

# THE FULFILLMENT OF THE RIGHTS OF CUSTOMARY LAW COMMUNITIES IN COASTAL SPATIAL UTILIZATION: A STUDY OF THE BAYAN INDIGENOUS COMMUNITY IN NORTH LOMBOK, INDONESIA

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## Abstract

This research is motivated by the condition that the practice of utilizing coastal space without the involvement of Indigenous Legal Communities (MHA) can be understood as a form of neglect of the collective rights of indigenous communities to territory, natural resources, cultural identity, and participation in development. This research aims to answer the question of how state legal norms regulate the fulfillment of MHA rights and how these norms work in practice when dealing with customary law, licensing, investment, and coastal spatial planning. This research is an empirical normative legal research using the Legislative, Conceptual, Historical and Sociological Approach methods. The primary data in this study were obtained from the research location, while the legal materials consist of secondary data in the form of primary, secondary and tertiary laws collected using interview techniques and direct observation or observation to the research location. The results of the study indicate that the regulation of MHA rights in coastal areas is still partial, sectoral, and highly dependent on administrative recognition mechanisms. In practice, the Bayan MHA has had a social structure, territory, institutions, and customary-based coastal management practices, but its existence has not been fully integrated into the Regional Spatial Plan (RTRW) or the Coastal Area and Small Islands Zoning Plan (RZWP3K). The recommendation that can be given is that the fulfillment of the rights of coastal MHA must be directed at strengthening meaningful participation, mapping customary areas, non-bureaucratic legal recognition, and the integration of customary law in coastal spatial governance in an equal manner.

**Keywords:** Customary Law Communities; Coastal Spatial Utilization; Legal Pluralism; Bayan MHA; Coastal Area Governance.

## INTRODUCTION

Indigenous Law Communities (MHA) are legal entities whose existence is inseparable from the history of the formation of Indonesian society. The existence of MHA is not merely a sociological fact, but also a juridical and cultural fact that demonstrates the existence of a system of values, institutions, territories, and legal norms that are alive and adhered to by their communities. In the context of coastal areas, the relationship between MHA and their living space has a unique character because the sea and coast are not only understood as economic resources, but also as social, cultural, spiritual, and ecological spaces that support the sustainability of indigenous peoples' lives. Therefore, discussions regarding the fulfillment of MHA rights in the use of coastal space cannot be placed solely within the framework of licensing or formal spatial planning, but must be seen as a matter of recognition, protection, participation, and justice.

Constitutionally, recognition of MHA has been affirmed in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that the state recognizes and respects customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. This recognition is reinforced by Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia which affirms respect for the cultural identity and rights of traditional communities. This constitutional norm provides the basis that MHA has a position as a legal subject that must be respected and protected by the state, including in the management and utilization of coastal areas.

However, this constitutional recognition has not always been directly proportional to substantive protection in practice. Recognition of indigenous peoples is often placed within a strict administrative framework, including through processes of identification, verification, validation, and determination by local governments. As a result, indigenous peoples, who have long lived within their legal systems and customary territories, often do not receive adequate legal protection until formal determination is made. This situation creates a paradox in Indonesian law: the state recognizes the existence of indigenous peoples, but at the same time subjects that existence to lengthy administrative procedures that are not always responsive to the need for rights protection.

This paradox is also evident in various sectoral laws and regulations. Law Number 5 of 1960 concerning Basic Agrarian Regulations recognizes customary law as the basis for national agrarian law, but this recognition remains limited by national interests and statutory provisions. Law Number 39 of 1999 concerning Human Rights affirms the protection of the cultural identity of indigenous communities, including their rights to their customary land. Similarly, Law Number 3 of 2024 concerning Villages provides space for the recognition of customary villages, but still requires their establishment through regional legal instruments. In the coastal context, Law Number 27 of 2007, as amended by Law Number 1 of 2014, recognizes indigenous communities as part of the subject of coastal area and small island management. However, in practice, this normative recognition is often overshadowed by the dominance of spatial planning, investment, and licensing policies.

Coastal areas hold strategic value for economic development because they provide space for fisheries, tourism, aquaculture, maritime transportation, settlements, and natural resource-based investments. While this development orientation can, on the one hand, encourage regional economic growth, it can also put pressure on the living spaces of coastal indigenous communities. When the coast is viewed primarily as an economic space, the historical and cultural relationship between indigenous communities and the sea is potentially neglected. Spaces traditionally managed under customary law can be transformed into formal economic zones through spatial planning instruments and permits, without always respecting the traditional rights of the communities that have long lived and depended on these areas.

In the practice of coastal space utilization, the state holds a dominant position because it has the authority to determine spatial planning, zoning, and grant permits for resource utilization. This authority should be exercised to realize the greatest possible prosperity for the people as

mandated by Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. However, if state authority is exercised in a legalistic and investment-oriented manner, then indigenous communities can be positioned as passive parties, even as obstacles to development. In such a situation, customary maritime rights, local knowledge, and customary-based management systems do not receive an equal place in the decision-making process.

This issue is not only related to the conflict between state law and customary law, but also relates to spatial justice. Spatial justice positions space as an arena for the distribution of justice, so that the use of space must take into account who receives the benefits, who bears the burden, who is involved in decision-making, and whose knowledge is recognized as the basis for policy. (Soja, 2010) In the context of coastal MHA, injustice is not only distributive, but also procedural and epistemic. Procedural injustice occurs when indigenous peoples are not meaningfully involved in the planning and licensing process. Meanwhile, epistemic injustice occurs when indigenous knowledge regarding fishing area boundaries, seasons, conservation, rituals, and resource management is not considered as legitimate knowledge in the state spatial planning system.

