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Legal Protection and Equitable Carbon Benefit Sharing for Customary Forest Holders in Forestry Carbon Trading

Muslim Lobubun[1*]

[1*] Institut Cinta Tanah Air, Indonesian

Correspondence

Muslim Lobubun, Institut Cinta Tanah Air Indonesia. JL. Petrus Kafiar Kel. Brambaken, Kec. Samofa, Kab. Biak Numfor, email: m.lobubun@gmail.com

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Original Article

Abstract

This study analyzes legal protection and equitable carbon benefit sharing for customary forest holders within forestry-sector carbon trading under Presidential Regulation No. 98 of 2021 and Minister of Environment and Forestry Regulation No. 7 of 2023. It employs normative legal research using statutory, conceptual, and case approaches. The findings show that customary law communities holding a formal determination of customary forest status are recognized as actors in carbon trading, although such protection operates through conditional inclusion due to reliance on administrative formalization. Furthermore, tenure rights over customary forests do not automatically confer ownership of tradable Carbon Units. Regarding benefit sharing, current regulations mandate free, prior, and informed consent (Padiatapa), agreed benefit-sharing plans, reporting, evaluation, and grievance mechanisms, yet fail to establish substantive parameters to evaluate equitable distribution. To ensure comprehensive legal protection and substantive justice, this study proposes a rights-and-contribution-based carbon benefit-sharing framework built on four core parameters: recognition, consent, contribution, and distribution.

Keywords: *carbon trading; customary forest holders; legal protection; benefit sharing; Padiatapa; distributive justice.*

Abstrak

Penelitian ini menganalisis perlindungan hukum dan pembagian manfaat karbon yang adil bagi pemegang hutan adat dalam perdagangan karbon sektor kehutanan berdasarkan Peraturan Presiden Nomor 98 Tahun 2021 dan Peraturan Menteri Lingkungan Hidup dan Kehutanan Nomor 7 Tahun 2023. Penelitian menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, dan kasus. Hasil penelitian menunjukkan bahwa masyarakat hukum adat pemegang penetapan status hutan adat telah diakui sebagai pelaku dalam perdagangan karbon, tetapi perlindungan hukum dan akses tersebut bersifat conditional inclusion karena sangat bergantung pada formalisasi administratif. Selain itu, hak atas hutan adat tidak otomatis melahirkan kepemilikan atas Unit Karbon yang siap diperdagangkan. Dalam aspek pembagian manfaat, regulasi telah mewajibkan Padiatapa, rencana pembagian manfaat yang disepakati, pelaporan, evaluasi, dan mekanisme pengaduan, namun belum menetapkan parameter substantif untuk menilai keadilannya. Untuk menjamin perlindungan hukum dan keadilan substantif, penelitian ini menawarkan konstruksi rights-and-contribution-based carbon benefit sharing melalui empat parameter utama: pengakuan, persetujuan, kontribusi, dan distribusi.

Kata kunci: *perdagangan karbon; pemegang hutan adat; perlindungan hukum; pembagian manfaat; Padiatapa; keadilan distributif..*

1. INTRODUCTION

Carbon trading no longer functions solely as an instrument for climate change mitigation. Its development has created an economic mechanism that gives rise to legal relationships concerning control, stakeholder participation, transactions, and the distribution of benefits derived from reductions in or removals of greenhouse gas emissions. This legal configuration was established under Presidential Regulation No. 98 of 2021 concerning the Implementation of Carbon Economic Value Instruments and National Greenhouse Gas Emissions Control. Under this regulatory framework, carbon trading is positioned as part of the implementation of Carbon Economic Value (Nilai Ekonomi Karbon, NEK). Carbon is therefore no longer associated solely with ecological interests but also carries economic and legal dimensions, as verified emission reductions or removals may be converted into Carbon Units that can subsequently be traded.[1]

The legal complexity becomes more pronounced when mitigation actions are implemented in forest areas that have historically and socially constituted the living territories of customary law communities. For these communities, forests are not merely resources with economic value. They form an integral part of customary territories that sustain the social, cultural, and spiritual life of the community and its continued existence across generations. This relationship is constitutionally grounded in Article 18B(2) and Article 28I(3) of the 1945 Constitution of the Republic of Indonesia *(Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, UUD NRI 1945).* In the forestry sector, the legal status of customary forests was further affirmed by Constitutional Court Decision No. 35/PUU-X/2012, which held that customary forests are not part of state forests but are forests located within the territories of customary law communities. Consequently, any use of such areas for carbon-related economic activities must be grounded in the legal protection of customary forest holders.[2]

The regulation of this relationship became more concrete with the issuance of Minister of Environment and Forestry Regulation No. 7 of 2023 concerning Procedures for Carbon Trading in the Forestry Sector. This framework expressly recognizes customary law communities holding a formal determination of customary forest status as actors in forestry-sector carbon trading. At the same time, customary forests are designated as one of the eligible areas in which mitigation actions generating tradable carbon may be implemented. This regulatory setup shifts customary forest holders from their previous position, in which they were often treated as affected parties, toward legal subjects normatively entitled to participate in carbon economy governance.

