


## Ulayat forest management based on customary law in the Tenganan Pegringsingan traditional village Karangasem Bali



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### ABSTRACT

*This study explores the application of the Village Customary Law called Awig-Awig in Tenganan Pegringsingan Village to manage the Ulayat Forest. The myth of Lelipi Lem Bukit is still believed to be a forest guard. A snake will peg the "Niskala" sanction for those who dare to commit theft of forest products. Meanwhile, "Skala" sanctions in the form of "fines" are given to those caught stealing forest products. The legal issue is how is the power of Awig-Awig in utilizing the Ulayat Forest in Tenganan Pegringsingan Village before state law. The method used is empirical legal research with an analytical approach, legislation, and customary law. Observation, Focus Group Discussion, and interviews obtained primary data. Secondary data was collected using documentation and recording techniques and analyzed by interpreting and qualitative techniques from the beginning until the Decree of the Minister of Environment and Forestry of the Republic of Indonesia No. SK.1546/MENLHK-PSKL/PKTH/KUM.1/2/2019 stipulates the Ulayat Forest of Pegringsingan Village as a Customary Forest, the regulation in the management and utilization of forest products is still based on Awig-Awig both as a regulatory and coercive rule. Obedience and observance of villagers are still very high because violations are scarce. Awig-Awig is a law that grows and is developed in the life of villagers in the ulayat village area, which is relevant to Von Savigny's thought, namely volkgeist and has a pliable and supple nature. The customary forest utilization model is relevant to Bentham's utility principle with several novelties.*

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## Introduction

Village administration in Bali has its uniqueness compared to other regions in Indonesia. In addition to the Official Village Government, there is also the Traditional Village Government, which used to be called *Adatrechtsgemeenschappen* or the customary law alliance. Each of these Village Governments has its authority without interfering with each other, so it is called duality in the government system. Traditional Villages take care of customs, traditions, and social and religious communities according to their Autonomous and Autonomous nature. Meanwhile, the Official Village takes care of its population administration as a citizen and as the lowest government to carry out government duties above it.

Another uniqueness of Traditional Villages in Bali, until now its existence is still being maintained by the community and regional government policies since 1979, namely the enactment of Law Number 5 of 1979 concerning Village Administration (UU 5/1979) which provides opportunities for the Balinese Government to choose whether to only register the Traditional Village as a Customary Law Alliance to become a Service Village following Law 5/1979 or maintain its existence. Bali at that time still chose to maintain the existence of Traditional Villages, so it was known that there was a duality of the Village Government system. The existence of this Traditional Village was later strengthened by the issuance of Regional Regulation (Perda) Number 06 of 1986 concerning the Position, Function, and Role of Traditional Villages as Units of Customary Law Community in Bali Province. In Article 1 letter e it is emphasized that the Traditional Village as a *Dresta* (regulations) Village is a unit of the Customary Law community in the Province

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of the Level I Region of Bali which has a unity of traditions and manners of the social life of the Hindu community from generation to generation in the ties of Kahyangan Tiga (Village Temples) which has certain areas and own assets and has the right to manage his household (Perda Bali 06/1986). This regional regulation has been reformed several times, namely first with Perda 03 of 2001 in conjunction with Perda 03 of 2003, then renewed with Perda no. 4 of 2019 concerning Traditional Villages in Bali.

The Traditional Village as a legal alliance and *Awig-Awig* as village customary law in Bali will be the only legal entity bodies that are still intact until now inherited from the 19 (Nineteen) Circles of Customary Law (*Adat Rechtskringen*) constructed by Van Vollenhoven. This study aims to provide coherent, correspondent, and functional information about the existence of *Awig-Awig* as village customary law which is still respected and obeyed in the equality of relations between God, Humans, and their natural environment as the living space of the community. Customary law is growing, which is able to adapt itself to the times with its technology because customary law is flexible and flexible. The existence of various cases or disputes in several Traditional Villages is more due to the incoherence of the culture of the customary law community and the policies of the Customary Prajuru in responding to changes in various state laws and demands for changes in socio-cultural values.