This condition is evident in the experience of the Bayan Indigenous Law Community in North Lombok Regency. The Bayan Indigenous Law Community has a system of values, customary institutions, cultural practices, and historical ties to coastal areas. The periodically held Labuan Alms tradition demonstrates the indigenous community's spiritual relationship with the sea as a living space. Furthermore, the practice of Sepenggitaq as a marker for fishing areas demonstrates the existence of a system of coastal spatial management based on customary law that is alive, recognized, and adhered to by the community. These practices demonstrate that the Bayan Indigenous Law Community not only possesses a cultural identity but also possesses a system of knowledge and a mechanism for managing coastal space that functions to maintain social and ecological sustainability.

However, the existence of this customary system has not been fully integrated into spatial planning and coastal area management policies. According to the initial research draft, the Bayan Indigenous Peoples (MHA) have been applying for recognition and designation as MHA since 2020 through an identification and verification mechanism as stipulated in Minister of Home Affairs Regulation Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Indigenous Legal Communities. This process includes mapping customary territories, recognizing customary institutions, and documenting existing customary legal practices. Although this process has been ongoing for a long time, the official designation was only issued on December 15, 2025, through North Lombok Regent Decree Number 305/45/DP2KBPM/2025. (Interview, 2025) The lengthy recognition process demonstrates that state administrative mechanisms have not been fully responsive and effective in addressing the protection needs of indigenous communities.

The delay in formal recognition has a direct impact on the legal standing of the Bayan Indigenous Peoples (MHA) in the utilization of coastal areas. Prior to official designation, customary areas are vulnerable to being treated as areas lacking strong formal legal claims.

This situation opens the door to the issuance of spatial utilization permits, including for large-scale shrimp farming activities, without adequate involvement of indigenous communities. The absence of consultation, approval, and customary deliberation in the licensing process demonstrates the weakness of substantive protection for MHA rights. This is despite the principle of community participation in coastal area management being a key part of Law Number 27 of 2007 in conjunction with Law Number 1 of 2014.

From a human rights perspective, the practice of utilizing coastal space without the involvement of indigenous peoples can be understood as a form of disregard for the collective rights of indigenous peoples to their territories, natural resources, cultural identity, and participation in development.

Indigenous peoples' rights encompass not only the right to recognition but also the right to maintain, manage, and utilize their living space in accordance with their customary values, laws, and knowledge. If coastal development is carried out without considering the existence of indigenous peoples, it has the potential to lead to social exclusion, spatial conflict, loss of access to livelihoods, and delegitimization of the customary legal system that maintains a balanced relationship between humans and nature.

Based on the above description, the researcher considers it necessary to analyze the regulation and implementation of the fulfillment of MHA rights in the utilization of space in coastal areas, by making MHA Bayan as the focus of empirical study. This research is directed at understanding the gap between normative recognition and substantive protection, while also assessing the extent to which state law is able to accommodate customary law in coastal spatial governance. By using the perspectives of spatial justice, legal pluralism, the rule of law, the welfare state, and the protection of human rights, this article is expected to provide a conceptual contribution to the legal reform of coastal area management that is more just, participatory, sustainable, and dignified.

## **RESEARCH METHODS**

This research is classified as a normative-empirical legal research that aims to determine whether the results of the application of law to legal events in concreto are in accordance with the provisions of laws and regulations. (Muhaimin, 2020) The approaches used are: a statutory approach, a conceptual approach, a historical approach, and a sociological approach.

This research uses primary data sources as the main data and secondary data as supporting data consisting of primary legal materials and secondary legal materials. Data collection techniques use direct interview methods or direct observation or observation in the field or to the research location (Participants), namely the Bayan Customary Law Community, the North Lombok Regency Government, the Provincial Maritime Affairs and Fisheries Service. From the data that has been collected, both obtained from library research and field research, a qualitative descriptive analysis is then carried out, namely an analysis that describes the actual situation regarding certain facts.

## DISCUSSION

### 1) Regulations on the Fulfillment of the Rights of Indigenous Legal Communities in the Utilization of Space in Coastal Areas

Regulations for fulfilling the rights of Indigenous Peoples (MHA) in the use of space in coastal areas are essentially based on constitutional recognition, sectoral regulations, and regional regulations. In the context of Indonesian law, MHA is understood not only as a social group that still maintains customs, but also as a legal subject that has traditional rights, territories, institutions, norms, customary assets, and historical relationships with their living spaces. Terminologically, MHA is often referred to as indigenous peoples or traditional communities. However, the term "indigenous peoples" has legal weight because it is used to designate communities that have an unwritten legal system and live based on their own social structures and customary institutions. (Haq, 2019) The Constitutional Court in Decision Number 31/PUU-V/2007 emphasized that an MHA is considered to still exist in fact if there is a community with group feelings, customary government institutions, customary assets or objects, customary legal norms, and for territorial communities there is a certain customary legal area.

The main basis for regulating MHA is contained in the 1945 Constitution of the Republic of Indonesia. Article 18B paragraph (2) states that the state recognizes and respects MHA units and their traditional rights as long as they are still alive, in accordance with the development of society, in accordance with the principles of the Unitary State of the Republic of Indonesia, and regulated by law. This provision is reinforced by Article 28I paragraph (3) which emphasizes that the cultural identity and rights of traditional communities are respected in accordance with the development of the times and civilization. Thus, the constitution provides legitimacy to the existence of MHA, but this recognition is conditional. The phrases "as long as they are still alive," "in accordance with the development of society," and "regulated by law" indicate that state recognition of MHA is not automatic, but requires social proof, normative conformity, and further regulation in statutory regulations.