This recognition, however, is subject to specific administrative requirements. Minister of Environment and Forestry Regulation No. 7 of 2023 does not automatically confer direct market actor

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1 F. F. Valentika and Bambang Eko Turisno, "Integrasi Inovasi Keuangan Dan Kebijakan Lingkungan Dalam Bursa Karbon: Tinjauan Hukum Dan Praktik Terbaik Di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 6, no. 3 (2024): 479–97, https://doi.org/10.14710/jphi.v6i3.479-497; Nikmah Mentari et al., "Implementasi Pengaturan Perdagangan Karbon Di Indonesia Dalam Perspektif Investasi Hijau Dan Konstitusi Ekonomi," *JATISWARA* 39, no. 3 (2024): 283–94, https://doi.org/10.29303/jtsw.v39i3.710.

2 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Article 18B(2) and Article 28I(3); Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 35/PUU-X/2012 Tentang Pengujian Undang-Undang Nomor 41 Tahun 1999 Tentang Kehutanan Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.; Wahyu Nugroho, "Konstitusionalitas Hak Masyarakat Hukum Adat Dalam Mengelola Hutan Adat: Fakta Empiris Legalisasi Perizinan," *Jurnal Konstitusi* 11, no. 1 (2016): 109, https://doi.org/10.31078/jk1116.

status on every community that factually maintains customary forests. Such access is granted only to customary law communities that have obtained a formal determination of customary forest status (e.g., through procedures under Minister of Environment and Forestry Regulation No. 9 of 2021). This requirement creates a legal structure of conditional inclusion, where legal protection and direct economic access to carbon trading depend heavily on state administrative formalization. Communities that continue to exist in practice and conserve their forests, but have not completed the formal administrative process for customary forest determination, face potential barriers to accessing direct carbon trading mechanisms.[3]

A further critical issue concerns the distribution of economic benefits generated by carbon trading. Current regulations require project design documents to include community participation, a carbon benefit-sharing plan agreed upon with the community, and compliance with free, prior, and informed consent (Padiatapa/FPIC), supported by reporting, evaluation, and grievance mechanisms. Nevertheless, the requirement to establish a benefit-sharing agreement is not, in itself, sufficient to guarantee equitable carbon benefit sharing. Existing regulations do not yet establish substantive parameters governing the proportionality of benefits, criteria for assessing ecological contributions, or standards for ensuring equal bargaining power during negotiations.

Previous studies have examined several dimensions intersecting with these issues. Muazzin (2015) and Azaria et al. (2023) highlight the vulnerability of indigenous rights in carbon mechanisms and the necessity of FPIC/Padiatapa. Nugroho (2016) and Perbawati et al. (2023) analyze the bureaucratic constraints surrounding the formal legal recognition and determination of customary forests. Meanwhile, Prihatiningtyas et al. (2023) and Mentari et al. (2024) emphasize ecological justice and rights-based approaches to green investment. However, these studies have not systematically conceptualized the integrated relationship among legal protection for customary forest holders, Padiatapa, ecological contribution, and equitable benefit-sharing mechanisms under the legal configuration of Presidential Regulation No. 98 of 2021 and Minister of Environment and Forestry Regulation No. 7 of 2023.[4]

To address this research gap, this study proposes a rights-and-contribution-based carbon benefit-sharing framework. This framework links four core parameters: recognition, consent, contribution, and distribution. Together, these parameters serve to evaluate whether customary forest holders are genuinely treated as rights-bearing stakeholders whose benefits reflect both their legal rights and their ongoing contributions to forest conservation.

2. RESEARCH METHODOLOGY

This study employs normative legal research using statutory, conceptual, and case approaches. The primary legal materials comprise the 1945 Constitution of the Republic of Indonesia *(Undang-*

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3 Candra Perbawati et al., "Progressive Law and Legal Discourse on the Determination of Customary Forests," *Fiat Justisia: Jurnal Ilmu Hukum* 17, no. 1 (2023): 17–30, https://doi.org/10.25041/fiatjustisia.v17no1.2815;

4 Nikmah Mentari et al., "Implementasi Pengaturan Perdagangan Karbon Di Indonesia Dalam Perspektif Investasi Hijau Dan Konstitusi Ekonomi," *JATISWARA* 39, no. 3 (2024): 283–94, https://doi.org/10.29303/jtsw.v39i3.710; Rizky Winda Salsabilla et al., "The Principle of Free, Prior, and Informed Consent in Preventing Deforestation in Indigenous Forests," *Hang Tuah Law Journal* 10, no. 2 (2024), https://doi.org/10.30649/htlj.v9i2.301.

Undang Dasar Negara Republik Indonesia Tahun 1945, UUD NRI 1945) and legislation governing forestry, environmental protection, and carbon trading, particularly Presidential Regulation No. 98 of 2021and Minister of Forestry Regulation No. 7 of 2023, as well as Constitutional Court Decision No. 35/PUU-X/2012. Secondary legal materials consist of books, journal articles, and relevant research findings addressing the subject matter of the study. All legal materials were collected through literature and document review. The materials were analyzed qualitatively and prescriptively by identifying and harmonizing the relevant legal provisions and interpreting the legal norms governing the research subject. The analysis seeks to identify regulatory gaps and formulate an equitable framework for carbon benefit sharing for customary law communities based on four parameters: recognition, consent, contribution, and distribution.

