

**Indigenous Knowledge and Customary Law in
Natural Resource Management: Experiences in
Yunnan, China and Haruku, Indonesia**

By
He Hong Mu Xiuping and Eliza Kissya with Yanes



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Joan Carling

Secretary General

AIPP

ACRONYMS

AMAN	=	Alliance of Indigenous Peoples of the Archipelago
CBD	=	Convention for Biological Diversity
FAO	=	Food and Agriculture Organization
HP3	=	Healthy Places, Prosperous People
NGOs	=	Non Government Organizations
PKI	=	Communist Party of Indonesia
PRC	=	Republic of South Maluku
SD	=	Elementary School
SLTA	=	Senior High School
UN	=	United Nations
WTO	=	World Trade Organisation

Introduction

Lands and territories inhabited by most indigenous peoples across the globe are rich in natural resources. Through generations of experimentation and as custodians, the indigenous peoples have developed an expansive body of knowledge for sustainable use and management of these resources. The continuity of this knowledge and sustainable use and management practices of these resources are enforced through rules, beliefs and taboos which form a part of their customary laws.

Indigenous peoples possess systematic knowledge of plants, animals and natural phenomena of the ecosystems and their surroundings. This rich knowledge coupled with their close relationship with their lands have enabled them to live in harmony with nature. However, with the colonization of their lands and territories over the centuries, the process of plundering the resources and dispossessions began. Additionally, statutory laws were imposed on them which marginalized their customary laws that regulate the application of their knowledge on the management of the natural resources within their territories. The situation has continued to aggravate over the last few decades with the coming of the era of economic development, which is aggressively pursued by private companies. In addition, indigenous peoples are being pushed out or evicted from their homelands in the name of conservation of natural resources. Both these trends are occurring with the backing of the state. Nonetheless, indigenous peoples continue to assert and practice their distinctive way of life and worldviews on a narrow margin.

However, along with this conflict, there is also an increasing realization of the invaluable role of the indigenous knowledge systems and customary laws in securing the health of the planet and the capacity of the global community to respond to the present and future challenges in food and health security. This is now being echoed in various researches conducted and in the agenda of development or conservation, including the Convention on Biological Diversity, Food and Agriculture Organization of the United Nations (FAO) and a host of others.

Initiatives are also being taken by national governments to recognize indigenous knowledge systems and customary laws for the stated reasons. Increasingly, its effectiveness or success in conservation and sustainable utilization of biological resources are being acknowledged by national governments. However, there is still a large gap in understanding the modalities and mechanisms which will be necessary for indigenous knowledge and customary law to secure the central role in the sustainable management and use of natural resources in their lands and territories.

It is in this context that two case studies were conducted - one in Yuhu Village, Yulong county, Yunnan, China and the second in Haruku village, Haruku Island, Indonesia. Both the cases highlighted the importance of indigenous knowledge and customary law for the success of conservation and sustainable development initiatives as the way forward.

These two villages in the two countries were chosen for conducting the case studies because there are merits in the efforts made by the communities in applying indigenous

knowledge and customary law in the management of natural resources. Further, there is an increasing acknowledgement and effort made by their governments to apply them more effectively. The case studies highlighted these in an attempt to shed some light in the search for a solution.

These studies were carried out under the Collaborative Management and Learning Network (CMLN) project of AIPP which is funded by the SwedBio. CMLN encourages dialogues between the communities living in Protected Areas (PAs) and the park authorities to promote co-management and shared governance.

Joan Carling
Secretary General
AIPP



Part A: Traditional Naxi Natural Resource Management and Current Policy: A Case Study at Yuhu Village, Yulong county, Yunnan, China

He Hong and Mu Xiuping, translated by Jason Pan

1. Basic Information about Naxi Ethnic Minority

1.1 The Name of Naxi Ethnic Minority

The Naxi ethnic minority was recognized for the first time on “Ethnic Minority Identification” (1949 to 1945), after the founding of the People’s Republic of China under the principle of “respect for the people themselves”.¹ The Jinsha River divides the Naxi people into the East and West regions. Those in the West had always been called “Naxi” and they refer to themselves as such, while those in the East are generally called “Moso” and refer to themselves as “Na”, or “Nari”, “Nahan”, or “Leixi”.

