and *Eucalyptus urophylla* (locally known as *ampupu*) below 2,000 m (Kurniawan & Iswandono, 2018).

IUCN has seven categories of the protected area. The Mountain Mutis Nature Reserve belongs to a strict nature reserve (Ia) whose primary objective is to protect biodiversity and geological aspects. According to IUCN rules, strict nature reserve means that the area is basically limiting "human visitation." Its "utilization and impacts are strictly controlled and a limiter to ensure the protection of the conservation values" (IUCN, 2008). The forested slopes of the Mutis Mountain area are also a critical watershed for the Timor island, and it plays a substantial role in the culture and village economy around the reserve (Lentz & Bowe, 1998).

Fourteen villages are bordering the Mutis Nature Reserve. The education level of the villagers is low, and their main occupation is livestock rearing and farming based on dry-land crop rotation systems (Fisher et al., 1999). The forests are vital for them as a place for livestock grazing, collecting honey from wild bee nests, and other non-timber forest products. Those activities generate additional income for them. Besides, the villagers use water from the forest for cooking, drinking, bathing; they also collect building materials and fuel woods from the dried trunks and branches of naturally fallen *ampupu* trees (Lentz & Bowe, 1998).

I selected the Fatumnasi village for the data collection. The Fatumnasi village is directly adjacent to the Mountain Mutis Nature Reserve and has administratively the most extensive area in the nature reserve. In addition, the village is adjacent to two conservation areas with different state jurisdictions. The west side of the village is adjacent to the Mountain Mutis Protected Forest managed by the Mutis Forest Management Unit under the control of the Provincial Government Forest Service. This forest management unit (FMU) has 115,380 hectares, and its management started in 2012. They have divided the area into three FMU based on the division of district administrative area. The east side of the village has a border with the Mountain Mutis Nature Reserve that the Dutch government initially designated as a forest cover to protect unique ecosystems with *ampupu* and conserve water in 1928 (Kurniawan & Iswandono, 2018). Therefore, this area is also one of the forms in territorial process conducted by the Dutch government.

(b) Data collection and analysis

I conducted a field survey in October 2018 and March 2019. First, I conducted field observation to understand how the customary legal system works in the village. Besides,

to understand local people's social and economic perspectives, I conducted in-depth interviews with key informants involved in the Mutis Timau Nature Reserve activities. Roth (2011) discusses the interaction between formal and traditional institutions. Referring to Roth (2011), I selected the key informants based on their social role in the community, the closeness of daily interactions with the forest, and their participation in forest management. The interviewees included officers of central and local government agencies, a staff of Non-Government Organizations (NGOs), and leaders of CC (Table 3.1.). The interview items were as follows: (1) the progress and current condition about CC in the Mountain Mutis area, (2) the status, problem, and land dynamic in the Mountain Mutis area, and (3) image, perception, and utilization from the *suf* area located inside the Mountain Mutis Nature Reserve.

Table 3.1. List of key informants interviewed in the study

Government	Non-Government	Customary Community
• An officer of East Nusa Tenggara Conservation of Nature Resources office • An officer of East Nusa Tenggara Province Forest Office • An officer of Forest Management Unit of Mutis Timau • An officer of Regional Planning Agency in Timor Tengah Selatan District	• A Staff of WWF East Nusa Tenggara	• Village heads • Elders of customary groups • A leader of a young people's group • A descendant from the former Kingdom of Mollo • A leader of honey bee farmers' group

I collected secondary data, such as statistical data and related documents, in parallel with the interviews. The collected secondary data were including the profile and demographic data of Fatumnasi village, a map showing boundaries among protected areas, nature reserve, and villages (Figure 3.2.), and agreement on access to customary area inside of Mountain Mutis Nature Reserve among a chief of the Mountain Mutis Nature Reserve Resort, a village head of Fatumnasi Village, a religious leader, and a traditional leader.

I analyzed the collected data by qualitative descriptive analysis to "describe systematically and accurately the facts and characteristics of a particular population or area/conditions" (Wirartha, 2006). Also, I employed the legal pluralism theory

reconceptualizing by Griffiths (1986), which defines the presence in a social field of more than one legal order.

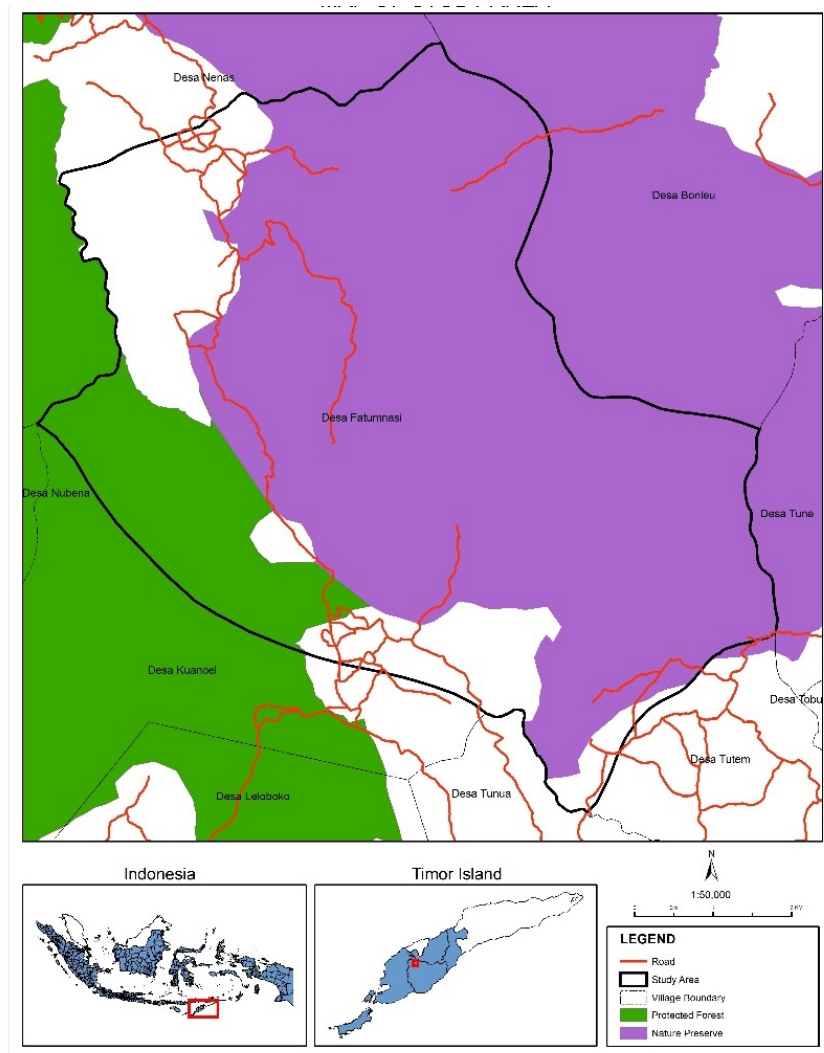


Figure 3.2. Study site. Source: Geospatial Information Agency (2019)

3.3. Results and Discussion

(a) Territorialization process in Mutis area

The CC around the Mountain Mutis area have existed for a long time. When the Dutch government first came to Timor Island in 1653, a small local principdom was in Timor Tengah Selatan district. Then, the principdom was transformed into three autonomous regions (*swapraja*): Amanatun, Amanuban, and Mollo. The people of the three

autonomous regions were a part of the Atoni ethnic group that was the largest ethnic group that occupied the western part of Timor island (Nordholt, 1971). The name of Atoni comes from the word of *Atoni Pah Meto* (= the people of the dry land) (Nordholt, 1971). While the Portuguese governed the east part of the Timor island, the Dutch governed mainly Kupang city in the west part of the Timor island. The Dutch government devoted the sandalwood trade that was the mainstay commodity of the Timor island and enacted many regulations for the sandalwood trade system; however, they did not interfere much in traditional matters of the interior (Nordholt, 1971).