3. RESULT AND DISCUSION

3.1. The Legal Construction of the Status of Customary Law Communities in Carbon Trading and Carbon Benefit Sharing

3.1.1. Transformation of the Status of Customary Law Communities as Subjects of Carbon Trading

The legal status of customary law communities in carbon trading must first be understood in light of their legal relationship with customary forests as the territories in which mitigation actions are undertaken. The constitutional basis for this relationship is found in Article 18B(2) and Article 28I(3) of the 1945 Constitution of the Republic of Indonesia, which recognize customary law communities and their traditional rights. Within the forestry legal framework, this construction was further affirmed by Constitutional Court Decision No. 35/PUU-X/2012, which removed customary forests from the category of state forests. The Constitutional Court characterized customary forests as an integral part of customary tenure *(hak ulayat)* territories, reflecting the recognition of customary law that remains living within the community. Accordingly, when customary forests are used as sites for mitigation actions, the relationship between customary law communities and those areas cannot be equated with the relationship of the general public to state forests.[5]

The participation of customary law communities in carbon trading should therefore not be understood merely as a form of state-sponsored empowerment. Their participation is connected to their status as rights holders over the territories from which ecological benefits are generated. Previous studies have likewise recognized customary law communities and forest-dependent communities as important actors in the implementation of REDD+ and carbon trading. Particular emphasis has been placed on the application of free, prior, and informed consent (FPIC) and on communities' rights to participate in the use, management, and conservation of resources associated with their territories. This status is significant because carbon-market activities in customary forests take place within territories that have long been embedded in legal, social, and ecological relationships with customary law communities.[6]

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5 Undang-Undang Dasar Republik Indonesia Tahun 1945 (1945) Article 18B(2) and Article 28I(3); Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 35/PUU-X/2012 Tentang Pengujian Undang-Undang Nomor 41 Tahun 1999 Tentang Kehutanan Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.; Nugroho, "Konstitusionalitas Hak Masyarakat Hukum Adat Dalam Mengelola Hutan Adat."

6 Rizky Winda Salsabilla et al., "The Principle of Free, Prior, and Informed Consent in Preventing Deforestation in Indigenous Forests"; Muazzin, "Perlindungan Hak Masyarakat Hukum Adat Dalam Kegiatan REDD+," *Kanun: Jurnal Ilmu Hukum* 17, no. 2 (2015): 277–302; Davilla Prawidya Azaria et al., "Indigenous People Environmental Rights

A significant change in the national legal framework occurred with the entry into force of Presidential Regulation No. 98 of 2021concerning the Implementation of Carbon Economic Value Instruments and National Greenhouse Gas Emissions Control. simultaneously repealed Presidential Regulation No. 98 of 2021. Presidential Regulation No. 98 of 2021establishes the general framework for implementing Carbon Economic Value, including carbon trading and Results-Based Payments. Communities are recognized as one of the categories of parties that may receive benefits from these mechanisms, although the regulation does not specifically distinguish customary law communities from communities in general.

Explicit recognition of customary law communities within carbon trading is found in Minister of Forestry Regulation No. 7 of 2023 concerning Procedures for Carbon Trading through Greenhouse Gas Emission Offsets in the Forestry Sector, which remains in force. Article 6(1) includes customary law communities holding a formal determination of customary forest status as one category of Business Actors. Their status is placed alongside holders of PBPH or management rights, holders of Social Forestry Management Approval, holders of private-forest registration, and holders of PB-PJL Carbon. Article 9 further designates customary forests as one of the areas that may be used for climate change mitigation actions.

These provisions establish a normative link between the legal subject and the area in which mitigation actions are carried out. Customary law communities that satisfy the formal requirements may acquire the status of Business Actors, while formally designated customary forests may serve as sites for mitigation actions that generate emission reductions or removals. This construction marks a significant shift in the way the law positions customary law communities. Their previous status, which was more commonly associated with affected groups or objects of protection, has shifted toward recognition as legal subjects capable of directly participating in carbon-related economic activities.

Recognition as a Business Actor, however, does not mean that control over or ownership of a customary forest automatically gives rise to ownership rights over tradable Carbon Units. Article 10 of Minister of Forestry Regulation No. 7 of 2023 requires Business Actors seeking to engage in carbon trading to hold Carbon Units. Carbon Units themselves arise only after mitigation actions have undergone the prescribed stages and satisfied the applicable technical requirements, including measurement, validation, verification, certification, and registration.

This distinction carries important doctrinal consequences. Rights over customary forests and rights over Carbon Units constitute two interrelated legal relationships, but they cannot be treated as equivalent. Rights over customary forests provide both the territorial basis and the source of legitimacy for customary law communities in utilizing their territories. By contrast, a Carbon Unit is an instrument that comes into existence only after the results of mitigation actions satisfy the applicable legal requirements and carbon-trading methodologies. Carbon stocks that are ecologically present within customary forests therefore cannot, by themselves, be treated as Carbon Units that already qualify as tradable objects.