1.2 Population and Distribution of Naxi

Based on the 2000 census, Naxi has a population of 308,800, with a male population of 155,000, and female, 153,800. The male-to-female ratio is at 100.87. They are mainly distributed in the regions bordering Yunnan and Sichuan Provinces, and the Tibetan Autonomous Region. They also inhabit areas along the Lancang, Jinsha, Yalong Rivers and the drainage areas, and also along the numerous other smaller tributaries and river valleys. The ascribed regions cover approximately 98.5 to 102 degrees east longitude, and 26.5 to 30 degrees north latitude, with a total area of about 80,000 square km². In general terms, the regions covered are within three provinces (Yunnan, Sichuan, Tibet), six cities and prefectures (Lijiang, Diqing, Liangshan, Changdu, Ganzi, and Panzhihua), twelve counties (Yulong, Shangri-La, Ninglang, Weixi, Yongsheng, Yanyuan, Muli, Huaping, Deqin, Mangkang, Batang, Yanbian).

Most of the Naxi people live in the northwest of Yunnan Province, with Lijiang City and Yulong Naxi Autonomous County as the main population settlement area. (See Table 1 for Population Distribution Data, and Illustration 1 for Population - Geographic Distribution). In the past 30 years, there have been pronounced outward migration trends to cities and other provinces, due to employment opportunity, education, marriage, and other factors. Currently, Beijing City, Hebei, Shandong, Jiangsu, Zhejiang, and Chongqing City all have a substantial Naxi population.

1 <http://www.dongzu8.com>

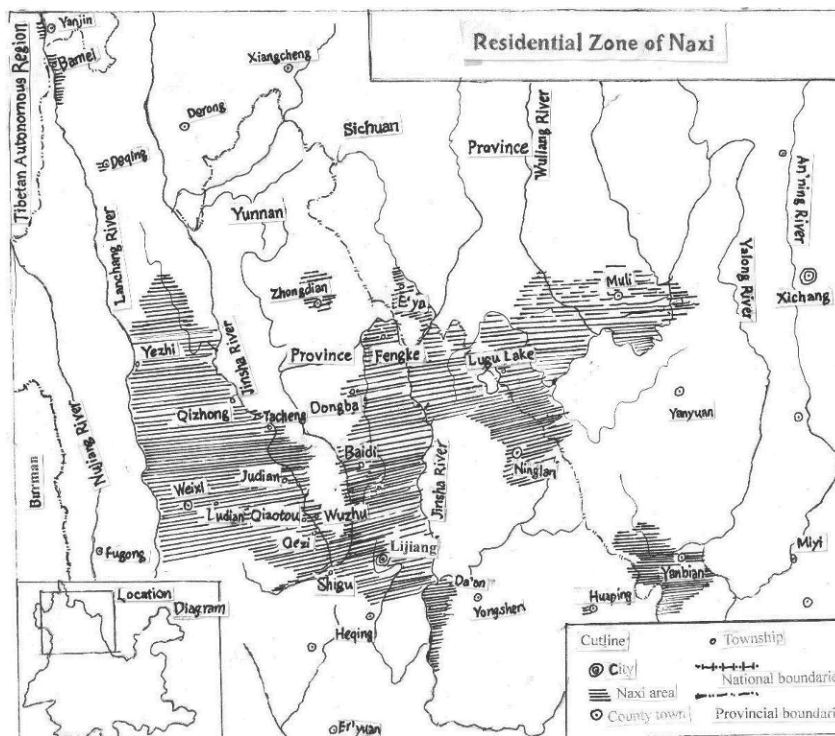
2 [Naxi People History] by Guo Dalie and He Zhiwu, Sichuan Minzu Publishing Co., 1998.

Table 1: Naxi Population Distribution

Province	Region / City	Population(unit:persons)
Yunnan	Yulong County (throughout the county)	119,333
Province	Old Town District (throughout the area)	85,485
	Yongsheng County (mainly in Da'an Township)	9,259
	Ninglang County (mainly in Yongning Township)	19,653
	Shangri-La County (mainly in Sanba Township)	9,794
	Weixi county (mainly in Lancang River Valley and its counties)	18,489
	Dali Prefecture (mainly in Jianchuan and Heqing)	4,302
	Nujiang Prefecture (mainly in Lushui County)	2,121
	Kunming City (mainly in state agencies, factory plants, mines, and schools)	8,800
	Sichuan	Laingshan Prefecture (mainly in Muli, Erya Village and Yenyuan)
Panzhihua (mainly in Yenbian County)		2,382
Ganzi Prefecture (mainly in Derong County)		760
Tibet Autonomous Area	Mangkang County(mainly in Yenjing Township)	1,223

Date of sources: Minzu Publishing Co. "A Brief History of Naxi Ethnic Minority", April, 2008.