This research is also useful in the development and deepening of customary law science past and present and subsequently used as a reference in the traditional village government and national culture development in the traditional village as a living laboratory in forging the nation's character through education at the village level to strengthen its identity, so it is not easy to be used as objects and tools as a place to seek popularity for the sake of power through a political party or because interests are not as a necessity for the establishment of a traditional village as an alliance of customary law that has received recognition since the Dutch colonial rule in Indonesia. The results of this research as academic information can be used as a reference in the issuance of policies by the state so that traditional villages as legal alliances become strong and independent.

Another objective is to criticize the phenomena that interfere with the autonomous and automatic nature of traditional villages with various irrelevant or overlapping burdens within the framework of implementing government duties in the village by keeping in mind the duality of the village government system in Bali, namely, on the one hand, there is an official village or a *Keperbekalan* village, or *kelurahan* and on the other hand, there is a traditional village. Each of these villages has duties and authorities in accordance with prevailing laws and regulations which are oriented towards achieving prosperity for the community, either as villagers or as village manners.

One of the customary forests that are managed based on village customary law (*Awig-Awig*) is the customary forest as village *ulayat* in Tenganan Pegringsingan, Karangasem Regency. Its management was originally based on "Ulayat Rights" which was originally called "beschikkingrecht", namely the right to control, utilize and collect products from existing plants and hunt animals that live in customary forests as a result of the close and religiously magical relationship between the land and its alliance.

In the social forestry scheme as an implementation of the 2015-2019 National Medium-Term Development Plan, it is targeted that 12.7 million hectares of forest will be managed by the community through social forestry schemes, one of which is the Village Forest, which is a State forest managed by the community in rural organizations for the welfare of rural communities. itself. Titian stated that the village forest is intended to provide access to the community through village institutions in sustainably utilizing forest resources with the hope of improving the welfare of the local community in a sustainable manner (Titian, 2016). What is meant by customary forest is a forest located within the territory of customary law communities (Permen LHK No.P.17/MENLH/SETJEN/KUM.1/8/2020).

Forests in accordance with their status are divided into state forests and private forests. State forest status can be in the form of customary forest. This is emphasized by Article 5 paragraph 2 of the Law of the Republic of Indonesia Number 41 of 1999 concerning Forestry (UU 41/1999). Grammatically this provision means that customary forests are categorized as state forests. If it is related to the statement regarding the conditional recognition of customary law communities, namely as long as they still exist and their existence is recognized, it can be interpreted that the existence of indigenous peoples is very dependent on their strength in defending themselves. So if the Traditional Village as an alliance of customary law no longer exists, it can no longer be maintained, because it is very relevant to conduct research and analysis on the power of *Awig-Awig* as customary village law in managing their customary forest in the development of state law.

This study applies empirical legal research in the sense that it will explore the application of village customary law called *Awig-Awig* in customary forest management, especially in Tenganan Pegringsingan Village, Karangasem which is classified as Bali Aga Traditional Village because it still strongly maintains its customary law as a tradition. The problem approach uses customary law techniques that are coexistent with legislation as state law, analytical and case approaches. Data were collected using observation, interview, and focus group discussion techniques for primary data. Meanwhile, secondary data is collected using documentation and recording techniques using the file system (Suwitra, 2009). Then analyzed with hermeneutic and qualitative techniques.

## **Village Forest Management Rights Under State Law**

The Social Forestry Model launched by the Government of the Republic of Indonesia and one of which is in Bali is oriented to giving rights to local communities around the forest to utilize forest resources and at the same time burdened with the obligation to legally

conserve forests. The aim is to stop the theft of forest products by local communities by improving their welfare by providing legal access to the use of forest resources in a controlled and responsible manner.

The provision of legal access to the use of forest resources to local communities around the forest is stated in the Minister of Environment and Forestry Regulation No. P.83/MENLHK/SETJEN/KUM.1/10/2016 concerning Social Forestry known as Village Forest Management Rights (referred to as HPHD), namely management rights in protected forest areas or production forests granted to village institutions (Permen LHK P.83/MENLHK/SETJEN/KUM.1/10/2016). The Governor of Bali then followed up by issuing Governor's Decree Number 2017/03-L/HK/2015 concerning Granting of Village Forest Management Rights in Protected Forest Areas of  $\pm$  3,041 Hectares to 7 (seven) Village Institutions in Buleleng Regency. The rights of the Village Institution include managing Village Forest Work Areas in the form of area utilization, utilization of environmental services, and collection of Non-Timber Products (NTPPs) according to the Work Plan, obtaining assistance, and obtaining facilitation in the management of Village Forests (Keputusan Gubernur Bali Tanggal 30 Oktober 2015 Nomor 2017/03-L/HK/2015).