The territorialization on Mount Mutis began with the enactment of *Mutis Gebergte, zulfbestur* No. 4/1, in 1928, that established forest covers to protect the ecosystem and conserve water (BBKSDA NTT, 2019). After the independence, the Indonesian government took over this area in 1974 through management under the authority of the Governor of the ENT province. Although there have been several changes in management status, the traditional land management system has not changed (Table 3.2.). The traditional land management system is hereditary in one clan group (communal family right).

Table 3.2. Territorialization process in Mountain Mutis

Year	Event
Before 1928	The land is traditionally owned by landlords: " <i>pah tuaf</i> ", passed down in one family group
1928	<i>Mutis gebergte</i> (Mutis Mountain), designated as forest cover by the Dutch government
1945	<i>Indonesian Independence</i>
1974	Forest cover, managed by Provincial Forestry Office
1978	Gazettement by Brigade VIII of East Nusa Tenggara Forestry Planology (153.227,68 ha)
1983	The Management of the Mutis Timau Area is divided into the Mutis Nature Reserve Area and the Mount Timau Protection Forest 13,392,507 ha
1996	Mutis Timau nature reserve covering an area of 17,211.85 hectares with 15,155.19 hectares located within the TTS Regency area and 2,056.76 ha located in the TTU Regency area
1999	Mutis Timau nature reserve area of 12,869,115 ha (area of GIS), Decree of the Minister of Forestry Number: 423/Kpts-II/1999
2014	The Mount Mutis Nature Reserve area is 12,315.61 hectares. South Central Timor (TTS) District covering an area of 9,888.78 ha (80.29%) and North Central Timor (TTU) District covering an area of 2,426.83 ha (19.71%).
2015	The East Nusa Tenggara Center for Conservation of Natural Resources and WWF initiated the 153,227.68 ha Mutis Timau Forest Group to become a National Park
2015	Managed by the Forest Management Unit System (KPH Mutis Timau) and BBKSDA NTT
2018	FMU System (Based on District Administrative Area): Kupang District FMU, TTU FMU, and TTS FMU

Source: Ormeling (1955), BBKSDA NTT (2019), Primary data

(b) Traditional land tenure system in Mutis area

The traditional land tenure systems have been coexisting with the state forest system in the Mutis Nature Reserve. Before being designated as the forest cover by the Dutch government, several dominant clans living around the Mount Mutis area, called *pah tuaf*, controlled the lands. They were elders of the Mollo people. The Fatumnasi village is composed of four large clans (i.e., Anin, Bay, Oematan, and Taklale), and they have inherited and maintained the culture of the Mollo people in several aspects. One of them is traditional land tenure systems with an imaginary land territorial system called *suf*. Ormeling (1955) defined *suf* as *authority for the management of natural resource areas owned by each tribe or indigenous clans headed by an amaf (customary head)*.

All CC around the Mutis area recognizes the *suf*, but nobody knows precisely so far when and where *suf* system began. Official data collection on *suf* also has never been conducted by all governmental agencies, including central, provincial, and local government institutions, because the legal structure of the government does not formally institutionalize the *suf*. What is sure is that the *suf* system has been passed down from generation to generation to date by a verbal tradition. In 2018, WWF Nusa Tenggara conducted a field survey to identify areas of *suf* in the Mutis mountain forest area and found that 176 families actively used *suf* areas for their needs for livelihoods.

According to the customary leaders in Fatumnasi village, Bonleu village, Mutis village, and Nenas village, the villagers who can do such activities were limited to family groups or clans with customary rights for *suf*. In other words, migrants, such as government officials assigned to the village (e.g., teachers and principals of schools), do not have the right to do such activities in *suf* areas. However, migrants who marry villagers with the *suf* can use their *suf* area. The villagers can not transfer the customary rights of *suf* to other persons because it is a communal right. Therefore, family members who move out of the village lose rights for the *suf*, but they can regain the right when they return to the village.

The *suf* areas had direct borders with the state conservation area and protected area and villages, especially in the case where the *suf* existed in the enclave area. The recognition of the local people for the borders between the state-owned territories and their customary territories was ambiguous. As Ormeling (1955) reported, its imaginary

boundaries usually were confirmed by natural borders such as rivers, large trees, or large rocks. Some of the *suf* areas were overlapping with the state forest.

The governmental officers regarded the *suf* as one of the causes of encroachment in the nature reserve. They mentioned that 71 hectares in 2009 and 64 hectares in 2012 of forest encroachment occurred in the nature reserve. Most squatters came from two villages in the east part and south part of the forest area, and they were carrying out farming activities to fulfill daily needs. The governmental officers did not consider that those encroachments were disturbing the forest ecosystem. Nevertheless, on the other hand, they were employing moral suasion for the local people to leave the encroached area and recognize that the area belongs to the state.

Figure 3.3. shows the overlapping legal order in Mutis Mountain. The dot-line means the customary area determined by the customary rules and laws. The customary area exists inside state land, and the customary rules have strongly influenced people living in the Mutis area. The local and national governments had not recognized those customary rules as the formal legal order for a long time. However, recently, they started discussions to recognize the *suf* in the formal legal order. According to the nature reserve officials, they proposed several alternatives, such as nature tourism parks and national parks, to change the function of the area. However, no final decision has been made until now, and the current status remains the nature reserve.

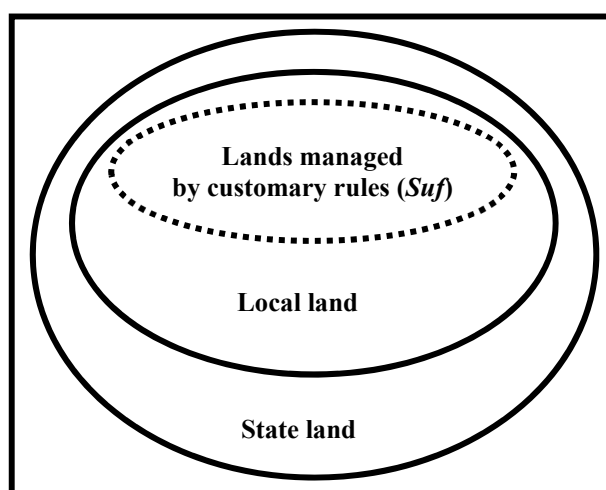


Figure 3.3. Overlapping legal order for territories in the Mutis area.