Within this construction, the status of customary law communities may be understood through at least three layers. The first concerns their position as holders of territorial legal relationships over customary forests, grounded in constitutional recognition and forestry law. The second arises when customary law communities acquire the status of Business Actors in carbon trading after obtaining a formal determination of customary forest status and satisfying the requirements established under sectoral regulations. The third concerns their position as holders of economic interests in carbon benefits once mitigation actions have generated Carbon Units and a benefit-sharing mechanism is

Vulnerability to Carbon Trading Mechanism: A Lesson Learned for Indonesia," *Bengkoelen Justice : Jurnal Ilmu Hukum* 13, no. 2 (2023): 194–208, https://doi.org/10.33369/jbengkoelenjust.v13i2.30953.

available. These three layers are supplemented by procedural rights to participation and *Padiatapa* Indonesia's formulation of free, prior, and informed consent in activities affecting the territories of customary law communities. This distinction is necessary to avoid two equally problematic understandings: first, that the state may detach all carbon value from communities' legal relationships with their customary forests; and second, that every carbon stock found in a customary forest automatically constitutes a Carbon Unit owned by the community.

The status of customary law communities is further strengthened under Jurisdictional Programs. Minister of Forestry Regulation No. 7 of 2023 requires an agreement with customary forest holders when carbon trading under such programs is implemented in areas already designated as customary forests. This provision positions customary law communities as more than parties merely entitled to receive information. Where carbon-trading activities affect territories formally designated as customary forests, agreement with the customary forest holders becomes one of the prerequisites for implementing those activities.

These regulatory developments demonstrate a transformation in the legal position of customary law communities within carbon trading. Under the previous regulatory framework, scholarship focused largely on the risks of losing tenure rights, the weak position of communities in carbon projects, and the need to implement *Padiatapa*. Minister of Forestry Regulation No. 7 of 2023 goes further by establishing a clearer normative basis for certain customary law communities to participate directly in carbon trading. The legal issue therefore no longer ends with the question of whether customary law communities are recognized. It has shifted toward determining which communities can gain access to that recognition and what requirements must be satisfied for such recognition to become operational within carbon trading.[7]

3.1.2. Determination of Customary Forest Status and the Construction of Conditional Inclusion

Recognition of customary law communities as Business Actors under Minister of Forestry Regulation No. 7 of 2023 is not automatically extended to every customary community. Article 6(1)(c) specifically refers to customary law communities holding a formal determination of customary forest status, rather than to customary law communities in general. This formulation means that the continued sociological existence of a customary law community does not, by itself, confer the administrative capacity required for that community to act as a Business Actor in carbon trading.[8]

This requirement is closely connected to the mechanisms for recognizing customary law communities and determining customary forest status under Minister of Environment and Forestry Regulation No. 9 of 2021 concerning Social Forestry Management, which remains in force. Substantively, the regulation requires the identification of the existence of customary law communities, their customary institutions and legal norms, customary territories, and instruments of recognition issued by local governments as part of the process for determining customary forest status. Before obtaining direct access to carbon trading as Business Actors, customary law communities must

7 Mentari et al., "Implementasi Pengaturan Perdagangan Karbon Di Indonesia Dalam Perspektif Investasi Hijau Dan Konstitusi Ekonomi," 2024; Azaria et al., "Indigenous People Environmental Rights Vulnerability to Carbon Trading Mechanism"; Khoirul Hidayah et al., "Economic Right Justice for Indigenous Peoples in Carbon Trading in the Forestry Sector in Indonesia."

8 Peraturan Menteri Lingkungan Hidup Dan Kehutanan Nomor 9 Tahun 2021 Tentang Pengelolaan Perhutanan Sosial; Perbawati et al., "Progressive Law and Legal Discourse on the Determination of Customary Forests."

therefore undergo a legalization process concerning both the legal subject and the territory in which the relevant activities will be conducted.[9]

These formal requirements are understandable from the perspective of carbon-market governance. Carbon trading requires certainty as to the party authorized to act, the boundaries of the project area, the location of emission reductions or removals, the party entitled to provide consent, and the subject responsible for the relevant Carbon Units. Such clarity is also necessary to prevent overlapping claims and double counting. Within this framework, the formal determination of customary forest status functions as an instrument for establishing certainty regarding both the legal subject and the territory before they enter the carbon-market mechanism.

A problem arises, however, if this administrative function is treated as the sole basis for recognizing the interests of customary law communities in their territories. Constitutional recognition and Constitutional Court Decision No. 35/PUU-X/2012 affirm that the relationship between customary law communities and their customary territories does not originate from an administrative decision of the state. State determination is necessary to provide legal certainty and operational legal effects within the formal legal system, but this does not mean that the community and its customary relationship with the territory come into existence only when such a decision is issued. The existence of the rights of customary law communities must therefore be distinguished from their administrative capacity to participate in carbon trading.

This distinction is particularly relevant to communities that continue in practice to maintain customary institutions, territories, legal norms, and intergenerational relationships with forests but have not completed the recognition process or obtained a formal determination of customary forest status. The constitutional interests of such communities must continue to be respected. Under Article 6(1)(c) of Minister of Forestry Regulation No. 7 of 2023, however, they do not yet possess direct administrative standing to act as Business Actors. At this point, a gap becomes apparent between recognition of the existence of customary law communities and their actual access to carbon-related economic mechanisms.