Village Institutions in implementing HPHD in forest areas have the following obligations:

- i. implement boundary demarcation of Village Forest Management Rights.
- ii. draw up a Village Management Plan.
- iii. carry out forest protection in the Village Forest work area and its surroundings.
- iv. carry out the rehabilitation of village forest work areas.
- v. carry out planting and other activities according to the work plan.
- vi. carry out plant cultivation in accordance with site conditions and applicable laws and regulations.
- vii. carry out the administration of forest product utilization in accordance with the prevailing laws and regulations; and (8) make a village forest management report.

Regulation of the Minister of Forestry of the Republic of Indonesia No: P.89/Menhut-II/2014 (Permenhut P.89/2014) Regarding Village Forests seems to provide opportunities for village communities to manage forests in the village to improve the welfare of local communities sustainably and ensure maintaining environmental sustainability. This opportunity should be interpreted properly and correctly in order to be able to provide the greatest benefit for prosperity, especially for local communities.

A village forest is a state forest managed by the village and used for village welfare. Meanwhile, Village Forest Management Rights (referred to as HPHD) are management rights in protected forest areas or production forests that are given to village institutions, namely village community institutions in charge of managing Village Forests. In "Government Regulation (PP) No. 43 of 2014 concerning Implementing Regulations of Law No. 6 of 2014 concerning Villages" stated that village community institutions were formed on the initiative of the Village Government and the community (Article 150 paragraph 1). The duties are as follows:

- i. empowering the Village community.
- ii. participate in development planning and implementation.
- iii. improve village community services (Article 150 paragraph 2).

The formation of Village Institutions is regulated by Village Regulations. The Village Institution that manages the Village Forest can be in the form of a cooperative or a local village-owned business entity. The form of business entity developed as a Village Institution that manages Village Forests currently in 7 (seven) Village Institutions as the holder of Village Forest management permits in Buleleng is "Village-Owned Enterprises" known as BUMDes or BUMDesa, such as BUMDes Wahana Karya Sudaji Village, Sawan District.

The village referred to in the Minister of Forestry and Environment Regulation is a village according to Law Number 6 of 2014 concerning Villages (Village Law). In the context of the duality of the village government system in Bali, it is known as the Official Village/Administrative Village. In Article 1 point 1 it is formulated that what is meant by Village is a village and traditional village or what is called by another name, hereinafter referred to as Village, is a legal community unit that has territorial boundaries that are authorized to regulate and manage government affairs, the interests of the local community based on community initiatives, rights of origin, and/or traditional rights that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia (UU 6/2014).

BUMDes as a Village Institution that is awarded the authority to manage and utilize village forests through Village Forest Management Rights is not found in Tenganan Pegriingsingan Village, Karangasem. Even though there is an official village government, it has never been appointed to prepare its village institutions such as in 7 (seven) villages in Buleleng as holders of Village Forest Management Rights. However, the activities of village communities, especially those who work as farmers, are used to collecting non-timber forest products such as *Terep*, *Pangi*, Durian, Banana, Jackfruit, and fruits that grow in customary forests.

From the observations and interviews results, it can be revealed that the right to manage the forest as *ulayat* of Tenganan Pegriingsingan Village is not carried out by the Village Institution which is often known as BUMDes and is not based on the Decree of the Governor of Bali but is based on Awig-Awig Desa as Village Customary Law in Tenganan Pegriingsingan. Can it be interpreted that the local community is against the Governor's Regulation? Appropriate approach and interpretation techniques are needed so

that there are no multiple interpretations of one of the provisions in social forestry that are welfare-oriented on the one hand and on the other hand oriented to participate in and be responsible for the existence of forests in the village environment.