Source: Primary data (Graph is adapted from Meinzen-Dick & Nkonya (2007))

In this situation, the Mountain Mutis Nature Reserve Resort chief, a village head of Fatumnasi Village, a religious leader, and a traditional leader signed a mutual agreement on the access of the *suf* area in the Mutis area on 7 August 2019. The agreement had two primary purposes: (1) to maintain the sustainability of the forests in Mountain Mutis and (2) to improve the prosperity of the villagers in Fatumnasi Village. The contents included in the agreement were as follows: (1) to set the camping location for visitors in a predetermined location in the Fatumnasi village field in order to generate financial income for the villagers, (2) to regulate the collection of forest moss, which is permitted only in protected forest areas, not in conservation areas (e.g., the harvesting of this *Eucalyptus urophilla* moss must also not be carried out by cutting down or injuring the tree, but by using a wooden jug or bamboo), (3) to continue the collection of NTFPs (forest honey) with traditional rituals, and (4) to follow the village regulations formally.

(c) Traditional activities for livelihoods in *Suf*

The elders of customary groups testified that the local people believed they had the right to do anything except cut trees in their *suf*. There were some traditional activities by the local people for livelihoods for generations under *suf* system in the Mutis area. One of them is a honey collection.

The local people have collected honey in their *suf* for generations. The yield of honey varies in every season. Generally, the honey harvest season is three months after the flower season. Wind and rain are the main factors affecting the honey yield. When honey-producing trees have enough flowers to feed the bees, the bees take nectar from flowers. However, when winds are strong (generally from the west), flowers are blown away, and the bees have no food. Irregular rain also causes uneven flowering. Consequently, the bees eat honey stored in their nests, resulting in hives that do not contain honey.

They have some traditional rituals based on their customs to preserve the nature reserve. For example, before collecting honey, they hold the rituals and pray for their safety to their ancestors during the honey collections. After collecting honey, they have the rituals to pray again to their ancestors for a rich honey collection next season. In addition, they have a principle for sustainable honey bee harvesting called *Ikepale*. It means taking only parts of honey. They do not harvest all the honey bee colonies and collect only the amount they need under the *Ikepale* system. Also, they do not harvest the

colonies on the small branch. This customary system helps regenerate honey for the next season and maintains the sustainability of honey collection.

(d) Customary sanctions on forest fire

The local people burn their *suf* to get fodder. However, sometimes the fires are uncontrollable and spread beyond their *suf*. I also witnessed many fires in the nature reserve and protected forest area during the field data collection in the heavy dry season of October and November. According to the Mutis Resort Management Office, 14 fires happened during the peak of the dry season in 2019. There were three leading causes of the fires: (1) accidental fire when getting young grass, (2) accidental fire when hunting animals, and (3) spreading fire when burning gardens.

The Natural Resource Conservation Law in 1990 and the Forestry Law in 1999 provide imprisonment or fines for perpetrators of forest fires. Meanwhile, the customary rules also provide sanctions for perpetrators without being affected by the state legal sanctions. As a concrete example, on 6 November 2019, a traditional ceremony was held to give customary penalties against a villager who burned up 106.3 hectares of forest and many trees, including 700 *ampupu* trees, in Pubasu village. The perpetrator declared to promise not to repeat the deed done through the sealed declaration signed by him at the traditional ceremony. Village officials, customary leaders, and nature reserve officers also witnessed this ceremony. Besides, the perpetrator had to provide some material for conducting the traditional ceremony, costing nearly 4,000,000 IDR (around 300 USD).

Table 3.3. shows the comparison between national law and customary law in the Mutis Area. According to Act Number 5 of 1990 on Natural Resource Conservation and its derivative regulation, it strictly prohibit many activities in the nature reserve. Only several activities are acceptable with special conservation area entry permits called *SIMAKSI* (Surat Izin Masuk Kawasan Konservasi/entry permit to the conservation area), such as research and development, movie making, and journalistic activities. Concerning the border of the area, the formal regulation only acknowledges the forest area based on the gazettelement process by the Ministry of Environment and Forestry. The fine and imprisonment are imposed on violators as penalties. The dominant figure in managing the forest is forestry officers in the Mutis Nature Reserve Unit.

In contrast, the primary source of customary law (*suf*) is oral speech passed down through customary elders. Based on the customary law, activities such as NTFPs and cattle grazing are limited but permitted. Based on the customary law, local people have an "imaginary" border determined by the natural boundary regarding the border area, such as trees, rivers, and big stones. The fine and traditional sanctions are imposed on violators, and the elders are dominant figures in the traditional laws.

Table 3.3. Comparison between national law and customary law in the Mutis area

Parameter	National Law	Customary law (<i>suf</i>)
Source of law	Act Number 5 of 1990 about Natural Resource Conservation	Oral speech/agreement in the indigenous community
Access	Strictly Prohibited	Limited utilization
Border area	Based on Gazettement Process	Following <i>suf</i> areas per family group
Sanctions and penalties	Fine/imprisonment	Fine/traditional sanction
Dominant figure	Forestry officer of Mutis nature reserve unit	Elders

(e) Discussion

The *suf* have been coexisting with the state system until today. The findings showed that the local people believed that they had the right to do anything except cutting trees in their *suf* areas. They had conducted some traditional livelihood activities, such as honey collection, for generations under the *suf* system. Some of the *suf* were overlapping with the state forest. Even though the government officers regarded the *suf* system as one of the causes of encroachment in the nature reserve, they did not consider that those encroachments were disturbing the forest ecosystem.

Myers et al. (2017) explain that conservation areas are a vital area of contestation between the state and CC. As the history of Indonesia shows, the first conservation areas were formed by the Dutch government in the colonial era, and the Indonesian government inherited those conservation areas after independence in 1945. In the Mount Mutis area, territorialization began with the enactment of Mutis Gebergte, zulfbestur Number 4/1, in 1928. Simultaneously, the Dutch colonial government established the conservation area, called forest covers, to protect the ecosystem and conserve water in the Mount Mutis area. Currently, the Mountain Mutis area consists of two conservation areas with different state jurisdictions: (1) the Mountain Mutis Protected Forest managed by the Mutis Forest Management Unit under the control of the Provincial Government Forest Service and (2)

the Mountain Mutis Nature Reserve that the Dutch government designated initially as the forest covers.

As Kurniadi & Rumboko (2016) reported, the governmental policies that restrict access of local communities to state forest areas caused resistance from the local community that depended on access to state forest areas for their livelihood, such as grazing. In other words, the designation of conservation areas is against the will of the local community, and such cases occurred in the Bukit Baka Bukit Raya National Park in Kalimantan and Lore Lindu National Park in Sulawesi (Myers & Muhajir, 2015; Maiwa et al., 2018). In comparison with the management system, which was more accommodative to human activity, Hayes (2006) pointed out that conservation areas with modern scientific systems (e.g., protected areas and national parks), which prohibited many activities of local people, were not always an effective way for promoting local conservation. Therefore, it is required ways to harmonize nations and communities around protected areas.