This study conceptualizes this situation as *conditional inclusion*. The most recent legal framework no longer excludes customary law communities from carbon trading, but direct access becomes available only after the formal requirement of determining customary forest status has been satisfied. Compared with the previous framework, this model represents progress because it establishes a clearer legal pathway for customary law communities to become subjects of carbon trading. Its effectiveness, however, depends heavily on the extent to which the system for recognizing customary law communities and determining customary forest status can be implemented effectively.

The longer the recognition and determination process takes, the greater the possibility of a gap arising between communities' ecological contributions and their access to the economic benefits of carbon. A community may actively protect forest areas, maintain vegetation cover, prevent deforestation, and preserve the ecological functions of its customary territory while simultaneously lacking the direct capacity to participate in carbon trading. Formal requirements should therefore not operate merely as instruments of administrative selection. They need to be accompanied by affirmative measures capable of accelerating legal certainty regarding the status of customary law communities and customary territories that satisfy the applicable legal requirements.

Once formal status has been obtained, Minister of Forestry Regulation No. 7 of 2023 provides certain mechanisms to address capacity limitations. Customary law communities holding a formal determination of customary forest status must be assisted by registered partners or facilitators, while

[9] Rizky Winda Salsabilla et al., "The Principle of Free, Prior, and Informed Consent in Preventing Deforestation in Indigenous Forests"; Azaria et al., "Indigenous People Environmental Rights Vulnerability to Carbon Trading Mechanism."

the government performs a facilitative role in improving communities' knowledge and skills in carbon trading. This arrangement is important because carbon trading involves complex technical processes, ranging from the preparation of mitigation-action documents to validation, verification, registration, and transactions. Previous research likewise indicates that procedural complexity, high certification costs, and limited access to verifiers and markets may create barriers for forest-managing communities.

The involvement of facilitators must not, however, shift customary law communities from their status as Business Actors into parties entirely dependent on project developers or consultants. Facilitation should strengthen community capacity rather than displace communities' substantive decision-making authority regarding the use of their territories and their economic interests. Differences in knowledge concerning carbon methodologies, cost structures, transaction values, and market access may create unequal bargaining positions even where communities formally hold Business Actor status. Legal recognition must therefore be accompanied by a genuine capacity to exercise the rights and authority attached to that status.

The analysis of the first research question demonstrates that the legal status of customary law communities under Presidential Regulation No. 98 of 2021and Minister of Forestry Regulation No. 7 of 2023 has undergone a substantive transformation. Customary law communities holding a formal determination of customary forest status now occupy the position of direct subjects of carbon trading, although access is structured through a mechanism of *conditional inclusion*. Administrative recognition determines their capacity to enter the carbon market, while their constitutional relationship with customary forests remains a pre-existing legal foundation that predates the establishment of the trading mechanism. At the same time, rights over customary forests cannot be equated with Carbon Units. Recognition of customary territory provides territorial legitimacy, whereas Carbon Units arise only after the applicable requirements concerning mitigation, validation, verification, certification, and registration have been satisfied.

This legal construction reveals three relationships that must be maintained simultaneously: the rights of customary law communities over their territories, their capacity as subjects of carbon trading, and their interests in the economic benefits generated by carbon-related activities. Minister of Forestry Regulation No. 7 of 2023 has strengthened the first two relationships. Business Actor status, however, does not by itself resolve the question of the amount of carbon-related economic benefits that communities should receive or the parameters by which such benefits should be determined. This unresolved issue provides the basis for the subsequent discussion concerning the adequacy of benefit-sharing mechanisms and the standards of justice applicable to their distribution.

3.2. The Construction of Equitable Carbon Benefit Sharing for Customary Law Communities

3.2.1. From Benefit-Sharing Agreements to Substantive Justice

Minister of Forestry Regulation No. 7 of 2023 introduced significant changes to the regulation of carbon benefit sharing. Article 12(2) requires the Climate Change Mitigation Action Design Document (*Dokumen Rancangan Aksi Mitigasi Perubahan Iklim*, DRAM) to be supported by a community engagement plan, a carbon benefit-sharing plan agreed upon with the community, and plans for and achievements relating to *Persetujuan Atas Dasar Informasi Awal Tanpa Paksaan* (*Padiatapa*), Indonesia's formulation of free, prior, and informed consent (FPIC). This framework requires benefit sharing to be designed from the outset of mitigation activities rather than addressed only after a project is underway. This regulatory direction is significant because studies by Amin, Paramitha, and Al Farauqi and by Hidayah et al. indicate that carbon governance continues to face problems relating to benefit distribution, procedural complexity, and suboptimal benefit-sharing mechanisms for customary communities.