The nature of this constitutional recognition raises important issues. On the one hand, the state recognizes MHA as legal subjects possessing traditional rights. On the other hand, these constitutional norms are still declarative and conditional in nature, so they do not directly regulate the mechanism for fulfilling MHA rights, particularly in the utilization of coastal areas. The nature of the norms in Article 18B paragraph (2) and Article 28I paragraph (3) is closer to an optional norm because its application depends on certain conditions, rather than an imperative norm that directly orders the fulfillment of rights. (Thontowi, 2015) Therefore, recognition of MHA must be translated into more operational sectoral regulations so that customary rights do not stop at the level of formal recognition, but become real protection and fulfillment.

From an agrarian perspective, Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) is an important basis for regulating MHA rights. UUPA was born as a milestone in the unification of national agrarian law based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Article 2 of UUPA affirms that land, water, and space are controlled by

the state for the greatest prosperity of the people. Article 5 of UUPA states that the agrarian law applicable to land, water, and space is customary law as long as it does not conflict with national interests and statutory regulations. ((Arizona, 2014) Within this framework, customary law is positioned as the basis for national agrarian law, not as a completely independent legal system outside of state law. (Arizona, 2014)

More direct recognition of MHA rights in the UUPA is found in Article 3, which recognizes customary rights and similar rights of indigenous communities as long as they exist in reality and their implementation does not conflict with the national interest. This norm is important because it provides the basis for recognizing MHA's collective rights to their living space. However, the UUPA does not explicitly regulate marine customary rights or the communal rights of coastal indigenous communities. The absence of technical regulations regarding marine customary rights creates an implementation gap, because coastal areas have different characteristics from mainland land. In coastal areas, MHA relationships are not only related to land, but also to the sea, fishing grounds, ritual areas, coastal resources, and ecosystems that support the lives of indigenous communities. Therefore, the UUPA provides a normative basis, but it is not yet sufficient as an operational instrument for fulfilling the rights of coastal MHA.

The history of colonial agrarian law reveals the root of the problem of state control, which tended to position space as an object of administration and investment. The Agrarian Law of 1870 and the principle of *domeinverklaring* made land that could not be proven to be owned by the state a domain. Masyrullahushomad & Sudrajat, 2019) In this context, the rights of indigenous peoples were easily subordinated because the colonial legal system prioritized the certainty of state control and the interests of capital. Criticism of this pattern emerged, among others, through Van Vollenhoven's idea of *beschikkingsrecht* as a recognition of the communal control rights of indigenous peoples. (Huma, 2025) The legacy of this thinking is relevant in reading the current issue of coastal space: if the state interprets areas that do not have formal evidence as claim-free spaces, then coastal customary areas have the potential to be allocated for investment without taking into account living customary law.

The most specific regulations regarding coastal areas are contained in Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands, which was later amended by Law Number 1 of 2014. Law Number 27 of 2007 was born with two main considerations, namely coastal areas and small islands as natural resources controlled by the state for the prosperity of the people, and as strategic areas with multi-sector uses. This law has recognized indigenous communities as coastal communities who have lived for generations in certain geographical areas due to ancestral ties, strong relationships with coastal resources, and value systems that determine economic, political, social, and legal institutions.

In Law Number 27 of 2007, MHA rights emerged through several provisions. Article 17 stipulates that the granting of Coastal Waters Business Rights (HP-3) must take into account the preservation of ecosystems, indigenous peoples, national interests, and the right of peaceful passage. Article 18 even opens up the opportunity for HP-3 to be granted to indigenous peoples. Article 21 paragraph (4) requires that the granting of HP-3 fulfill operational requirements in the form of recognition, respect, and protection of the rights of indigenous peoples and local

communities. Meanwhile, Article 28 places the conservation of coastal areas and small islands as an instrument for protecting certain indigenous areas, and Article 60 grants the community the right to manage coastal resources based on applicable customary law as long as it does not conflict with statutory regulations.

Although Law No. 27 of 2007 normatively accommodates indigenous peoples (MHA), the existence of the HP-3 scheme has drawn serious criticism. The HP-3 scheme is seen as potentially hindering access by coastal communities, traditional fishermen, and indigenous peoples to marine resources by opening up the opportunity for control of waters by investors or capital owners with greater technological capabilities and capital. Mahrus Ali, et al., (2020) The petition for judicial review of the law to the Constitutional Court subsequently resulted in Constitutional Court Decision Number 3/PUU-VIII/2010. The applicants' main objections included overlapping regulations, unclear concepts of rights, limited public participation, discrimination against indigenous peoples, excessive bias toward entrepreneurs, and the potential for legal eviction through compensation schemes. This decision is important because it emphasizes that coastal area management cannot be reduced to a mechanism for granting exclusive rights that blocks access for indigenous peoples and coastal communities.

The amendments through Law No. 1 of 2014 were a response to this criticism. This law shifted the approach to business activities towards location permits and management permits and strengthened the principle of community protection. Constitutional Court Decision No. 3/PUU-VIII/2010 also had the effect of reaffirming the state's control rights, namely policy-making, administration, regulation, management, and supervision in coastal area management. However, in academic studies, Law No. 1 of 2014 is still considered to not fully embody the traditional rights of MHA due to inconsistent terminology, the potential reduction of traditional rights, and tensions between the recognition of customary authority and the requirements for formal recognition. Yurista, 2016)

The most important article in Law Number 1 of 2014 is Article 21. This article states that the utilization of coastal waters and resources and the waters of small islands within the MHA area is the authority of the local MHA. This norm recognizes MHA as a subject with the authority to regulate, protect, and manage its coastal areas. However, this authority remains limited by national interests and laws and regulations. This means that MHA's authority is not absolute, but rather relative. Positively, these limitations are intended to maintain national integration and legal certainty. However, critically, the phrase "national interest" can become a space for unilateral interpretation by the state to override MHA rights when dealing with strategic projects, investments, or economic development.