Sopian (2015) mentions that the legal pluralism application is intended to maintain order and harmony in society. In the Mount Mutis area, the local people had a principle for sustainable honey bee harvesting called *Ikepale*. They do not harvest all the honey bee colonies and collect only the amount they need based on the customary rules. Besides, they had the customary rules providing sanctions for perpetrators of forest fire without being affected by the state legal sanctions. At the traditional ceremony, the perpetrator promised not to repeat the fire in front of village officials, customary leaders, and nature reserve officers. The rights for *suf* are limited to family groups or clans in the village. In other words, the villager must continue to live in the village to retain their rights. Trust from other villagers is an essential condition to live in the village, and consequently, they must follow the customary rules to keep it. Therefore, such customary rules and punishment systems appear effective ways for sustainable forest management.

In contrast, there are some concerns about the effects of customary rules on sustainable forest management. The ENT province comprises many small islands, and the current population density is not high. Also, the local people collect only the amount they need under the *Ikepale* system. Even though the current forest resource use is well maintained under this condition, future increased pressure on the forest due to the growth

of population and commercialization of honey collection could affect the use of *suf*. Also, it may cause friction between the local people and the governmental officers.

As discussed above, it appears that the legal pluralism approach is one of the ways to harmonize nations and communities around protected areas. On the other hand, there are some institutional challenges to apply the legal pluralism approach in the Mount Mutis area. The *suf* have been coexisting with the state system until today, and all CC around the Mutis area recognizes the *suf*; however, nobody knows precisely so far when and where *suf* system began. The legal structure of the government does not formally institutionalize the *suf* so far, but recently there are some policy movements to position the *suf* in the legal structure. For example, the Minister of Environment and Forestry Regulation on the Gazettement of Forest Area allows excluding the customary area from the state forest. However, they require written authentic evidence for that. The *suf* system has been passed down from generation to generation to date by a verbal tradition. Therefore, the ministerial regulation can not apply to the *suf*.

The findings also showed that the government officers and local people recently started some discussions to recognize the *suf* in the formal legal order, such as nature tourism parks and national parks. However, their introduction still seems to need to solve some institutional problems. For example, the *suf* area in the Mutis area is composed of the nature reserve and protected forests. In contrast, the nature tourism park targets nature reserves only and cannot be introduced into protected forests. Another possible solution is the social forestry scheme. However, even though social forestry can introduce in protected forest areas, it cannot introduce in the nature reserve area. The current policies are not in line with the actual situation in the Mutis Area. Therefore, bridging the gap remains a policy challenge to harmonize legal pluralism.

3.4. Conclusion

This study organized the historical territorialization process and clarified the traditional land tenure system, called *suf*, in the Mutis area. The historical process forms the legal pluralism between state and people. The present local and national governments had not recognized those customary rules as the formal legal order for a long time; however, the *suf* have been coexisting with the state system until today. Recently, they started discussions to recognize the *suf* in the formal legal order. Legal pluralism is

essential to manage forest resources sustainably and harmonize society between state and people, especially in places where local customs and laws are still maintained. Therefore, it is required to flexibly operate or revise the state laws according to the actual situation to promote forest policy on CF.

Chapter IV

The Struggle for Customary Forest in East Nusa Tenggara Province

4.1. Introduction

The forest tenure reforms for CC have been more active after the CCD enactment. Before the CCD, there were only two forests in Indonesia based on the Forestry Law of 1999: state forest (*hutan negara*) and right forest (*hutan hak*). At that time, the forestry laws defined CF (*hutan adat*) as "state forests" within an area of customary law communities. However, the CCD declared that CF were forests within an area of customary law communities, and it removed the word of the "state (*negara*)" from the forestry law. Consequently, the CF won the independent statuses that are neither state forests nor rights forests in the forest management of Indonesia.

CC have strong interactions with forests and have local wisdom to protect forests and the environment (Camacho et al., 2012; Roth, 2011). They also have their own identity distinguishing them from others (Bakker & Moniaga, 2010). The CCD has been bringing new hope for the CC (Subarudi, 2014). To realize the CCD principles, Suryadi (2013) urged the importance of the new regulations that explain more details about CF management, including the rights and obligations of the CC. The Ministerial Regulation No. 17 of 2020 about the Customary Forest and Right Forest also prescribes that regional regulations must expressly stipulate the customary law community's regulations. In recent years, regions that have regional regulations on CC increased significantly. The MoEF shows that at least 52 regional governments enacted the regulations until mid-2019 (MoEF 2020); however, not all regions have had the regulations yet.

A significant gap in the CF between claims of CC through the BRWA and the recognition of the MoEF is one of the policy challenges of the CCD. According to the interview with MoEF officials, there were several causes of the gap. First, the BRWA submitted 777 CC maps to the Minister of MoEF by mid-2017. However, many of them were in the form of polygons on papers that did not cross-check in the field. BRWA accommodated all CF claims from CC and recorded them in the customary area registration book. The state forests of Indonesia also have intersected with claims of CC' territories. As of January 2018, when the first CF coordination meeting was held, 134

proposals from CC overlapped with 51 protected areas covering 1,646,155.12 ha in 20 provinces (KLHK, 2019).

Secondly, there was an absence of regional regulations in some areas. According to the Ministerial Regulation No. 17 of 2020 about the CF and Right Forest, it is necessary to stipulate the regulation of the customary law community specifically. In recent years the number of regions with regional regulations related to CC increased significantly. The MoEF noted that at least the 52 new regional regulations had been enacted until mid-2019 (MoEF 2020). Lastly, one of the officials of the MoEF testified that there were still many concerns that changing management from the state to CC would not ensure the sustainability of forest, especially among conservationists in the MoEF. Although the CCD recognized the CF owned by CC, it is not automatically mean that all parties accept the rights of CC.

The ENT province is one of the outermost and fragmented areas in Indonesia. It is one of the provinces which has many local customs and small CC. BRWA has registered 32 CC of the ENT province. However, the ENT provincial government has not acknowledged any CC and forests. Therefore, the CCD has not yet been well-implemented in ENT province. Therefore, it appears there are some barriers to develop CF in ENT province.

The objectives of this chapter are to (1) determine the changes in CF management and (2) discuss the policy challenges after the CCD in the ENT Province.

4.2. Methodology

(a) Study Site

The ENT province is composed of many small islands. The ENT province has no concessions and another land utilization hindering building recognition of CF (Myers et al., 2017a). Therefore, the contestation commonly comes between conservation areas (Iswandono et al., 2015; Kriswoyo et al., 2019) or between other family clans (Sopian, 2015).

Among the ethnic groups in the ENT province, I selected (1) Baranusa CC in the Alor district of Pantar Island, (2) Mollo CC in the Timor Tengah Selatan district of Timor Island, and (3) Nua Wologai CC in the Ende district of Flores Island for data collection as the following reasons (Table 4.1.). The Baranusa CC registered the most expansive

customary area (around 5.000 ha) to BRWA since 2 June 2017. However, the regional government has not yet acknowledged their customary area until today. The Mollo CC is one of the most prominent ethnic groups in Timor Island; however, they have never registered their CF neither to BRWA nor to the government agency. The Nua Wologai CC is in the Ende district, where the regional government enacted regional regulation on CC early after the CCD; however, they have not yet gotten legal recognition until today. All three CC are the heirs of those kingdoms or tribes and have kept a clear lineage and customary norms until today. They also have close interactions with nature, including forests. Therefore, I expected that comparing three CC with different conditions of their CF would provide useful material to discuss the policy challenges of the CCD.