Illustration 1: Naxi Population - Geographic Distribution



The Naxi people's traditional areas have complicated geographic landforms, while the climate pattern is also highly diverse. They are found not only in the hot and humid river valleys and the temperate plains, but they also live in mountains with glaciers at over 4,000 meters above sea level. With the high mountains and deep valleys, Naxi people inhabit a wide territory that is rich in both water and forest resources, and is famous for its abundant biodiversity.

According to fossil finds, there were human habitations in the Lijiang area since 100,000 years b.p. (before present). From academic studies and scientific research, there is evidence that the Naxi people originated from the amalgamation of two major ancient tribes. One was the nomadic culture of the ancient "Maoniu (Yak) Yi" tribe (there were also other terms for this tribe of people), who inhabited the northwest regions of the Yellow River and Huangshui River during the period of pre-Qin Dynasty (from early history to about 221 BC, or about 2,200 b.p.). The "Maoniu (Yak) Yi" tribe migrated south during periods of social unrest and mass movement, as they moved southward along the Minjiang River, Dadu River, and Yalong River. They migrated to the regions of the present day, as they settled and mixed with the "Shou Ren" tribe, the indigenous people of the Yunnan northwest region who had been living there since prehistoric times. Thus these two major ancient tribes merged together to become the Naxi people³.

1.3 Changes in Political Status and Social Life of Naxi People since the Founding of the PRC⁴

After the revolution and founding of the PRC in 1949, the Lijiang Naxi Autonomous County was established in April 1961, and affiliated itself with the Lijiang Prefecture. Lijiang was promoted to the administrative level of a "municipal city" in July 2000. The original Lijiang Naxi Autonomous County was divided into the Yulong Naxi Autonomous County and the Old Town District. The Yulong County is now the only Naxi people's autonomous county in China. In spite of the administrative adjustment, the Yulong County and the Old Town District are still the Naxi people's main population centers. In other places, the Sanba Naxi Township was set up under the Diqing Tibetan Autonomous County. There are also the Er'ya Naxi Township in Sichuan Province, and the Yanjing Naxi Township in Tibet Autonomous Region.

In the early 1950's, Naxi people went through a period of recovery and development of agricultural production. The socio-economic life of the Naxi people suffered serious impact during the turbulent time of the "Cultural Revolution" from mid-1960's to late 1970's. Since 1978, the agriculture-based Naxi economy has made great recovery, and the living standard of the Naxi people has been much improved.

Since the 1990's, the income of Naxi people living around Lijiang has been boosted rapidly due to the development of tourism centered around Lijiang City and its neighboring areas. Furthermore, with the influence of urbanization, the economic activities of Naxi people have expanded from agriculture-dependent to that of many diverse economic sectors. However, the Naxi people living in the hills and mountain region are still poorer compared

3 [Development and Transformation of Lijiang Naxi Culture] by Li Zhe, Central University of Nationalities, 2007.

4 Part of it quotes from "A Brief History of Naxi Ethnic Minority".

to their urban-dwelling counterparts, both in terms of poverty level and higher proportion of poor people.

1.4 Social and Cultural Background of Naxi

The Naxi language belongs to the Yi language sub-branch of the Tibeto-Burman language family, which is a member of the Sino-Tibetan phylum. It is composed of two linguistic regions, namely the “East” and the “West” regions. Naxi people possess their own ancient written language - the Dongba text, which is a distinct written language based on hieroglyphic characters. There is another writing system - the Geba text, which is still unclear in its language attributes and is limited for use in certain socio-cultural and religious activities only, much the same like the Dongba text. After the founding of modern China, academics started a project to design a set of “Naxi characters” based on Latin alphabets for the ease of recording and use of the language.

The ancestors of Naxi people used to practice the nomadic and livestock grazing way of life. That is why the sundry elements of nomadic and livestock grazing culture within the agricultural way of life for Naxi people can still be experienced. To this day, livestock grazing is still the main economic activity and important source of income for Naxi people living in the hills and mountain areas. For cultural activities, the most traditional ethnic event for Naxi people is the Sanduo (the name of one God) Festival, along with the Ancestor Worship Festival in the seventh and eleventh months of the Lunar calendar. As well, Naxi people also follow the celebration of the Chinese Lunar New Year, Lantern Festival, Mid-Autumn Festival, Tomb Sweeping Holiday, Dragon Boat Festival, Ghost Festival (Zhongyuan), and Torch Festival. These reflect the influence of Han Chinese and Yi peoples on the Naxi culture.