Article 22 of Law Number 1 of 2014 is also important because it exempts MHA from the obligation to obtain permits for the utilization of coastal waters and resources as long as the MHA has been recognized in accordance with statutory regulations. This provision demonstrates the recognition of MHA's original rights. However, at the same time, this exception still requires prior formal recognition. Thus, MHA that are factually still alive but have not yet received administrative recognition remain in a vulnerable position. This is a major weakness in the regulation of the fulfillment of MHA rights: factual recognition is often

insufficient to protect rights when dealing with state licensing mechanisms. Article 60 of Law Number 1 of 2014 expands community rights in coastal area management. For MHA, the important rights regulated are the right to propose MHA areas to be included in the RZWP-3-K and the right to carry out coastal resource management activities based on customary law. In addition, communities have the right to access coastal waters that have been granted permits, the right to propose traditional fishing areas, the right to obtain benefits, the right to obtain information, the right to express objections, the right to report pollution or destruction, the right to sue in court, the right to obtain compensation, and the right to receive legal assistance and assistance. These provisions indicate that the fulfillment of MHA rights in coastal areas is not only related to territorial recognition, but also participation, access to information, access to justice, redress for losses, and protection from the impacts of development.

Another relevant regulation is Law Number 3 of 2024 concerning the Second Amendment to Law Number 6 of 2014 concerning Villages. Villages have a historical relationship with customary law communities because many villages in Indonesia grew from customary communities that have their own government systems, customary land, natural resources, and social institutions. The Village Law provides space for recognition of ancestral rights and customs as the basis for village authority. A village is defined as a legal community unit that has territorial boundaries and is authorized to regulate government affairs and the interests of the local community based on community initiatives, ancestral rights, and/or traditional rights recognized in the government system of the Republic of Indonesia. Ilham, et al., 2020)

In the context of fulfilling the rights of coastal MHA, the Village Law provides a basis for strengthening customary institutions, holding deliberations, managing resources based on local wisdom, and resolving disputes based on family values. Recognition of customary villages and their ancestral rights opens up space for MHA to maintain their social, cultural, and customary legal structures in village development. A study of the Village Law shows that village recognition is a manifestation of the implementation of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. ((Diamantina, 2016) In addition, village customary institutions can be used as a means of resolving disputes and protecting customary rights, especially in cases that are more appropriately resolved through deliberation and local mechanisms. (Diansyah, et al., 2021) However, this strengthening still requires synchronization with spatial planning and coastal management policies so that customary villages are not only recognized administratively but also have real management space.

Law Number 26 of 2007 concerning Spatial Planning is also an important instrument because the fulfillment of the rights of coastal Indigenous Peoples (MHA) is highly dependent on whether customary areas are recognized in spatial planning documents. In implementing spatial planning, the government is obliged to respect the rights of communities and customary law communities. This norm positions MHA as the subject of spatial planning, not merely an object affected by development. (MKRI, 2011) The implication is that the government is obliged to consider the existence of MHA in the preparation of the RTRW, include customary areas in spatial planning maps or zoning, and ensure that spatial utilization permits do not ignore customary rights.

Indigenous Peoples' rights in spatial planning include the right to participate in the preparation of spatial plans, the right to obtain spatial planning information, the right to file objections to spatial plans or spatial use permits that harm customary rights, the right to obtain adequate compensation, and the right to protection of spatial cultural identity. The obligation of Indigenous Peoples to comply with spatial plans must be read in a reciprocal manner: Indigenous Peoples are obliged to comply with spatial plans as long as their ancestral rights and customary territories are recognized and respected. In practice, many customary territories have not been included in the Regional Spatial Plan (RTRW). This is also evident in the context of North Lombok Regency, where the 2011-2031 North Lombok Regency RTRW and the draft 2021-2041 RTRW have not adequately accommodated the existence, territorial boundaries, functions of customary spaces, and living spaces of the Bayan Indigenous Peoples' Space. The absence of such regulations creates legal uncertainty and opens up potential conflicts between regional development and the sustainability of the indigenous community's spatial management system.

Law Number 32 of 2014 concerning Maritime Affairs provides a framework for marine management oriented towards sovereignty, sustainability, and prosperity. This law was enacted in response to the increasingly complex needs for marine spatial management, as Indonesia is an archipelagic nation with vast maritime territory. (Ministry of Communication and Investment, 2021) In the context of Indigenous Peoples (MHA), the Maritime Law is relevant because marine management cannot be separated from coastal communities, who depend on marine resources for their livelihoods and possess local ecological knowledge. Although the Maritime Law does not yet specifically regulate the mechanisms for marine customary rights, norms on sustainable marine management must be interpreted in line with the state's obligation to protect coastal indigenous communities. The main challenge is ensuring that marine management, marine spatial planning, and the blue economy do not neglect the access rights, cultural rights, and ecological rights of Indigenous Peoples (MHA).