(b) Data Collection and Analysis

I conducted in-depth interviews with key informants on February-March 2018, March-April 2019, and November 2019. The key informants are (1) officers of central government agencies represented by the MoEF, (2) officers of local government agencies, (3) staff of NGOs focusing on CC' rights problems, and (4) representatives of CC. The interview items included (1) the progress of CF developments, (2) the process of advocating, mapping, and registration of CF, and (3) actual conditions of CC on managing their CF. I collected secondary data in parallel with the interviews (i.e., statistical data and related documents).

This research is elaborated by the qualitative study that conducts observation, interview, and documentation during data collection (Creswell, J. W., & Creswell, 2018). I also employed descriptive policy analysis, which described concerns with evaluating a new policy as it is implemented. The policy analysis is conducted after policy implementation, and the primary concern is to understand the problem rather than solve it" (Dunn, 1981). I further discuss the results using the Legal Recognition Process Scheme framework formulated by Arizona et al. (2019). This framework figures out the process of legal recognition, which consisted of some steps from initiating the CF issue until its recognition/pa-recognition. I also expand the discussion based on these steps: (1) Land tenure problem analysis, (2) preparation on entering the legal process, (3) legal recognition process, (4) post legal recognition.

Table 4.1. The characteristics of the three customary communities

Parameter	Mollo (TTS district)	Baranusa (Alor district)	Nua Wologai (Ende district)
General Characteristic	The largest ethnic group in Timor Island	The largest tribes in the Pantar Island	One of the small tribes Florest Island
History /genealogy	The descents of previous Oenam people, transformed into several sub-districts	The descents of the previous Baranusa kingdom, transformed into one village	The descents of previous small tribes kingdom Nua Wologai, transformed into one village
Main cultural activity (natural resources utilization)	NTFPs gathering, traditional land tenurial system, wedding ceremony	Marine products gathering	Ritual activity, traditional land tenurial system
Claimed / Proposed Customary Community/Area	Access to the conservation forest/protected forest	Limitation of collection of marine products in some periods	Access to the protected forest
Dominant Norm	The Triangle System of Life (Harmony between Human, Livestock, and Forest)	Hading Mulung & Hoba Mulung ("grace periods" of sea products harvesting)	Tiga Batu Tungku (the harmony between stakeholder to manage the forest)
Possibilities for customary forest/customary community acknowledgment	Customary forest coexisted with state forest	Customary community area	Customary Forest
Important Motives for Recognition	Secure access for daily livelihood	Conserve the coastal reef for the sustainability of sea products	Forest for religious and cultural activity
Main NGO Connection	WWF Nusa Tenggara	AMAN Indonesia WWF Lesser Sunda Projects	AMAN Nusa Bunga
Presence of District Regulation Related to the customary community	No district regulation	District Regulation no.4/2018 about Recognition and Empowerment of Customary Institutions	District Regulation no. 2/2017 about Implementation of Recognition and Protection of Customary Law Communities in Ende District

4.3. Results and Discussion

Table 4.2. shows the overview of the forest and land management of the three CC and their response towards the CCD.

Table 4.2. The forest/land management of Customary Community and their Response towards CCD.

Customary Community	Before CCD	After CCD
Mollo	• Access the state forest for livelihood • Collaborate with empowering NGO	• Access the state forest for livelihood • Not proposing a customary forest as long as the access can be granted
Baranusa	• Manage the sea for a livelihood • Collaborate with empowering NGO and Adat revivalism NGO	• Imply the traditional "grace period system." • Propose the customary area to BRWA and actively revive customs and institutions
Nua Wologai	• Maintain the sacred forest • Collaborate with Adat revivalism NGO	• Maintain the sacred forest • Propose the customary area to BRWA and actively revive customs and institutions to many stakeholders

(a) Baranusa customary community

(1) Overview of customary community

The Baranusa CC is the heir of the small kingdoms that occupied the Pantar Island region. The current Baranusa king is the 16th generation. The crowning has been done hereditary from the first generation to the 16th generation. However, the 12th to 15th kings had to get approval from the Dutch government controlling the Lesser Sunda region. In exchange for accepting the Dutch government's sovereignty, the Baranusa Kingdom received the "obedience letter" from the Dutch government in 1896, which granted honorary title (*Koninlijk*) and agrarian rights to the king. It resulted in the leaders of the kingdom became subordinate to the Dutch colonial government. In contrast, many small local kingdoms in the mountainous area did not agree with the customary territorial claims based on the Baranusa custom. They have had their customs and have claimed that their ones are not a part of the customary law of the Baranusa.

After Indonesia's independence, the Baranusa Kingdom transformed into a village in the West Pantar district, where the sub-district capital is located. Today, they are still keeping their customary norms, such as the marriage system, culture ceremony for farming, and local wisdom in managing natural resources. One of them is a traditional management system for the coastal and marine areas called *Hading Mulung* and *Hoba*

Mulung. The fishers are allowed to use only environmentally friendly fishing gear in the *Hoba Mulung* area. Meanwhile, all types of fishing equipment, including traditional fishing tools, are prohibited in the Hading Mulung area for a certain period. Plaimo (2020) mentions that the *Mulung* activities positively affect fishers' income because *Mulung* provides time for marine biota to recover the sustainable conditions to catch fish continuously. These traditional fishing systems and marriage systems make the Baranusa CC unique.

(2) Impacts of the CCD

The CCD gave the Baranusa people the spirit to revive their CC. They initiated the revival activities in 2015 and formed an *adat* council consisting of representatives of customary leaders from several villages. Then, the 16th king registered 5,000 hectares of coastal and marine areas as their customary area on 2 June 2017. Many Baranusa people have made a living by running agriculture and fisheries for generations. However, they were facing the overfishing problem. Therefore, the primary purpose of the registration was to preserve the coral reef and coastal ecosystems for their livelihoods. Meanwhile, WWF International-Lesser Sunda Projects supported this initiative to conserve mainly the "triangle" coastal area between Lapang Island and Batang Island (WWF 2019).

After preparing for entering the legal process through a series of informal meetings, they held the formal meeting on 27 November 2017. At this meeting, they formed the Baranusa customary institution consisting of the advisory board (King of Baranusa and West Pantar sub-district head), chairman-secretary, treasurer, and the representatives of five tribal groups (Uma Kakang, Waliweka, Sandiata, Maluku, and Illu). Therefore, the CCD was an opportunity for Baranusa CC to establish the legal rule on protecting their "claiming" customary coastal area. On the other hand, the king of Baranusa said that they proposed ocean territory instead of land territory as their customary territory to avoid frequent disputes among CC. A neighboring clan of the Baranusa CC also testified that they could not accept if the Baranusa claimed all the Pantar Island under the same cultural family as Baranusa.

(b) Mollo customary community

(1) Overview of customary community

Before Indonesia's independence, there were three autonomous regions (*swapraja*) in the Timor Tengah Selatan district: Mollo, Amanutun, and Amanuban (Parera, 1994). The three *swapraja* were a part of the Atoni ethnic group that was the largest ethnic group occupied the western part of Timor island. The Mollo CC was one of the three *swapraja*. After Indonesia's independence, the three *swapraja* transformed into 32 sub-districts in the Timor Tengah Selatan district. Nowadays, the Mollo CC's people are domiciling in four sub-districts in Timor Tengah Selatan district (BPS TTS, 2020). *Sonbai Fam* is one of the most prominent families of the Mollo people, and the current throne is the heir of the Sonbai family. They have an evident pedigree and still adheres to their customs.