### ***Ulayat Forest Management in Customary Law (Awig-Awig)***

In comprehending customary law as a law that grows and develops in customary law communities known as "Custom Villages" in Bali, it is relevant to refer to Van Vollenhoven's thoughts conveyed in his oration on October 2, 1901, which emphasized that: to know the law, the main thing that needs to be investigated is the nature and composition of the legal alliance bodies, where people who are controlled by the law live daily whenever and wherever it is (Surojo Wignjodipuro, 1979). This statement implies that the existence of a community's customary law is highly dependent on the presence or absence of its legal alliance as a legal supporter. Therefore, to be able to know the Balinese customary law, better known as awig-awig properly and correctly, knowledge of the legal alliance body known as the "Customary Village" becomes very important and essential. If customary law in Bali is still respected and obeyed in the lives of its people, it can be interpreted that all of this is due to the strength of the legal alliance body known as the Traditional Village.

Another very relevant thought is the conception conveyed by Ter Haar about customary law communities (*adatrechtsgemeenschap*) which emphasizes that customary law communities are referred to as a group of people who are organized, permanent in nature, and have the power and authority to manage their wealth in the form of objects, both visible and invisible (material and immaterial) (Otje Satman Soemangdiningrat, 2002).

Customary law communities are autonomous customary community units in which they regulate their life systems (law, politics, economics, and so on), besides that they are *otohton*, which is a customary law community unit that was born/formed by the community itself, not formed by power. others, for example, the village unit and its LKMD (Village Community Resilience Body). Now it is no longer fully autonomous and apart from the process of integration into the unity of the nation-state life organization on a large scale and national format

The issuance of the Village Law initially gave rise to various interpretations of the term village and traditional village as used in the formulation of Article 1, namely: "Village is a village and traditional village or what is called by another name, hereinafter referred to as Village..." thus giving the impression that the Traditional Village in Bali as regulated in a regional regulation can be recognized as the same as a village regulated in the Village Law, especially in the provision of "Village Funds" from the APBN (State Budget) of at least 1 (one) billion rupiah every year if it is registered according to the mandate of the said Village Law. Meanwhile, the meaning it contains is not equated to Official Villages and Traditional Villages as in Bali, which is known as the duality of the government system in Bali. The formulation of Article 1 with the term "customary village and village" is intended to remain in the corridor of "Desa Dinas", but may use the term "Village or Traditional Village". The word "and" is meant in terms of the freedom of choice in each Regency/City, that from the number of villages owned, they can choose the terms village and adat village for villages that were formerly administrative villages. So, in the form of an offer given by the State through the legislators in using the terms of the two available options according to the will of the people who will be proposed by the Regency/City. Whichever term village is chosen as the name of the village remains in the corridor of the Dinas/Administrative Village, because whichever term is chosen is called "village" like the concept in the Village Law. It is important to reaffirm this thought by remembering that in Bali there was a scene with the issue of "village registration". Meanwhile, the term traditional village used in the provisions of Article 1 of the Village Law is very different from the term Traditional Village which has been known as a customary law alliance (*adatsrechgemenschap*) whose regulation is regulated in a Regional Regulation (Perda) of Bali Province, which begins with the issuance of Regional Regulation No. 06 of 1986, Regional Regulation No. 3 of 2001 in conjunction with Regional Regulation No. 3 of 2003, and in 2019 the issuance of Regional Regulation No. 4 of 2019 concerning Traditional Villages in Bali (Perda 4/2019) as a replacement for the previous Regional Regulation. So, the concept of the village in the Village Law is intended to refer to the existence of an Official Village/Administrative Village. Meanwhile, the concept of a traditional village in the province of Bali refers to the local regulation on traditional villages which were developed from traditional villages. The persistence of the Traditional Village in providing answers to the presence of the Village Law which can be referred to as "hurricane volume II" started from the birth of an agreement between the Executive and Legislative in the meeting of the House of representative of Denpasar City to maintain duality in the village government system in Bali after hearing a study from Team 8 (eight) results of consultation with the Ministry of Home Affairs in Jakarta on January 8, 2015.

Considering the concept of the traditional village in Perda 06/1986, it can be understood that the customary village is a unitary community of customary law that exists within the ties of a unitary tradition and manners which are used as a regulation of living in the identity of Hindus in their *ulayat* areas which are autonomous and *otohton*. This concept also wants to emphasize the recognition of the existence of differences in customs and habits from one traditional village to another. The existence of these differences is one of the identities of the custom itself. This difference by Kosnoe is called the *desa*, *kala* and *patra* (Koesnoe, 1979). Efforts to unify customary law or make customary law equal (*awig-awig*) in all traditional villages in Bali are totally wrong and contradictory thoughts and are not productive when directed to efforts to strengthen traditional villages which are always used as a political language by politicians to seek sympathy for traditional village members.