2. Natural Resource Management in Yuhu Village

2.1 Basic Information of Yuhu Village

Yuhu is a typical Naxi village in the Yulong Naxi Autonomous County. It is located south of the Yulong Snow Mountain and in the north of the Lijiang Plain. It averages about 2,730 m in altitude above sea level, and is 18 km away from Lijiang City. The old name of Yuhu was “Xuesong Village”. In Naxi language, it was called “Nuluken”, which means “the village at the foot of Yulong Snow Mountain”. There is a sharp contrast between the dry and wet seasons. It is a dry mountain region due to the disjointed geological structure resulting in low water-retaining capacity. The village lies at the marginal buffer zone of the Yulong Snow Mountain Reserve.



Yuhu Village

The whole Yuhu Village is 36.66 square km in area. It is composed of 3 natural villages and 9 villagers' groups. According to census count in 2008, there are 358 households and 1,340 persons altogether, with an annual average income of RMB 3,000⁵. The village's main economy is based on tourism, livestock grazing, and agriculture.

Yuhu Village is buttressed by Yulong Snow Mountain, with the Yuzhu-Qingtian Scenic Area to the west, and Yuhu Lake (Jade Lake) to the east. The private dwelling houses here are rich in their own local and ethnic cultural characteristics. All the farm fields and village houses have a good view of Yulong Snow Mountain, and thus are blessed with the beauty of the natural landscape. Moreover, Yuhu Lake is one of the earliest original settlement areas of Naxi people. There are also other scenic spots, such as the relic of Juchien Temple, Yuzhu-Qingtian Scenic Area, and the old home of the famous Austrian-American scientist Joseph Rock, who lived here for 27 years. In addition, Yuhu Lake is also endowed with abundant natural resources in the forest, pasture fields, and with medicinal plants.

Located in the sub-alpine cool temperate zone, Yuhu Village's economy used to rely in equal halves on agriculture and on livestock grazing. Local farmers once had practiced shifting cultivation with slash-and-burn land clearing, rotational cultivation and fallowing. It is now prohibited by the local government because of its negative impact on the environment. However, the forest still provides food, medicine, firewood, and construction materials for many villagers today. Nowadays, the forest hills around the village are used for horseback-riding through the trails and other tourism activities, also for collecting herbal plants and other traditional medicine, for sale to outside businessmen.

2.2 Natural Resources of Yuhu Village

The ecosystem of Yuhu Village is a combination of both agriculture and forest type ecosystems, with 4,074 Mu of arable land and 90,000 Mu of forest land⁶. Agriculture was the

5 Date of sources: Bulletin board of Yuhu Village, Aug, 2009.

6 Data of sources: propaganda of Yuhu Village, 2006

main way of life before 2004, which was supplemented by livestock grazing, along with selling of sand and gravel and forest timber products for additional income. With the establishment of a tourism co-operative in 2004, the main source of income for the people had undergone a big change. The average area of arable land for each villager is about 3.04 Mu. The village has a cool temperate climate, given its location at the foot of Yulong Snow Mountain, and has a long frost period. Crop harvest is once a year or three crop harvests through two years. The main agricultural products are cereal crops, such as potato, oats, and turnip mustard.

The forest resources show a ladder-like distribution according to their different elevation above sea level. At the localities between the village and an elevation of 3,000 m above sea level, there are evergreen trees, deciduous broad-leave trees, and Yunnan pines. At elevation between 3,000 and 3,500 m above sea level, there are spruces, firs, and Alpine oak species, while at elevation above 3,600 m, there are azaleas, arrow bamboos, firs, and deciduous pine species. Pastures are also found among the different elevations.



Yuhu Lake and the Surroundings

Besides the woodland trees, the biological diversity of vegetation below the forest canopy is also quite rich. There are more than 30 species of azalea plants, including the Chinese yellow azalea, hemp rhododendron, meconopsis plant, golden primrose, and other rare flower species. Many valuable plants for medicinal use and traditional Chinese herbal medicines are found, including a variety species of ginseng, hemp, fungus, and other rare plant species.

Wildlife resources include wild red deer, monkey, grey fox, snow leopard, clouded leopard, Siberian musk deer, black muntjac, Satyr Tragopan, Chinese monal, blood pheasant, Asian golden cat, pangolin, Chinese copper pheasant, snow crane, large Indian civet, small Indian civet, Himalayan palm civet, red-bellied tree squirrel, red fox, bamboo partridge, otter, black bear, and others.