The Mollo people are known as the people with dryland farming and raising livestock. Besides, they are also famous as the people who have the concept of the triangle of life consisting of nature, humans, and livestock (*mansian muit nasi moni nabuan* in their language), which means humans, forests, and livestock are an inseparable part and have interdependent relations. They have maintained their customs for generations, and one of them is the customary land system called *suf*. In general, the *suf* is described as *ulayat* land (customary land) in a state forest area. They collected NTFPs in the *suf* and inherited the *suf* in a family group for generations. There is no official data on the number of *suf* within the conservation area or protected area of the state forest in the Timor Tengah Selatan district. Meanwhile, WWF Nusa Tenggara in 2018 identified ten honey harvesting farmer groups composed of at least 176 families. They were harvesting honey in the nature reserves or protected areas of the state forests in Kupang district and Timor Tengah Selatan district. Budiman et al. (2020) also found the Mollo people harvesting honey in the strict conservation area of the Gunung Mutis Nature Reserveng Natural Resources and Ecosystem Conservation.

(2) Impact of the CCD

Unlike the Baranusa CC, the Mollo CC has never desired to change the status of *suf* from the state forest to CF. They emphasized the importance of access to *suf* that they had inherited for generations. Therefore, the state has not recognized their *suf*, but it does not

matter for them as long as their customary access rights for non-timber forest products in *suf* are secured.

The Ministerial Regulation No. 17 of 2020 prescribes that regional regulations must expressly stipulate the customary law community's regulations. Therefore, the Forest Management Unit (FMU) officer suggested that the customary leaders often consult with district legislative members to promote legislation on CF of Mollo CC. Communication between the customary leaders and the district legislative members or local authorities is essential to make regional regulations on CF. van der Muur (2018) also reported a case of South Sulawesi that closeness to bureaucrats was a vital factor for accelerating the recognition of customary territories.

(c) Nua Wologai Tana Sigaria customary community

(1) Overview of customary community

Before 1932 the land was owned communally by the Siga Ria family. The first territorialization happened after the Dutch colonial government reached the ENT. The Dutch colonial government gazetted a protected forest boundary outside the arable lands of the Wologai people.

After Indonesia's independence, the state forestry agency declared a protected forest boundary intersecting the cultivated area of the Wologai people in 1984. The Wologai people testified that some parts of the protected forests were their CF for traditional ceremonies. Besides, they could previously use wood from the forests for building traditional houses. However, the state forest agency has not allowed those activities. Currently, those forests are under the management of Ende FMU as protected forests. The Wologai people do not have legal access to their CF in the protected forest.

(2) Impact of the CCD

In a legal process, Nua Wologai CC was assisted by a local NGO, AMAN Nusabunga, an AMAN network for the Bali and Nusa Tenggara area. The process was initiated in 2015 when AMAN Nusabunga started collecting data on the characteristics of the Nua Wologai CC. The collected data were the identity of the community (e.g., name of the community and administrative location), identification of the customary territory including the border of the area, demography, a brief history of the CC, communal land

rights and territorial management, customary institution, customary laws, and its biodiversity.

AMAN Nusabunga carried out a participatory mapping with the *adat* leaders and the indigenous youths regarding their customary area. The mapping process in 2015 figured out some land management that should be further proposed as a CC area to BRWA. The CC areas consist of four areas: *bodhe*, *ngebo*, *uma*, and *nua*. The *bodhe* is the traditional forest area utilized for springs, sacred sites, and traditional ceremonies. The *Ngebo* is a communal forest area that can be used for community gardens and cultivations. The *uma* is an arable area in the shape of gardens, fields, and former gardens or fields covering by food crops such as mountain rice and commodity crops. The *nua* is a settlement area used as residences of people (BRWA 2015).

The role of local NGOs is vital in the process of legal recognition. A chief of AMAN Nusabunga was a member of the Regional People's Representative Assembly (*Dewan Perwakilan Rakyat Daerah*) in two periods (2009-2014 and 2014-2019) and played a crucial role in lobbying the fellow of the Ende districts legislative members. As a council member, he also educated CC in Ende Regency, and one of them is NuaWologai CC. Low awareness of the legislature members to the urgency of the legal existence of customary society was the biggest challenge in the process. At least five to six times, comprehensive meetings with community members were necessary until they registered the CC to the BRWA on 2 December 2015.

Eventually, their struggle was a success on 15 August 2017. As a result, the regional government enacted the Ende District Regulation No.2 of the Implementation of Recognition and Protection of Customary Law Communities. The regulation defines several rights and obligations of the CC. The stipulated rights are (1) land, customary territories, and natural resources, (2) development, (3) spirituality and culture, (4) environment, and (5) implementation of the customary law and court. Meanwhile, the regulation obliges the CC to (1) participate in mutually agreed-upon development processes, (2) keep the cultural values of Indonesia maintaining tolerance between indigenous and tribal peoples, (3) comply with the provisions of laws and regulations, (4) conserve the environment in their customary territories sustainably, (5) be subject to the unique habits, spirituality, traditions, values, and customary courts that apply in the

customary law community, and (6) cooperate in the process of identification and verification of indigenous and tribal peoples.

The struggle for recognition on *adat* also got positive support from the regent of in Ende district. The relation between the regent and the AMAN Nusabunga was excellent, and their communication was also very well. Such a formal relationship between representatives of *adat* community was essential to develop the understanding of the stakeholders. van der Muur (2018) argues that the indigenous group who have a strong connection with the local state actor will get a better advantage. However, unfortunately, the legal process in the Ende district is hampered after the death of the regent in May 2019.

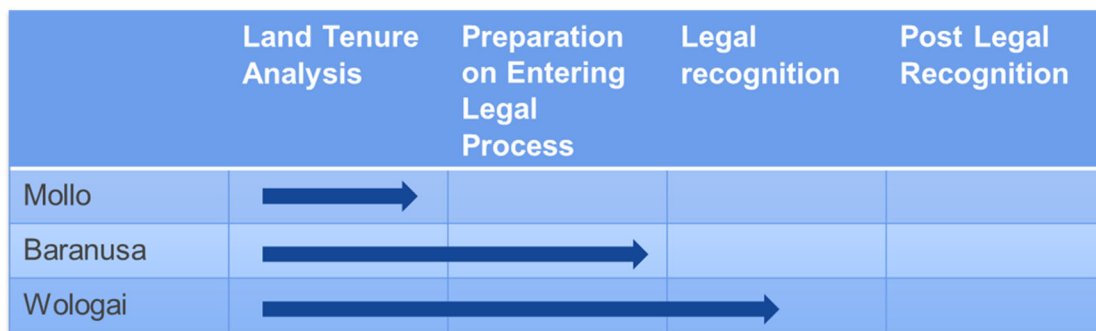


Figure 4.1. The stages of achievement of adat recognition in the study area.