The requirement to establish a benefit-sharing agreement, however, does not in itself guarantee an equitable distribution of benefits. Minister of Forestry Regulation No. 7 of 2023 does not yet establish substantive standards for assessing the content of such agreements, including how the contributions of each party should be calculated, which types and categories of costs may be deducted before benefits are distributed, how the economic value of Carbon Units should be disclosed, and what criteria should determine the proportionality of the share received by communities. The absence of a uniform benefit-sharing percentage is not the principal concern, because project characteristics, territorial size, costs, risk levels, and forms of contribution may differ from one project to another. The more fundamental problem is the absence of minimum parameters capable of preventing contractual flexibility from developing into domination by parties that control capital, technology, information, and market access.[10]

For customary law communities, this issue has a distinct character. Their position in carbon projects cannot be equated with that of investors or technical service providers because their relationship with the forests in which mitigation actions take place predates the establishment of carbon projects. This relationship is both historical and legal. Accordingly, the benefits received by customary law communities should not be understood merely as social compensation or project-based assistance. Benefit sharing is a consequence of communities' relationship with their territories and their contribution to maintaining the ecological functions of forests from which carbon-related economic value is subsequently generated. Customary law communities should therefore be positioned both as rights holders and as parties that contribute to the creation of such benefits, rather than merely as beneficiaries whose share is determined by project developers.

The need for such an approach is also reflected in previous research. Amin, Paramitha, and Al Farauqi emphasize the importance of respecting indigenous rights, ensuring participation, and achieving equitable benefit distribution in the governance of carbon programs. Hidayah et al. find that indigenous communities occupy a strategic position because many carbon-rich forests are located within territories they manage and conserve, yet their access to economic benefits remains constrained by issues involving communal carbon rights, procedural complexity, limited institutional capacity, and suboptimal benefit-sharing mechanisms. Saparwadi, Priyono, and Setyowati similarly demonstrate that the existence of benefit-sharing mechanisms does not automatically produce substantive justice when negotiations take place under unequal power relations and clear minimum safeguards are absent.[11] These findings indicate that merely formal participation is insufficient where the distribution mechanism fails to establish a clear relationship among rights, contributions, and the benefits received by communities.

A normative basis for constructing such a framework can be found in Presidential Regulation No. 98 of 2021. Article 72 identifies authority, emission-reduction performance, efforts to avoid emissions, and the roles and contributions of relevant parties as bases for benefit distribution under Results-Based Payment mechanisms. Although this provision cannot be directly converted into a formula binding all carbon trading conducted through offset mechanisms, the elements of role and contribution may serve as a systematic normative orientation for assessing benefit sharing in the

[10] Wilda Prihatiningtyas et al., "Perspektif Keadilan Dalam Kebijakan Perdagangan Karbon (Carbon Trading) Di Indonesia Sebagai Upaya Mengatasi Perubahan Iklim," *Refleksi Hukum: Jurnal Ilmu Hukum* 7, no. 2 (2023): 163–86, https://doi.org/10.24246/jrh.2023.v7.i2.p163-186.
[11] Amin et al., "Menakar Koherensi Tata Kelola Perubahan Iklim Atas Hak Masyarakat Adat Dalam Program Perdagangan Karbon Di Kalimantan Timur"; Khoirul Hidayah et al., "Economic Right Justice for Indigenous Peoples in Carbon Trading in the Forestry Sector in Indonesia."

forestry sector. It would be difficult to justify normatively a framework in which Carbon Economic Value regulations recognize contribution as a basis for benefit sharing under Results-Based Payments while failing to assign any weight to communities' contributions to maintaining forest cover, preventing deforestation, and preserving carbon stocks in benefit-sharing agreements.

Benefit sharing under Minister of Forestry Regulation No. 7 of 2023 is also not treated entirely as a private matter. Article 54 requires carbon-trading reports to include information on the implementation of benefit-sharing agreements, while Article 55 makes community involvement and the implementation of such agreements part of the subject matter of government evaluation. These provisions give benefit sharing a public-law dimension because its implementation remains subject to state oversight. The difficulty is that the existing oversight framework places greater emphasis on whether an agreement has been implemented than on whether the substance of the agreement itself satisfies standards of justice. An agreement may be implemented in full yet have allocated a disproportionate share to the community from the outset because of information asymmetries or unequal bargaining power. A distinction must therefore be drawn between **compliance with the agreement** and **fairness of the agreement**.

This distinction is consistent with environmental justice approaches that do not reduce justice to distributive outcomes alone. In the context of carbon trading in Indonesia, Prihatiningtyas et al. emphasize that carbon policies must account for justice toward both communities and the environment, while Saparwadi, Priyono, and Setyowati demonstrate that procedural justice is insufficient where the substantive allocation of benefits remains vulnerable to unequal bargaining power. Recognition of affected groups and their involvement in decision-making processes are therefore integral components of justice. This framework also has a normative basis in Article 28 of Minister of Forestry Regulation No. 7 of 2023, which requires respect for the rights of customary communities and the effective participation of relevant parties. Benefit-sharing agreements should accordingly not be treated as ordinary commercial negotiations but as part of carbon governance that remains subject to standards of rights protection and justice.

Against this background, this study proposes a shift from agreement-based benefit sharing toward rights-and-contribution-based carbon benefit sharing. Agreements remain necessary because each project has distinct characteristics and configurations, but contractual freedom must operate within a framework of rights recognition, meaningful consent, acknowledgment of contribution, and transparent and proportional distribution. This framework is built on four parameters: recognition, consent, contribution, and distribution.