The pasture resources of Yuhu, according to the vegetation and landform include wet meadow bog, mountain shrub grassland, mountain meadow, mountain grass savanna, and other types. These diverse pastures, meadows, forests, and the mountain terrain are

inter-dependent to create diverse clusters of rich biodiversity. The above mentioned pasture resources also guarantee the continual existence and development for livestock grazing.

Yuhu Lake is also an important water source for Lijiang. There are several streams originating from Yulong Snow Mountain. One of the largest ones is called "Sansukai". It is located to the northeast of Yuhu Village, flowing into Yuhu Lake, and continues its course southward to the Lijiang Old Town, to form one of the most important waterways for the Old Town. The upper rock strata layer of Yuhu is rich in sandstone, which is an essential building material for urban city construction. Geological exploration also revealed good quality mineral resources in the area.

2.3 Concept and Principle of Natural Resource Management

According to the traditional Naxi concept, the spirits exist in Nature - the "Su" spirits are intimately related to human beings. In Naxi mythology, they are half brothers borne from different mothers. Therefore, the natural resource management principle of Naxi people is to balance between the human beings and Nature. The conduct of natural resource management is dependent on rules and taboos arising from this kind of special human and family relationship, which is the customary law of Naxi people.

We can find many situations of coexistence and inter-relationship between humans and the different creatures, as shown in the ancient Naxi documents and Naxi mythology tales. For example, the tales are told of ants and butterflies that taught human beings the values of work. The white bats asked for scripture of divination from the female angels, and explored the way to enable human beings to speak. Human beings learned the character traits of courage and fierce fighting from the tigers and the tigers, along with the yaks protected the safety of Naxi people and their families. The horses carried the soul of human beings after death to the land of ancestors. The paradise flycatcher bird saved the hierarch Dongba Shiluo from the Ghost Sea. The golden frog brought about the notion of Yin and Yang, and the "Formation of Five Elements". Different birds and animals collaborated with human beings to build the magical Juna-Ruolou Mountain. Under such frame of thought, Naxi people do not deem themselves as outside of Nature, but as part of Nature. These ideas are the basis for the efforts to seek peaceful coexistence between humans and Nature, and to guarantee the harmony relationship between human and Nature.

2.4 Mechanism and Framework of Natural Resource Management in Yuhu Village

The objective of natural resource management lies in self-sufficiency and sustainability. The natural resource management system of Naxi people in Yuhu Village is intimately related to their social, cultural and spiritual lives, as well as the economic, political, and judicial activities, and also the medical, technological, and educational systems. The principles for management of natural resources were established by customary laws and were transmitted from generation to generation through oral traditions or through daily practice in the family and between the elders and the youth in the community.

Natural resource management includes people's activities both in the material world and the spiritual world, and becomes part of the daily life activities in the village. Achieving balance is dependent on human behaviors that may violate certain principles or customary

law either in the spiritual or the material world.

The people of Yuhu Village have formulated a set of mechanisms and framework with principles derived from their customary law for natural resource management. These are regulated and managed by a “Council of Elders”, traditional taboos, and the relevant religious ceremonies.

2.4.1 Belief and Taboos

The Naxi people of Yuhu Village have always followed their traditional Dongba religion prior to 1949. The Dongba religion worships Nature and deems human beings and the spirits of Nature (“Su”) as half brothers from different mothers. Humans take possession of the roads, farm fields, houses, livestock, villages and all the things related to human activities, while “Su” rule over the forests, springs and waterways, wild life, plants, and other natural things. When necessary, humans can use the properties of “Su”, such as bringing wilderness land under cultivation with certain limits, logging, and hunting. But they must hold regular solemn rituals to make apology to “Su” and to “repay the debt” during the year.

The worship and belief in “Su” spirits lead to the concept and understanding that - “Su” are living everywhere, including the villages, farm fields, mountains, pastures, among the trees, in the rocks, and in the water. Every person must be very careful in living along side with “Su” lest misfortune come to them or their family. When people offend “Su”, they must conduct certain rituals to obtain pardon from “Su”, so that peace can be restored again. With this religious belief, the Dongba priest plays an important role in balancing the relationship between human beings and “Su”. The capability and knowledge of a Dongba priest has to come from extensive learning since childhood, with teaching from old Dongba priests. Nonetheless, the concept of “Su” is transmitted by people’s encounters with “Su” in Nature, and in seeking solution to the encountered problems.