(d) Barriers to the development of customary forest in ENT Province

The MoEF Regulation No. 7 in 2020 mandates that the community must be acknowledged as a customary law community (*Masyarakat Hukum Adat/MHA*) before proposing their forest area as a CF. Previously, to be obtained the position of MHA, the CC must fulfill some process stated in Ministry of Internal Affairs Regulation No. 5 in 2014 about Guidelines for The Recognition and Protection of Indigenous Communities. There are two steps of recognition (Figure 4.2.). According to the interview with customary leaders and the ENT provincial forestry officer, there were two main obstacles in the development of the CF in the ENT province: (1) complicated political process in the district government and (2) the competition of CF program with other central government programs.

(1) the complicated political process in the district government

The formalization becomes one of the enforceable factors for customary right recognition (Simarmata, 2019). In a fast and structured manner, the central government made various efforts to follow up the CCD. On the other hand, as shown in Figure 4.2, the district governments have a vital role in recognizing indigenous communities. The steps include (1) formation of committees, (2) identification, (3) verification and validation, and (4) appointment of indigenous communities.

Until March 2021, among the 22 districts in the ENT province, only three districts (i.e., Ende District, Alor District, and Manggarai Timur District) had local regulations regarding the CC. Meanwhile, there is no district regulation explicitly related to the recognition, protection, or empowerment of indigenous communities. Elites, traditional elders, council members, and bureaucrats in charge of indigenous peoples and forestry continue discussing these issues. Although the traditional culture is robust in the ENT Province, they have different perceptions about the urgency of establishing CF in the three study sites.

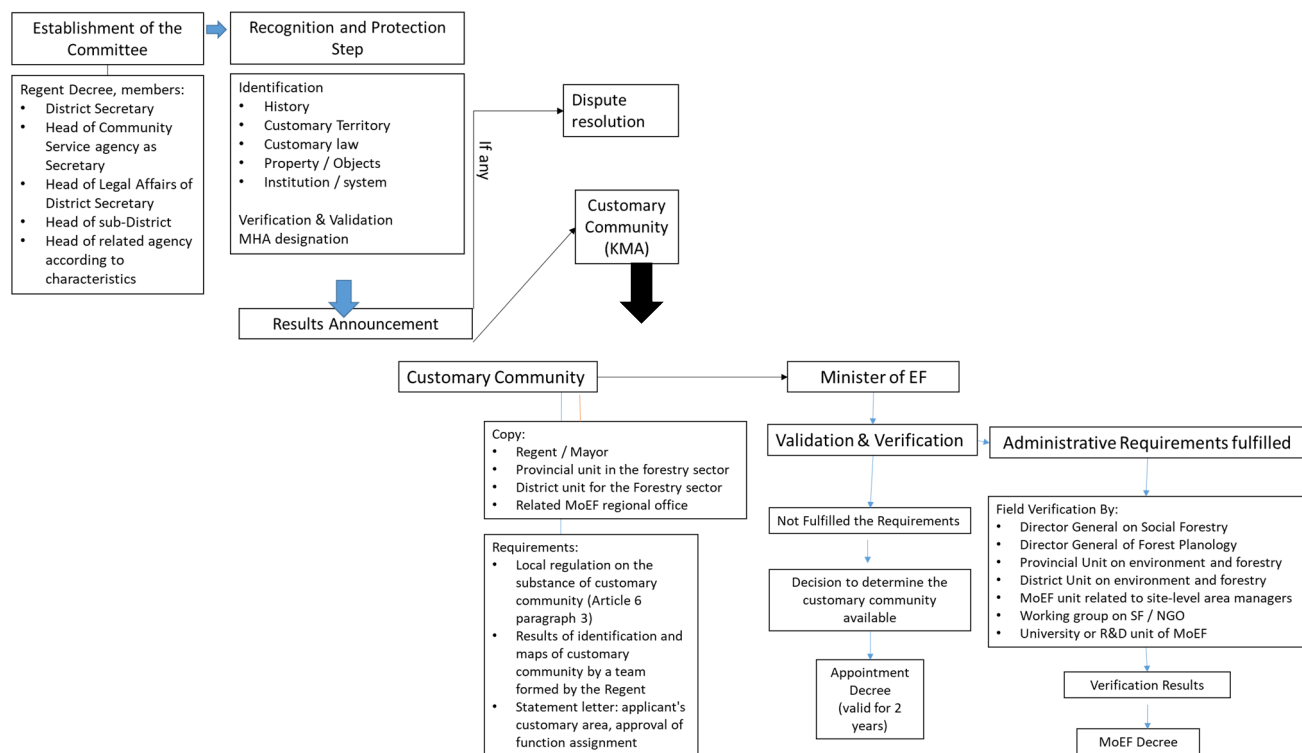


Figure 4.2. Two-Step of CC recognition by District Government and CF acknowledgment by MoEF

(source: MoHA Regulation no. 57/2014 and MoEF no. 17/2020)

The case of Ende District, the first district that imposes regulation on CC protection and acknowledgment, showed that it took at least five years of struggle to establish the regulation. The initiator came from the legislative member, who was also one of the influential people in the district. However, my interview revealed that building awareness of the urgency of recognizing indigenous peoples among legislators required time and a long process.

In that sense, funding plays an essential role in the CC establishment facilitation. The trial process in the legislature and the facilitation of many stakeholder meetings required an adequate budget. Based on the MoEF Regulation No. 17 in 2020, the proposals of the CC must come from the CC self-budget. Therefore, assistance from NGOs and regional revenue and expenditure budgets (*Anggaran Pendapatan dan Belanja Daerah/APBD*) are necessary because the process is very long and involves many parties. However, it seems that financing for the facilitation and initiation of CF establishment has not become a top priority of district governments. It is evident from the relatively small budget for assistants in the three districts for facilitating the CC establishment.

(2) competition with other government programs

Currently, the agrarian reform (*Tanah Obyek Reformasi Agraria/TORA*) and the social forestry scheme are the two mainstream programs of the central government in the forestry sector. Those programs offer rights in the state forest area to be managed or owned by communities or individuals. These two programs aim to solve the land dispute problem, which involves the community around the forest area, including CC and indigenous people. As in another province, for instance in West Sumatra (Asmin, 2019), the popular schemes are village forest (*hutan desa*), community forestry (*hutan kemasyarakatan*) and community plantation forest (*hutan tanaman rakyat*).

According to the ENT provincial officer, CC competed with the communities pursuing social forestry licenses, particularly in Flores Island. They were also actively proposing and negotiating to get the land utilization rights through the TORA scheme. Those communities desired to get their prestige by obtaining a TORA certificate and assistance for social forestry activities. TORA was the choice for many communities in the ENT province because it was related to individual land ownership rights. The social forestry

program also provided a lot of facilitation and funding in implementing activities in the field.

(e) Policy challenges of the CCD

The enactment of the new local government law (Law No. 23 of 2014), replaced with Law No. 32 of 2004, has recentralized several authorities from the district level to the provincial level, such as natural resources extraction, mining, and forestry. As one of its impacts, it dissolved the district forestry service and replaced with the provincial FMU in the ENT province. The FMUs have focused mainly on forest protection and social forestry programs as an extension of the provincial government. Therefore, the CF issues are still not a priority in the FMU. According to a provincial forestry officer, they did not have a specialized unit to handle the CF issue. He explained that a sub-unit addressed CF issues while dealing with the social forestry program, and their main activities were data collection on the CF.