The concept of the traditional village has not changed by the issuance of the Bali Provincial Regulation No. 3 of 2001 in conjunction with No. 3 of 2003 concerning *Pakraman* Village. It's just that there was an alternation in the term *Pakraman* Village which was previously used as the term Traditional Village in Perda 06/1986. With the issuance of Regional Regulation 4/2019, the term Traditional Village is used again. Traditional Village is defined as a unit of customary law community in Bali which has territory, position, original structure, traditional rights, own assets, traditions, manners of community life from generation to generation in the bonds of sacred places (*kahyangan Tiga or kahyangan desa*), duties and authorities as well as the right to regulate and manage their own household. So substantially there is also no change in concept. It's just that there is no statement from the Hindu community. It was also found that there were additional statements such as duties and authorities as well as the right to regulate and manage which could be duplication with "the right to take care of their own household. So, in the formulation of the concept, it can be stated that the concept of the traditional village in the previous regional regulations such as Perda 06/1986 and Perda 3/2001 jo 3/2003 was shorter, concise, and clear. All of this is an implication of prestige that politicians, both executive and legislative, should bet on the work in the form of regional legal products, whether only oriented to populist interests or really as a necessity according to the study that underlies the preparation and publication of Local regulations known as Academic Papers as standards of content, processes, and results.

Apart from the orientation of each party in the issuance of Perda 4/2019, further tasks are the domain of academics in criticizing it which is oriented towards the Vision, namely "strengthening" Traditional Villages as a legal alliance which since the beginning of the Dutch Colonial government has always been faced with the vortex of power and challenge in maintaining its existence. This condition continued until the era of independence, the Old Order (Orla), the New Order (Orba), the Reformation, and Post-Reformation Era or the Industrial Revolution Era (4.0 to 5.0).

The model of customary forest management and utilization based on customary law (*Awig-Awig*) and local wisdom, will be analyzed in several theories, such as justice, benefit, and authority theory. In Aristotle's view, justice is designed as a virtue related to human relations. Fair can be interpreted according to law, and what is comparable, that is, what should be. A person is declared unfair if he takes more than what is his right, regardless of the law. In line with Notohamidjoyo's thoughts on social justice in the conception of the Indonesian nation. Justice is an assessment by giving to anyone according to what is their right, namely by acting proportionally and not violating the law. Social justice demands that humans live properly in society (*Awig-Awig Desa Adat Tenganan*, 2015).

From Aristotle's thought, the relevant reference is to the statement "not taking more than what should be his right". This statement is very relevant to coexist with the meaning of justice in the sense of the ability to provide protection or protection, especially to the rights and authorities of customary villages in the management of customary forests which are now referred to as customary forests as part of state forests. This thought also cannot be separated from the aspect of obligations that must be considered in exercising rights and authority so as to create an equal relationship between humans and humans, humans and nature, and humans and God (*Ida Sang Hyang Widi*) as the supreme creator who has given the gift of the forest.

Villagers as the owners and cultivators who manage the lands in the ulayat environment of Tenganan Pegringsingan Village have always been obedient in carrying out the profit-sharing agreement on their cultivated land, although until now it has not been made in writing. The profit-sharing model is still valid. As for the types of plants or fruits that can be taken from customary forests, such as *Pengi*, Hazelnut, *Tehep*, Banana, Coconut, Durian. As for the wood products, they can be in the form of Jackfruit Wood, *Tehep*, *Pangi*, Durian, Coconut, Jaka, namely, as in the following table:

**Table 1:** Type of land, plant/fruit and profit sharing

No	Type of land	Type of plant /fruit	Profit-sharing
1	Moor/Garden/Dry Land	Fallen of <i>Pangi</i> , <i>Tehep</i> , Jackfruit, hazelnut	Collectors right
		Banana	
		Coconut	1 cultivator: 3 Owner/Village
		Durian	1:1 or 50:50
		Tuak/Nira (wine)	1:1 or 50:50
		Timber Forest Products (Cempaka, Durian, <i>Tehep</i> , <i>Pangi</i> , hazelnut, Jaka) that are Old/Dead	Can be used for buildings after obtaining permission from the Village
2	Rice field/Wet land	Rice	1:1 or 50:50
		Palawija (secondary plant)	1/3 Cultivator: 2/3 Owner/Village