3.2.2. The Construction of Recognition, Consent, Contribution, and Distribution

The first parameter is recognition. As discussed previously, Business Actor status in carbon trading is granted only to customary law communities that have obtained a formal determination of customary forest status. This requirement may be understood as an attempt to provide legal certainty regarding the subjects and territories involved in carbon transactions. The protection of customary law communities' interests, however, should not depend solely on whether this administrative status has been obtained. Article 28 of Minister of Forestry Regulation No. 7 of 2023 refers to customary law communities within its social safeguards framework without expressly limiting protection to communities that already hold a formal determination of customary forest status.

Recognition should therefore operate at two levels. The first is formal legal recognition, which determines the capacity of customary law communities to act directly as Business Actors. The second is substantive protective recognition, which ensures that communities with an actual relationship to an affected territory are taken into account in *Padiatapa* and benefit-sharing arrangements even where the formal process for determining customary forest status has not yet been completed. This distinction does not diminish the importance of formal customary forest designation. Rather, it prevents administrative requirements from being used to disregard the procedural rights and economic interests of communities that factually maintain a relationship with the project area.

The second parameter is consent. Its normative basis is provided by Minister of Forestry Regulation No. 7 of 2023 through *Padiatapa*, which requires information concerning mitigation actions to be disclosed openly and comprehensively so that communities can provide or withhold consent free from coercion. The same regulation also requires a benefit-sharing plan agreed upon with the community to form part of the DRAM. Textually, *Padiatapa* is directed toward mitigation actions. It would therefore be inappropriate to interpret the provision as requiring a separate *Padiatapa* process for each individual benefit-sharing clause. Nevertheless, consent to a project becomes less meaningful when communities are unaware of the economic consequences of the project to which they have agreed.

This study therefore develops the concept of dual consent. The first form of consent concerns the use of the territory for mitigation actions, while the second concerns the formula and mechanism for benefit sharing. These two forms of consent need not be obtained through separate procedures and may be integrated into a single *Padiatapa* process. Their respective objects of information and consent, however, must remain distinguishable. Community consent to project implementation cannot automatically be treated as consent to every benefit-sharing formula that may subsequently be established.

For consent to be genuinely meaningful, it must be based on disclosure of information concerning the project's economic value, transaction mechanisms, cost structure, benefit-sharing formula, risks, and consequences for the use of the territory. The information must also be communicated in a manner that communities can understand. Consent must not only be free from coercion but must also arise from an adequate understanding of the project to be undertaken. This principle is consistent with FPIC standards, which place consultation through the representative institutions of indigenous peoples at the center of decision-making concerning projects that affect their territories and resources. *Padiatapa* likewise should not be understood as a one-time procedural requirement. Material changes to a project or its benefit structure should trigger renewed consultation and consent to preserve the continuing legitimacy of community approval.[12]

The third parameter is contribution. This parameter links the economic benefits received by the parties to their respective roles in producing mitigation outcomes. Article 72 of Presidential Regulation No. 98 of 2021already recognizes role and contribution as one basis for benefit distribution under Results-Based Payment mechanisms. Although that provision cannot be directly transposed into a formula applicable to every carbon transaction conducted through offset mechanisms, the concepts of role and contribution may nevertheless serve as normative criteria for assessing the fairness of benefit sharing in forestry-sector carbon trading.

The contribution of customary law communities should not be calculated solely on the basis of activities undertaken after a carbon project begins. The carbon stocks underlying a project may have been preserved through forest-protection practices maintained long before the project was established. An assessment of community contribution may therefore take into account both historical and current contributions to conservation, territorial protection, the application of traditional ecological knowledge, monitoring and prevention of deforestation or forest fires, and opportunity costs arising from restrictions on resource use during project implementation.

Recognizing such historical contributions does not mean that all past ecological services can automatically be converted into Carbon Units. The calculation of Carbon Units must remain distinct

[12] Saparwadi et al., "Karbon Biru Untuk Siapa?"

from the assessment of contribution for benefit-sharing purposes. Carbon Units concern quantified emission reductions or removals that satisfy applicable methodological, certification, and transactional requirements. Contribution, by contrast, concerns the determination of how the economic value already generated should be fairly distributed among the parties whose roles contributed to achieving the mitigation outcome. Assigning weight to community contributions therefore does not alter carbon-accounting methodologies; rather, it affects communities' position within the benefit-sharing structure.

This distinction is necessary to prevent benefit structures from assigning economic value exclusively to financial capital, technical expertise, and market access. Legal relationships with territories, conservation practices, ecological knowledge, and community efforts to protect forests also constitute contributions that enable carbon-related economic value to be generated. If capital and technology are the only elements assigned economic value, benefit distribution is more likely to favor project developers while marginalizing the ecological and social contributions of communities.

The fourth parameter is distribution. At this stage, recognition, consent, and contribution are translated into tangible economic benefits. Distributive justice does not require every party to receive an equal share. What is required is a proportional allocation that takes into account the legal status, contribution, burdens, risks, and benefits of each party. For this reason, the present study does not propose a single nationally uniform percentage for customary law communities. Establishing a fixed percentage without considering project characteristics, cost structures, and the different forms of contribution made by each party may itself produce new forms of injustice.