2.4.2 Community Management Organization - “Council of Elders” and Self-Regulation by Villagers

Before the 1950’s, there was a self-governance organization by the villagers known as the “Council of Elders”. “Elder” is a respectful form of address to these elected individuals. They were usually older individuals of good character, with honorable reputation and standing in the community. Not only did they take the responsibility of managing the community and its natural resources, but they also passed on their fair and responsible attitude in resource management to the younger generations.

According to this village self-governance and local regulation, a villager must first apply to the “Council of Elders” if he or she wanted to build a house. It was the power of the Council to examine and approve the quantity of wood and the type of trees to be used. Logging for wood must be done only under the supervision of a “mountain guardian”. Cutting down trees for wood must not exceed the approved quota, and must not be logged indiscriminately. Even the quantity and quality of wood needed to make a new bed for wedding or preparing for coffins (for people over 60 years of age) should also pass the approval by the Council. During the growing season for trees in spring and summer, it was prohibited to enter the mountain area. During this “mountain closure” period, all logging, hunting, even pine leaf and pine nut gathering activities were prohibited. The types of trees used for construction

and for firewood were all regulated. For example, pine and fir were used in house building, while chestnut, birch, thickets, and others were for firewood. Whether it was for house building or firewood, people can only cut down trees and gather timber wood during the winter months (11th, 12th, and 1st months of the lunar calendar) of the year. Unfortunately, this type of “Council of Elders” disappeared after the revolution and founding of the PRC. Much of the natural resources were depleted and suffered tremendous devastation from indiscriminate logging that took place in the 1980’s.

During the Cultural Revolution, this cultural and spiritual belief that influenced the way of resource management was deemed superstitious and backward and was nearly wiped out. In the past two decades, the Dongba cultural belief has been recognized as an important part of the traditional Naxi culture by various levels of government, and they have also tried to rejuvenate the belief system through many support programs. However, due to the long term neglect and deprivation of the traditional spiritual belief, the Dongba priests, who were at the core of Naxi religious belief system, have passed away in the Yuhu community and with them, this traditional system. Most people who were born after the 1960s show little regard and lack of understanding towards the traditional concept of “Su”. This attitude is especially prevalent among the young generation.

These days, managing and protecting the forest resources are done by the “Village Committee”, along with the “Natural Forest Protection Works” project team which is under the forestry bureau of the county government. According to the law, open election is held to elect members of the “Village Committee”. Their responsibilities include the legal management of collective lands of the villagers and other common properties, educating villagers on proper utilization of natural resources, protecting and improving the ecosystem and environment. Usually, the village chief and the Village Committee members hold a general assembly meeting or consultation with all villagers where rules and regulations for managing the community are done.

2.7 Examples of Traditional Natural Resource Management in Yuhu Village

In addition to the rules and regulations on nature resource management as set forth by the above-mentioned “Council of Elders”, the following are the actual examples of these practices:

- 1) Agreement must be reached between the individuals and the community as well as confirmation by the village chief to ascertain the ownership and the right of use of the forest land. For example, a family would choose a graveyard in the forest land to bury their deceased and mark the boundary by erecting a rock or by planting thistle shrubs. This rock is respectfully termed as a “mountain deity”, for protecting the graveyard. When people come to the grave to pay respects to their ancestors, the ceremony starts from the “mountain deity” rock. Due to the sacred nature of the graveyard, trees within the graveyard are not allowed to be cut down.
- 2) Farm lands are often separated by fence or by natural streams to mark the borders.
- 3) To ensure the reproduction and sustained population of wild animals, the hunting practices in general follow the rule of “No hunting the female in spring, no hunting the male in autumn”.

- 4) Pine nut is a favorite snack for Naxi people. To ensure the reasonable and equitable gathering and use by each household, the customary law provides that people can only do the pine nut gathering at certain periods around the mid-Autumn Moon Festival time.
- 5) Common medicinal plant-gathering can be done at anytime, but those highly valuable medicinal materials (such as *Cordyceps sinensis*, a type of rare fungus) can only be gathered by local villagers.
- 6) Yuhu Lake is the headwater for Lijiang. Because of the concept of “Su”, people cannot dump waste into the lake, nor do they wash dirty clothing in it.
- 7) Taboos originating in the worship of “Su” are as follow: No logging of trees around the ground for ritual ceremony, at water source area, and in the graveyards. No urinating and no washing of dirty clothing at the water source. No hunting of pregnant animals. No consuming of the meat of snakes, frogs, monkeys, and other specific animals.