Law Number 11 of 2020 concerning Job Creation has an impact on the regulation of Indigenous Peoples' (MHA) rights because it emphasizes regulatory simplification, accelerated licensing, and ease of investment. In the context of coastal communities, this regulation has two sides. On the one hand, simplified licensing can accelerate the development and management of the coastal economy. On the other hand, if not balanced with the protection of indigenous peoples' rights, accelerated investment can increase MHA's vulnerability to land conversion, licensing conflicts, and the neglect of local wisdom. Studies of the Job Creation Law indicate concerns about the protection of MHA rights in natural resource management. (Nadiyya et al., 2021) Therefore, every derivative policy of the Job Creation concerning coastal and marine permits must ensure consultation, information transparency, protection of indigenous peoples' access, and recognition of customary management areas.

Minister of Maritime Affairs and Fisheries Regulation Number 8 of 2018 concerning Procedures for Determining Indigenous Peoples' Management Areas in the Utilization of Space in Coastal Areas and Small Islands is a crucial technical regulation. This regulation governs the mechanism for determining Indigenous Peoples' management areas, including the recognition

of customary marine rights. Within the framework of rights fulfillment, this regulation bridges constitutional recognition and operational needs in the field. Through the determination of management areas, Indigenous Peoples' Management Areas provide a basis for maintaining fishing spaces, ritual spaces, local conservation areas, and coastal resources managed through generations. However, the effectiveness of this regulation depends heavily on the willingness of local governments to identify, verify, validate, and carry out participatory mapping, as well as the integration of customary management areas into spatial planning and zoning documents.

At the local level, North Lombok Regency Regulation No. 6 of 2020 concerning the Recognition and Protection of Indigenous Communities is a crucial instrument for the Bayan Indigenous Peoples and other indigenous communities in North Lombok. This regulation provides the basis for administrative recognition and protection of customary territories, natural resources, culture, and the environment. This regulation positions Indigenous Peoples as owners of ecological knowledge systems, not simply landowners. Indigenous Peoples have the right to file objections to activities that could potentially damage their customary territories, to file complaints about pollution, and to safeguard inherited ecological knowledge. However, this regional regulatory model still needs to be strengthened to prevent it from stopping at declaratory recognition. Recognition of Indigenous Peoples must be accompanied by the integration of customary territories into the RTRW (Regional Spatial Plan) and RZWP-3-K (Regional Spatial Plan), protection from permits that conflict with customary rights, and a mechanism for redress in the event of losses.

West Nusa Tenggara Provincial Regulation Number 11 of 2021 concerning the Recognition, Respect, and Protection of Indigenous Peoples Units strengthens the regional commitment to providing legal protection for Indigenous Peoples (MHA). This regulation is important because it emphasizes that MHA recognition is not solely a district/city matter but also part of provincial policy to protect cultural identity, customary territories, natural resources, and the collective rights of indigenous peoples. In the coastal context, this regulation can serve as a basis for harmonizing provincial and district policies, as well as spatial planning and zoning documents. The main challenge is ensuring that provincial and district regulations do not operate in isolation but rather form a unified protection system.

Based on all these regulations, it can be concluded that the fulfillment of Indigenous Peoples' (MHA) rights in the utilization of coastal areas has a fairly broad legal basis, ranging from the constitution, the Basic Agrarian Law (UUPA), the WP3K Law, the Village Law, the Spatial Planning Law, the Maritime Affairs Law, the Job Creation Law, Ministerial Regulation No. 8 of 2018, to the NTB and North Lombok Regional Regulations. However, the main problem lies not in the lack of normative recognition, but rather in the weak consistency, operationalization, and integration between regulations. Recognition of MHA still often relies on lengthy administrative procedures, while licensing and spatial planning policies can proceed more quickly than customary recognition processes. As a result, MHA may lose access to their living space before obtaining formal protection.

Therefore, regulations for the fulfillment of Indigenous Peoples' (MHA) rights in coastal areas need to be directed at three main agendas. First, strengthening the recognition of MHA as full legal subjects through a rapid, participatory identification and determination mechanism that does not delegitimize the factual existence of indigenous peoples. Second, integrating customary territories and customary management areas into the RTRW (Regional Spatial Plan), RZWP-3-K (Regional Spatial Plan), and spatial utilization permits so that customary rights are not only recognized but also serve as the basis for decision-making. Third, ensuring meaningful participation, access to information, access to justice, environmental protection, compensation, and legal assistance for MHA. Therefore, the fulfillment of MHA rights in the utilization of coastal space must be understood as a state responsibility to balance the interests of development, protection of cultural identity, ecological sustainability, and social justice.

## **2) Implementation of Fulfillment of the Rights of Indigenous Legal Communities in the Utilization of Space in Coastal Areas**

Coastal areas are vital living spaces for the survival of indigenous communities. In the context of indigenous communities, the coast is not only understood as the boundary between land and sea, but as a socio-ecological landscape that shapes the identity, economic system, cultural practices, and social structure of communities passed down through generations. Therefore, the fulfillment of the rights of indigenous communities in the use of coastal space must be placed within a broader framework, namely the protection of living space, ecological sustainability, cultural identity, and access to justice. Normatively, Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia recognizes and respects the unity of indigenous communities and their traditional rights. Various sectoral regulations, such as the Law on the Management of Coastal Areas and Small Islands, the Human Rights Law, the Forestry Law, the Village Law, and other related regulations also strengthen the legal position of indigenous communities. However, in practice, these regulations mostly stop at the phrase "recognition," while the dimensions of protection, advancement, and fulfillment of rights have not been concretely outlined in operational policies.