It is a Relevance to the theory of "Utility" from Bentham which puts benefit as the main goal of the law. Usefulness is defined as happiness. So, whether a law is good or bad, depends on whether the law gives happiness to humans or not. This happiness should

be felt by every individual. But if it is impossible to achieve (and certainly impossible), it is strived for that happiness to be enjoyed by as many individuals in the society (nation) as possible (the greatest happiness for the greatest number of people) (Dardji Darmodiharjo dan Sidharta, 1996). Jeremy Bentham's Principle of Utility is to produce pleasure, goodness, or happiness or to prevent harm from occurring. In the management of customary forests, it appears that there is a coexistence between the economic benefits obtained by the community around the forest or indigenous peoples and that the customary forest is preserved by referring to the Tri Hitakarana philosophy. This balanced relationship is regulated in Awig-Awig which is still respected and obeyed.

In a previous study by Karidewi et al, it was stated that *Awig-awig* as a village customary law in Tenganan Pegringsingan is still effective until now even though violations of this rule have occurred previously and can still be found, but apart from the number of violations being relatively small, the violations do not disturb the local forest ecosystem (Karidewi dkk, 2012).

From the theoretical aspect of authority, customary forest management rights as village ulayat initially became the full authority of the traditional village in accordance with the autonomous and autohton nature of the traditional village. However, after the issuance of various laws and regulations in the forestry sector, this authority can be attributive and delegative. Attributive is observed from the appointment of management rights through social forestry, while delegative by paying attention to the model of granting permits from the Governor. For the determination of the Traditional Forest of the Tenganan Pegringsingan Traditional Village, it is only based on the Decree of the Minister of Environment and Forestry of the Republic of Indonesia No. Decree. So, it is more of an attributive authority, because this right to management is based on customary rights based on awig-awig. In previous research, it was found that the Tenganan Pegringsingan Traditional Village was able to maintain the preservation of its ulayat environment, including the forest in it (I Ketut Kasta Arya Wijaya dkk, 2018).

The management and utilization of Customary Forests which consist of 226 hectares are designated as Protection functions and 365 hectares with Production functions carried out based on local wisdom and laws and regulations indicating the existence of coexistence between customary law and state law in the management and utilization of customary forests. This stipulation does not seem to change the pattern of utilization of customary forest which since 2019 has been called customary forest since the first based on *Awig-Awig*. So *Awig-Awig* and the commitment of the Customary Village and Official Village Leaders have a central role in maintaining customary forests and managing and using them with a profit-sharing pattern for the empowerment of local communities.

The stipulation of customary forests in the protection and production functions is only an affirmation of the state of the real conditions of the traditional forest management and utilization model by the people of the Tenganan Pegringsingan Traditional Village as "Krama Desa (village members)" which from the beginning was oriented to "proper" use with a goal on the one hand. Economic benefits are obtained from a welfare perspective, and on the other hand, forest environmental sustainability benefits are obtained from a conservation perspective through the inherent supervision of villagers.

## Conclusion

Since the issuance of the Decree of the Minister of Environment and Forestry of the Republic of Indonesia No. SK.1546/MENLHK-PSKL/PKTHA/KUM.1/2/2019, Forests that are managed and utilized based on customary rights in the Tenganan Pegringsingan Traditional Village are called Customary Forests. In this decree, it is also emphasized that management and utilization are based on local wisdom and statutory regulations. So, there is an acknowledgment of the power of customary law known as *Awig-Awig Desa Adat* as a customary law alliance body. The stipulation of Customary Forest as a form of Social Forestry has just been carried out on the Traditional Forest of Tenganan Pegringsingan Village which is also a Role Model in the management and utilization of customary forest by the Awig-Awig-based Traditional Village.

Several legal principles such as ethical principles in the form of honesty and propriety, communal religious, and benefit-oriented justice in communal bonds need to be observed and maintained to make the management and utilization model of customary forests role models in achieving its main goal, namely improving the welfare of local communities around forests, and forests can be preserved sustainably for the needs of future generations.

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