Seven to eight members of the “Council of Elders” are elected every three years in the first month of the new year. The vacancy for those found to be incompetent or those who passed away would not be filled until next term. The requirements to be a member of the council are reading literacy and impartiality in mediating disputes. The “Council of Elders” is responsible for setting the rules for the village, adjudicating over conflicts, mediating family and village disputes. They also select the mountain guardians, water guardians, and seedling guardians, and to oversee these people to do their job properly. When there are violations of logging or destruction of crops, the “Council of Elders” and these guardians decide on the punishment according to the set rules. In governing the village affairs, the “Council of Elders” has a higher standing among the villages and performs these functions better than those administrative and policing officials as appointed by the municipal authorities.

The mountain guardian’s duty is to follow the rules and decisions made by the “Council of Elders”, and to patrol the mountains daily. They hand out punishment and educate the violators and for their work, they receive some monetary stipend. If there is a forest fire, everyone (except the elders and children) is responsible to fight the fire. Those violating logging rules such as cutting trees outside of the proper season, are subjected to confiscation of goods or property by the mountain guardians. Those with serious acts of violation are also punished with a severe fine. In general, violators will be forced to hand over material goods, such as food crops as form of punishment. These expropriated food crops are stored in the village collective granary.

In addition, the guardians of the seedlings need to watch over the farm fields during the harvest season including the prevention of people, fowl, and livestock animals from entering the farm fields to destroy the crops which are the result of a whole year’s hard work. If someone had destroyed crops while cutting pig weed, the pig weed will be confiscated and handed over to the seedling guardians. The lesser violations will be punished by caning with tree branches. Serious violation of crop destruction is punished by a severe fine and if livestock animals had done the crop destruction, owner of the livestock will be punished. The duty of the water guardian is to arrange the reasonable and fair use of water to irrigate the farm fields.

2.8 The Value System Inherent Within the Natural Resource Management System of Naxi People

The survey and interview of the elderly people at Yuhu Village awakened their memory of the old ways of natural resource management by customary law. At the same time, they wanted to introduce these traditional ways of customary law to the young generation as they believed that the old ways of natural resource management was most effective. The present day legal system on resource management is comprehensive and in place, but the actual implementation and conduct through the current laws is not as effective as the traditional ways. The traditional ways of customary law combined with religious beliefs to carry out the practical “compensate-for-use” mechanism prove to be better. These not only reflect the value of natural resources, but also emphasize the concept that people only have the right of utilization, and not the right of ownership, regarding natural resources. They express the concept that natural resources are not things that can be controlled in any way people desire. Also in the villagers’ self-governance organization as in the “Council of Elders”, there are limitations imposed on the use of forest resources where they are not looked upon as personal properties.

The Naxi people’s traditional ways of customary law had limited the extent of over-exploitation and over-utilization of the natural resources, thus achieving the desired effect of protecting the resources, and setting in place the “compensate-for-use” concept. This is recognized as the concept best reflecting the value of natural resources, and how they are utilized for gratis with certain limitations. This is the core concept and the real value of the customary law.

3 Current Situation of Natural Resource Management System in Yuhu Village

The resource management systems originated both in the domain of spiritual belief by the worship of “Su”, and also with the community self-governance institution and mechanism of the “Council of Elders”. Both systems are transmitted by oral tradition through generations, through the collective participation in community activities, and by responding to specific problem incidents and follow-up solutions. During the research and study period, it was observed that both traditional ways of resource management systems are gradually disappearing due to the effects of the Cultural Revolution in the 1960s and 1970s, and later due to the great impact of cultural and economic forces through the globalization process. Presently, the natural resource management in the village is mainly carried out by the following government departments:

3.1 “Natural Forest Protection Works” Program of the Forestry Department

The “Natural Forest Protection Works” program was initiated in August 1998 for natural forest protection in the upper-reach drainage areas of the Yangtze River including the Jinsha River and its tributaries, which is the major river system in the Lijiang region. According to plans approved by the State Council, forestry protection departments are set up at the different administrative levels for the preservation of the natural forests. Yuhu Village is under this program where the local public works agency selected five villagers to work as the “natural forest protection team”. They protect and manage the forest resources that

belong to their village. Their wages are paid by the State, thus the village is not burdened with the financial responsibility for the protection team. Through the initiation of this public works program, the major role and responsibility for resource management shifted from the village committees and villagers into the hands of the forest department and the “natural forest protection team”.