The Ministerial Regulation No. 32 of 2015 about the Right Forest, updated by Ministerial Regulation No. 17 of 2020, gives the mandate to the district government as the focal point to deal with the legislation process of CF. However, as of the end of 2020, there was no district regulating the CC except for three districts: Ende district (District Regulation No. 2 of 2017), East Manggarai district (District Regulation No. 1 of 2018), and Alor District (District Regulation No.4 of 2018). Thus, the scarcity of regional regulations regarding customary law is still the leading cause to hinder the legislation process of CF in the ENT province.

According to the interview, there were some reasons. Firstly, there was no "umbrella" regulation protecting indigenous peoples in the ENT province. Secondly, information access on "how to" apply for the CF was limited. Lastly, as the case of the Mollo CC showed, some CC did not need to change the status of their forest as long as the local government recognized their existence sufficiently. In other words, any forest status is acceptable for them as long as the local government secures their access to the forests for their livelihood and cultural activities. Tyson (2010) affirms that "recognition" is a crucial aspect sought by all actors in all parties. He also argues that only the state can secure recognition, apply arrangements, and establish an ethnic group and a traditional community. Therefore, the recognition of CC and their forests is a significant policy

challenge in Indonesian forestry to unravel the tangled tenurial conflicts in forest areas that continue to this day.

Another significant policy challenge of the CCD is overlapping the claim area between CC. It can cause horizontal conflicts and negatively impact CC if this policy challenge is not resolved appropriately. The ENT province is very tolerant and has fewer tribal, religious, and racial (Suku Agama Ras dan Antargolongan: SARA) problems than other provinces. However, recently, a rising concern is that land conflict over CF will damage tribal, religious, and racial relations. Thus, Baranusa CC proposed ocean territory instead of land territory as their customary territory to avoid frequent disputes among CC. The recognition for the land right is essential for CC existence in the forestry sectors of Indonesia.

In this context, Safitri (2017) proposed establishing the Indigenous People Act to protect indigenous peoples' rights in Indonesia. She showed three critical factors causing the delay in recognizing the customary people's rights by the government. First, there has not been a consistent legal umbrella that nationally recognizes indigenous people and CC. The second one is that foresters still misunderstand that forest areas should be state forests, and its management should exclude people. Thirdly, local governments still have political and economic interests that want to allocate the lands for large-scale investments rather than CF.

4.4. Conclusion and Recommendation

The findings clearly showed three different responses of the CC towards CCD in the ENT province. The Nua Wologai CC proposed the CF as their right. The Baranusa CC tried to revive the *adat* and traditions to maintain the ecosystem sustainability where they depend on their livelihood. The Mollo CC did not desire to obtain their CF (*suf*) legal status if their forest activities are guaranteed.

Besides, this study clarified the possibility of new land conflict among CC. Some CF claimed by a CC are overlapping with the claims by other CC. This situation is closely related to the history of the formation of the Republic of Indonesia. Therefore, careful consideration for land history and different perceptions on CF among CC are crucial in the verification process of CF.

This study in the ENT province described the diverse perception of CF between CC. Indonesia is an archipelago country composed of countless small islands and various ethnic groups with unique livelihoods. Reportedly, there are 55 ethnic groups in the only ENT province alone. Therefore, I recommend that the national and provincial policymaking process takes into account each locality around CF. The role of the regional government, which connects central and local governments, is vital to facilitate the CF initiative.

Chapter V

Summary & Conclusion

5.1. Summary

This study focused on CF management in Indonesia after implementing the CCD in 2012, particularly in the ENT province. This study aimed to investigate the latest CF in Indonesia, the dilemma of actual conditions on managing the CF, and future challenges of CF development in Indonesia. Some specific research questions were explored: How did the current literature discuss the CF in Indonesia? How were the historical territorialization process, and the challenges of the traditional land tenure system to manage forests sustainably, and policy methods to harmonize legal pluralism? How the CC gets the acknowledgment?

Chapter I explored the trend of the current policy of CF recognition at the national and sub-national levels. After the CCD 2012, slow but sure, the government began to build a mechanism for recognizing CF to implement the CCD mandate. Indigenous NGOs also took this golden opportunity. They became a joint organization for the CC to discuss and formulate the process of recognizing indigenous peoples. Accordingly, the NGO network (BRWA) facilitated CC to carry out participatory mapping and proposals for customary areas from the bottom-up to the government mechanism. As a result, the government is forced to accelerate the process of recognition or proposals for CF originating from community initiatives.

This chapter also explored the literature from the database and online journal portal from several universities in Indonesia that study forest and CF. In general, the research related to CF in Indonesia can be classified into three categories. The research on CF was also dominantly carried out on the big islands (i.e., Java, Sumatra, Kalimantan, and Sulawesi), which previously had access to information, NGO advocacy, and government facilitation related to the recognition process. Meanwhile, CF in eastern Indonesia, such as Maluku and Papua, and outermost and remote islands, including ENT, was not observed.

Chapter II mainly focuses on the methodology. This chapter provides an overview of the research location analysis methods.

Chapter III describes the territorialization and legal pluralism in ENT province. This chapter tries to explain the historical territorialization process in the Mutis area to clarify the traditional land tenure system and activities for the livelihoods of local people in the Mutis area. It also discussed the challenges of the traditional land tenure system to manage forests sustainably and policy methods to harmonize legal pluralism in the Mutis Area. The finding shows that the present local and national governments do not recognize those customary rules as the formal legal order for a long time; however, the *suf* has been coexisting with the state system. Recently, they started discussions to recognize the *suf* in the formal legal order. Legal pluralism is essential to manage forest resources sustainably and harmonize society between state and people, especially in places where local customs and laws are still maintained. Discretion in operational terms is also needed to maintain harmony on legal pluralism implementation.

Chapter IV investigated the struggle of the CC to recognize their status and their forest and natural resources. This chapter aimed to (1) determine the changes in CF management and (2) discuss the policy challenges after the CCD in the ENT Province. The results show the three different responses of the CC towards the CCD. The Nua Wologai CC proposed the CF as their right. The Baranusa CC tried to revive the *adat* and traditions to maintain the ecosystem sustainability where they depend on their livelihood. The Mollo CC did not desire to obtain their CF (*suf*) legal status as long as their forest activities are guaranteed. Besides, this chapter clarified the possibility of new land conflict among CC. Some CF claimed by a CC are overlapping with the claims by other CC.

5.2. Conclusion

This study attempted to provide an overview of the current studies related to the CF, drawing the in-site lesson learned from the sample study site related to the inheritance of the territorialization from Dutch and earlier initiatives for the struggle of CF status in ENT Province. After decades of state hegemony, CCs have obtained the opportunity to make choices through CCD, social forestry schemes, and agrarian reform. The nature of democracy in Indonesia today also provides broad community involvement in forest management. Therefore, the CC also can choose which forest management model scheme is more appropriate to their condition.

In conclusion, CCD provides the opportunity for the CC to regain their right to the ancestor land. However, it also gives a new potency of conflict between CCs. Therefore, not only the harmony of legal pluralism between the state and CC but also harmony among CCs have been emerging as a new challenge for forest management of Indonesia.

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