More important is the existence of a transparent and verifiable distribution formula. Agreements should specify the value base to be distributed, including revenue generated from Carbon Unit transactions and the types of costs to be deducted beforehand, such as validation, verification, registration, facilitation, project development, and lawful levies. Such transparency is necessary to prevent the term "net benefits" from being used loosely to deduct various cost components before distribution without providing communities with an opportunity to assess whether those costs are reasonable.

Distributional concerns also extend beyond the relationship between a project and a community. Questions of justice may arise within the community itself. Transferring benefits to the institution representing a customary law community does not necessarily mean that all community members have received a fair share. Internal governance must therefore continue to respect representative institutions and customary-law mechanisms while ensuring transparency and accountability in the use of benefits. Benefits also need not always take the form of cash payments to individual members. Subject to community decisions, benefits may be allocated to the protection of customary territories, education, health, institutional strengthening, community economic activities, or other collective needs that support the community's long-term sustainability.

These four parameters require supporting accountability mechanisms. Minister of Forestry Regulation No. 7 of 2023 already provides a basis through grievance mechanisms that must be readily accessible, transparent, responsive, and supported by measurable dispute-resolution procedures. These mechanisms should be operationalized to address disputes concerning benefit sharing, incomplete information, community representation, the implementation of *Padiatapa*, and discrepancies between agreed formulas and the benefits actually received. Government evaluation should likewise extend beyond determining whether payments have been made. It should assess whether implementation remains consistent with the information, consent, and contributions that formed the basis of the agreement.

Based on the foregoing analysis, the rights-and-contribution-based carbon benefit-sharing framework treats recognition, consent, contribution, and distribution as interrelated elements.

Recognition identifies the relevant legal subjects and their legal relationships with the territory; consent ensures that decisions concerning projects and benefit sharing are made freely and on the basis of adequate information; contribution provides an objective basis for evaluating the ecological, social, territorial, technical, and financial roles of each party; and distribution translates those three elements into a transparent, proportional, and verifiable allocation of benefits.

These four parameters are cumulative. Recognition without consent may produce administrative legality without corresponding community legitimacy. Consent without recognition risks reducing communities to parties that are merely consulted. Where recognition and consent are not accompanied by acknowledgment of contribution, benefit allocation can easily become arbitrary. Likewise, distribution without transparency and corrective mechanisms may reduce benefit sharing to mere administrative compliance. This framework also preserves the distinction among rights over customary forests, Carbon Units, and rights to carbon benefits. Rights over customary forests do not automatically confer ownership of Carbon Units, but communities' relationships with their territories and their contributions to forest sustainability retain normative significance in determining the share of benefits they are entitled to receive.

Presidential Regulation No. 98 of 2021and Minister of Forestry Regulation No. 7 of 2023 have, in principle, established a more advanced legal foundation through *Padiatapa*, mandatory benefit-sharing agreements, safeguards for the rights of customary communities, reporting obligations, evaluation mechanisms, and grievance procedures. The remaining deficiency lies in the absence of substantive parameters for assessing the fairness of the contents of benefit-sharing agreements. Carbon benefit sharing for customary law communities should therefore be structured around recognition, consent, contribution, and distribution. Under this construction, customary law communities are no longer positioned merely as passive recipients of benefits but as rights-bearing stakeholders whose interests derive from both their legal rights and their contributions to carbon-economy governance.

4. CONCLUSION

This study finds that Presidential Regulation No. 98 of 2021and Minister of Forestry Regulation No. 7 of 2023 have strengthened the legal position of customary law communities in forestry-sector carbon trading. Customary law communities that have obtained a formal determination of customary forest status may now act as Business Actors, while customary forests may be designated as areas for the implementation of mitigation actions. Access to this framework, however, remains contingent upon fulfillment of the formal requirements for determining customary forest status, thereby creating a pattern of conditional inclusion. At the same time, rights over customary forests cannot be equated with ownership of Carbon Units. Carbon Units arise only after the applicable methodological, validation, verification, certification, and registration requirements have been satisfied. The legal position of customary law communities must therefore be understood by distinguishing among territorial rights over customary forests, administrative capacity as Business Actors, and economic interests in carbon benefits.

With respect to benefit sharing, the current legal framework has established a normative basis through *Padiatapa*, mandatory benefit-sharing agreements, reporting and evaluation mechanisms, and grievance procedures. Nevertheless, the regulations do not yet provide substantive standards for assessing the fairness of the contents of such agreements. This study therefore formulates a rights-and-contribution-based carbon benefit-sharing framework built on four parameters: recognition, consent, contribution, and distribution. Recognition ensures respect for communities' legal relationships with their territories; consent ensures that decisions concerning projects and benefit sharing are made freely and on the basis of adequate information; contribution provides a basis for assessing communities' ecological, social, territorial, and technical roles; and distribution directs the allocation of benefits toward outcomes that are transparent, proportional, and accountable. Under this framework, customary law communities are positioned as rights-bearing stakeholders whose interests derive from both their legal rights and their contributions, rather than merely as beneficiaries within carbon-economy governance.

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