Indigenous communities have a multidimensional relationship with their land, sea, forests, and territories. Land and sea are not merely economic resources, but integral parts of their systems of life, belief, spiritual relationships, and social governance. Traditional rituals related to nature demonstrate that the living space of indigenous communities is inseparable from the identity and sustainability of their communities. Tania, 2002) Neglecting these relationships has damaged the fabric of life for indigenous communities, particularly when the state or business actors treat customary space as empty space that can be allocated for investment purposes. In many cases, indigenous communities have unique natural resource management practices, whether for land, forests, seas, or coasts, which have been passed down from generation to generation and embody the principle of sustainability. (KomnasHAM, 2016) Therefore, fulfilling the rights of indigenous communities is not sufficient merely by recognizing their status, but must also ensure that their living space, livelihoods, value systems, and customary management mechanisms continue to operate.

Empirically, the Bayan Customary Law Community in North Lombok Regency is a concrete example of an indigenous community that still maintains norms, institutional structures, and maritime traditions. The Bayan Customary Law Community is known as a long-standing customary community with strong social legitimacy. Literature on the Sasak and Wetu Telu communities indicates that the Bayan community has long historical and cultural roots. Budiwanti, 2000) Based on field findings, there are five kebekel (village) areas related to coastal indigenous communities: Sukadana, Barung Birak, Batu Gembung, Loloan, and Anyar. Of these five areas, some are facing challenges with shrimp pond development, while Kebekelan Anyar is facing the dynamics of Carik Port development. Although the development objectives are different, these five areas face the same problem: the suboptimal implementation of indigenous peoples' rights to coastal areas. (Interview, 2025)

The Bayan MHA still upholds the TUNAQ principle of caring for and utilizing natural and cultural resources. In coastal areas, the sea is not only an economic space, but also a spiritual and cultural space. Maritime traditions, fishing regulations, customary rituals, and certain prohibitions are evidence that the Bayan MHA has a living legal system. The relationship between indigenous peoples and natural resources is more accurately understood as a relationship of obligations rather than mere rights, because indigenous peoples have a moral responsibility to maintain the living space inherited from their ancestors. Arizona, 2009) In general, the rights of customary law communities include the right to control and manage customary territories and their natural resources, the right to govern themselves according to customary law, the right to run customary institutions, and the right to maintain identity, culture, belief systems, traditional wisdom, and native languages.(Interview, 2025)The Constitution does not specify the types of rights in detail, but the term “traditional rights” has become an umbrella term for recognizing the fundamental rights of indigenous peoples.

The implementation of these rights is evident in the customary law practices of the Bayan coastal indigenous people. One customary rule still widely recognized is the prohibition on catching marlin. This prohibition is based on the belief that marlin hold special significance in local cosmology. If a fisherman catches a marlin, a traditional ritual called "Asuh" must be performed. (Interview, 2025) This rule demonstrates that customary norms operate not solely through material sanctions, but also through moral, spiritual, and social ones. Furthermore, there is the philosophy of "Kemeleq Gumi Langit," the belief that every human action will be rewarded by the universe. This cosmological perspective demonstrates that the customary law of the Bayan MHA rests on ecological morality, a perspective that places humans as part of an ecological community and has an ethical responsibility to maintain the balance of nature. Teti, 2025) Within this framework, acts of environmental damage are not only administrative violations, but also moral violations of natural harmony.

The Bayan MHA also recognizes the concept of customary maritime boundaries called "Sepenggitaq," meaning "as far as the eye can see" from land. This concept relates to the scope of traditional fishing areas understood and used for generations. (Interview, 2025) Although not defined by quantitative measures like a formal national map, Sepenggitaq serves both a normative and operational function within indigenous communities. It serves as a collective

guideline for regulating community behavior in utilizing marine space, while simultaneously maintaining social order and the sustainability of coastal resources. Thus, TUNAQ, Kemeleq Gumi Langit, Sepenggitaq, the Asuh ritual, and the prohibition on catching marlin constitute living legal norms born from the community's need to maintain the sustainability of coastal space.

However, in recent years, indigenous communities have observed significant changes in the condition of the waters and fishing grounds. Several species of fish, such as the Bedah and Blanak fish, which were previously easily found in coastal areas, are now increasingly difficult to obtain. Fishermen state that they must travel farther out to sea than usual to catch their catch. These changes are believed to be related to the operation of shrimp farms along the coastline of the Bayan MHA area. (Interview, 2025) The impacts are not only a decline in catches, but also disruption to traditional fishing grounds and coastal ecosystems. Despite this, communities have not taken legal action or reported the impacts to the government or environmental agencies. This is not because they do not feel the impacts, but rather because they lack understanding of available legal mechanisms and lack the capacity to access dispute resolution institutions. This situation demonstrates the gap in access to environmental justice and the weak legal standing of indigenous communities vis-à-vis the government and investment activities.

Normatively, customary fishing rights and traditional fishing areas are closely related to the recognition of indigenous communities who rely on traditional fishing for their livelihoods. The state is obliged to protect the space, access, fishing methods, and the sustainability of the ecosystems on which indigenous communities depend. If customary fishing areas are not established in formal policy, indigenous communities face legal uncertainty when their fishing areas are disturbed by development or investment. In the case of the Bayan Indigenous Peoples Association (MHA), the Sepenggitaq concept should have served as the initial basis for recognizing customary fishing areas. However, because they have not been translated into formal instruments such as the RTRW (Regional Spatial Plan) or RZWP3K (Regional Planning and Planning for the Development of the Coastal Zone), these customary claims lack a strong standing within the state's legal system. Consequently, when fishing areas are disturbed, indigenous communities lack effective legal instruments to defend their rights.

An interview with the Head of the Maritime Affairs and Fisheries Office of West Nusa Tenggara Province revealed that the local government has not yet taken concrete steps to grant or fulfill the spatial rights of the Bayan Indigenous Peoples. The government's efforts through relevant agencies have been limited to distributing fishing gear to the Bayan community in coastal areas. The government argues that granting coastal spatial rights can only occur if the indigenous community has formal legal standing as an indigenous legal community, as stipulated in laws and regulations. (Interview, 2025) This view demonstrates the dominance of administrative logic in fulfilling indigenous peoples' rights. On the one hand, the Bayan MHA already socially possess a vibrant customary structure, norms, management areas, and management practices. On the other hand, the government is only willing to allocate space if a formal determination is made.

The process of recognizing the Bayan MHA itself has been proposed since 2020. Based on an interview with the Head of the Bayan MHA Customary Community in Kebekelan Sukadana, the verification and identification process has been completed, including documenting the history of origins, customary institutional structures, customary territories, customary legal practices, and the sustainability of customary norms. (Interview, 2025) Formal recognition through a regional head decree was only issued in December 2025. While this recognition is significant, research shows that it has not yet translated into operational rights fulfillment. The Bayan Indigenous Peoples Association (MHA) is still awaiting further action from the local government to translate normative recognition into concrete policies, particularly the legality of the territorial space they actually manage. Thus, there is a gap between *de jure* legal recognition and *de facto* rights protection.

This gap can be analyzed through the theory of legal pluralism. John Griffiths distinguishes between weak and strong legal pluralism. Weak legal pluralism occurs when non-state law, including customary law, is only recognized to the extent that it is legitimized by state law. (Griffiths, 1986) In contrast, strong legal pluralism holds that various legal systems can exist independently and equally in one social space. (Griffiths, 1986) In the case of the Bayan MHA, what is happening is weak legal pluralism. Bayan customary law is socially alive, but its legal effectiveness is highly dependent on state administrative recognition. This aligns with Franz von Benda-Beckmann's view that state law and customary law should not be placed in a hierarchy that subordinates customary law to the state, but rather should be understood as systems interacting within the same social space. (Beckmann, 1992)

Prior to formal recognition, the traditional rights of the Bayan Indigenous Peoples (MHA) existed in a legal vacuum. *De facto*, the community had long protected the sea and its customary territory; *de jure*, these rights remained unprotected due to the lack of formal recognition. Data from customary institutions and field information indicate that recognition of MHA communities in North Lombok only strengthened after the enactment of North Lombok Regency Regulation No. 6 of 2020 and the administrative process that led to the recognition of MHA. (BRWA, 2026) This demonstrates that the state acts as the arbiter of customary law's validity. As a result, customary recognition tends to be a mechanism of administrative control, rather than substantive respect for customary legal autonomy.

This situation can be described as administrative violence against customary law. This violence is not physical, but rather structural coercion through legal-bureaucratic procedures that require living laws to await formal recognition before they can operate effectively. During the application, verification, and determination processes, customary territories are vulnerable to exploitation by outsiders because they are not yet legally recognized as customary spaces. In the context of the Bayan Indigenous Peoples Association (MHA), protection of the Sepenggitaq fishing area or other customary norms is delayed because they must await ratification in state documents. As a result, customary resources can be exploited or converted through formal permits, while indigenous communities lack a strong legal standing to resist.

The fulfillment of the rights of the Bayan Indigenous Peoples also faces challenges due to interventions in spatial planning and investment permits. The Bayan community can be

understood as a semi-autonomous social field, as Sally Falk Moore put it: a social field capable of creating and enforcing its own rules, yet simultaneously influenced by external rules. Moore, 1973) The Bayan MHA has internal norms, rituals, social sanctions, and customary institutions that have proven effective in maintaining socio-ecological order. However, when state law enters through the RZWP3K (Regional Zoning System for the Development of Villages), shrimp farming permits, and investment policies, friction arises between customary and state rules. Moore explains that when external rules enter a semi-autonomous social sphere, a process of adjustment or friction will occur. Moore, 1973) In the case of Bayan, the state has not been able to align formal regulations with living customary law, resulting in overlapping authority and socio-ecological disorganization.

The RZWP3K Regional Regulation and coastal licensing policies are essentially intended to organize spatial planning in an orderly manner. However, if their development lacks the involvement of indigenous communities, these policies can become instruments for the commodification of coastal space. Civil society criticism of the RZWP3K indicates that coastal zoning has the potential to legalize the appropriation of coastal communities' living space if it does not provide sufficient space for local and indigenous communities. KIARA, 2026) In the context of North Lombok, plans to develop strategic areas, ports, tourism, and shrimp farms are putting pressure on ecosystems and traditional fishing grounds. Field findings indicate that the shrimp farms of PT. Sumber Marina Berkah and PT. Mentari Utama Indonesia in Bayan District have sparked community protests due to alleged pollution, reduced catches, and the shrinking of traditional fishing grounds. (Interview, 2025)

The entry of investment without adequate dialogue demonstrates a failure of communication between customary and state legal systems. From the government's perspective, formal permits serve as the legal basis for spatial utilization. Conversely, from the perspective of indigenous communities, coastal areas are not empty spaces, but customary spaces regulated through norms, social boundaries, rituals, and value systems. When state permits are granted without customary deliberation, communities experience normative confusion. Interviews with the Head of the Bayan Customary Community (Lang-lang Adat) indicate that some communities experience confusion in determining legal compliance when customary norms clash with state legal provisions. This situation weakens customary sanctions, erodes the authority of customary law, and triggers the disintegration of local values that have long been the foundation of Bayan social cohesion. (Interview, 2025)

Another impact is the weakening of environmental protection. State law assumes that permitting, monitoring, and environmental impact assessment (EIA) mechanisms are capable of controlling the impacts of business activities. However, in practice, oversight is often weak, community involvement is minimal, and ecological damage persists. Meanwhile, customary structures that previously served as ecological control mechanisms are weakened because their authority is not integrated into the formal licensing system. This demonstrates that the presence of state law does not automatically create order and can even create normative chaos when it does not communicate with customary law.

To address these issues, a reconstruction of the relationship between state law and customary law is necessary. Recognition of indigenous peoples (MHA) is not sufficient simply by issuing regional regulations or decrees; it must be followed by concrete fulfillment of their rights. First, coastal customary areas, including the Sepenggitaq fishing area, need to be mapped in a participatory manner and incorporated into the RTRW (Regional Spatial Plan) and RZWP3K (Regional Spatial Plan). Second, every permit to utilize coastal space must require consultation, customary deliberation, and meaningful consent from the affected MHA. Third, customary norms related to conservation, fishing prohibitions, rituals, and customary sanctions need to be recognized as instruments of environmental management. Fourth, local governments need to provide legal aid mechanisms, technical assistance, and access to complaints so that indigenous peoples can effectively defend their rights.

Constitutional Court Decision Number 3/PUU-VIII/2010 concerning coastal area management needs to be laid down as a constitutional basis to ensure the protection of the rights of coastal indigenous communities in every spatial utilization policy. (Hukumonline, 2026) The state must carry out active obligations, not only recognizing the existence of MHA, but also ensuring that their rights can be enjoyed in real terms. From the perspective of a state based on the rule of law, the rights of indigenous peoples must not be reduced to administrative requirements. Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia must be read as the basis for substantive protection of the right to life, cultural rights, the right to manage space, and the right to a healthy environment. John Locke's view on the social contract emphasizes that the state was formed to protect life, freedom, and property. (Yusdiansyah, 2010) In the context of coastal MHA, fishing grounds, customary territories, and traditional management practices are forms of communal "property" that must be protected by the state, not sacrificed by investment agendas.

Thus, the fulfillment of the rights of the Bayan Indigenous Peoples (MHA) in the utilization of coastal space has not been carried out substantively and structurally. Formal recognition has begun, but it has not been followed by the allocation of customary space in spatial planning, guaranteed protection of traditional fishing spaces, meaningful involvement in licensing, and easily accessible legal protection mechanisms. The law has not yet functioned as a means of justice because it has not proportionally protected the collective rights of indigenous peoples. The law also does not provide certainty because the boundaries and status of customary space have not been expressly outlined in operational policies. In terms of utility, existing regulations have not yet resulted in real protection for the living space, ecological sustainability, and welfare of the Bayan Indigenous Peoples. Therefore, the fulfillment of MHA rights in the utilization of coastal space must be directed from mere administrative recognition to substantive protection through the integration of customary law, participatory spatial planning, ecological protection, and effective access to justice.

Implementationally, the fulfillment of the rights of the Bayan Indigenous Peoples needs to be placed in measurable policy stages. The first stage is participatory validation of the socio-ecological boundaries of coastal customary areas, including Sepenggitaq, ritual points, traditional fishing areas, and areas impacted by shrimp ponds. The second stage is the

integration of the mapping results into regional spatial planning and zoning documents so that customary rights are not only socially recognized but also have administrative binding force. The third stage is the establishment of a customary consultation mechanism prior to the issuance of business permits in coastal areas. This mechanism must ensure that indigenous peoples receive sufficient information, are given the opportunity to express their agreement or objection, and receive protection in the event of pollution or reduced access to fishing areas. The fourth stage is the strengthening of customary institutions and legal assistance, so that indigenous peoples are not merely policy recipients but also partners with the government in coastal environmental monitoring. With these stages, the implementation of rights fulfillment does not stop at symbolic recognition, but moves towards legal protection that is operational, participatory, and socio-ecologically just.

## CONCLUSIONS AND SUGGESTIONS

### 1) Conclusions

- a) The regulation on the fulfillment of the rights of Indigenous Peoples in the utilization of space in coastal areas is limited to Law of the Republic of Indonesia Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands, namely regulated in Article 21 and Article 60 which regulates the granting of management rights to MHA and Regulation of the Minister of Marine Affairs and Fisheries No. 8 of 2018 concerning Procedures for Determining Management Areas of Indigenous Peoples in the Utilization of Space in Coastal Areas and Small Islands. The nature of granting rights to MHA based on these regulations is in the form of management with the terms and conditions that MHA has been determined by the government as MHA through a long process and these regulations are not sufficient because they only answer the aspect of initial normative recognition, but do not guarantee the fulfillment of rights operationally.
- b) Implementation of the fulfillment of Indigenous Peoples' rights remains weak due to policy inconsistencies, minimal recognition of customary territories in coastal spatial planning, and limited involvement of Indigenous Peoples in decision-making processes. This situation has limited legal certainty and protection of Indigenous Peoples' rights. Therefore, strengthening regulations and implementing integrative, participatory, and equitable policy practices is necessary to ensure the sustainable fulfillment of Indigenous Peoples' rights in coastal spatial management.

### 2) Suggestions

Current regulations contained in Law No. 1 of 2014 and Ministerial Regulation No. 8 of 2018 are still limited to aspects of normative recognition and the granting of management rights. Therefore, a more comprehensive regulatory formulation is needed, particularly those governing protection mechanisms, legal certainty for coastal customary areas, and guarantees of active participation of MHA in coastal spatial management. Furthermore, the involvement of indigenous communities needs to be placed as a crucial part of the planning, supervision,

and management of coastal spatial areas to ensure the realization of participatory, inclusive, and socially just policies.

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