3.2 Village Committee and Natural Resource Management

The Village Committee is the most basic level in the hierarchy of local administration and it is responsible for assisting the forestry department and the “natural forest protection team” in the management of the forest resources of Yuhu Village. In the rules and regulation set out by the village assembly committee, there are two articles on natural resource management:

Article 5. It is recognized that protecting the natural ecosystem and the environment, as well as resource management, are the duty and responsibility of every villager. Everyone must observe the rules conscientiously. It is prohibited to bring friends or relatives from outside to gather and destroy the natural resources of the village.

Article 8. Any action which endangers the public interest of Yuhu Village is strictly prohibited. This means even if the destruction is only one tree, one blade of grass, or one rock, the violator will be punished, with a further fine of RMB 20 to 500. Serious violations will be prosecuted by law if the violation is found to be true.

3.3 Tourism Co-operative in Yuhu and Natural Resource Management

The villagers of Yuhu organized a “Tourism Co-operative” in 2004 to take advantage of their geographic location at the foot of Yulong Snow Mountain and the rich natural resources around the village. The co-operative aims to collectively develop and manage the tourism resources in the village such as horseback riding service for tourist sight-seeing of the mountains. All community members join the co-operative as village household units. The members provide services according to the charter of the co-operative, and receive remuneration according to work rendered. The tourism development benefits Yuhu Village which used to have an agriculture-based economy. It became a fast-track route out of poverty for many people. The average annual income per person increased from RMB 937 in 2004 to RMB 3,000 in 2008.

The study also found that under the background of tourism development contributing to higher income for village committee and the farming households, the villagers have become more conscientious of protecting their natural resources. Illegal cutting of trees is now less frequent. As outlined in the co-operative charter, it is the duty and responsibility of co-operative workers and managers to prohibit villagers from cutting trees, quarrying mountain slopes, rock mining, excavating sand and gravels, and other acts that degrade and destroy the ecosystem and the environment. Therefore, it can be seen that modern concepts of environmental protection at Yuhu Village have been established in the charter of the Tourism Co-operative. However there are problems that cannot be ignored for the sustainable development of the community, as tourism and economic development are currently taking place. The increased number of tourists and the horse caravans are impacting negatively on the biodiversity and environment of the area, and this problem

must not be neglected.

4. Related Laws and Regulations of Natural Resource Management

To support the economic development in hinterland regions after the founding of PRC, the middle-to upper-reach areas of the Yangtze River centering around Lijiang (the Jinsha River watershed) gradually became an important lumber production center in Yunnan. Logging enterprises under the management of three levels of government (namely the province, prefecture, and county) were established around Lijiang. In the subsequent decades, these state forestry enterprises extensively logged the forests around Lijiang, and also much illegal logging occurred and worsened since 1958. Between 1958 and 1960, there were steel and copper production plants, copper mines, and coal mines which caused large scale deforestation that resulted in barren mountain landscapes. For example, from January to August of 1958, eight iron mines including the Yulong Mine logged a total of 21,760.81 cubic meters of lumber. With the liberalization of lumber market in 1985, there was another large scale logging activity by the above-mentioned three levels of state forestry enterprises, along with groups of villagers and individuals going into the mountains to log the forests. There were many one-man companies rushing to make a profit in the lumber industry and the forests in the area suffered large scale devastation. According to available data, the lumber reserve of Lijiang Yulong County declined from 49.0314 million cubic meters in 1959 down to 18.7390 million cubic meters in 1989. The amount of forest cover was 63 % in 1949 for Lijiang Yulong County. Even prior to the large scale deforestation in 1985, it had already decreased down to 37.8 %.⁷

After China opened up for liberal economic development in the 1980's, the central government and local administration departments became more aware of the problems brought about by ecological and environmental destruction. The government had established and codified the relevant laws and regulations, so that natural resource management is now guaranteed by law. Herein are the extracts from relevant laws and regulations concerning the protection of natural resources. We can have a closer examination and have a better understanding of how these laws and regulations can help promote and preserve biodiversity. We can also gauge where there are inadequacies or weaknesses in the laws, so that future work on protection of biodiversity can be carried out more effectively.

7 Quotos from: Minzu Publishing Co. "A Brief History of Naxi Ethnic Minority", April, 2008.

4.1 Laws and Regulations

Table 2: Laws and Regulations on Natural Resource Management at National and Local Levels

Title	Objective	Articles and Provisions	Advantage or Disadvantage
Constitution of the People's Republic of China(promulgated and adopted on Dec. 4, 1982; amended on March 14, 2004)	This is the basic law of the State and must be observed as the criteria for the legislation of any other acts. Thus resource management under it is part of the basic national policy.	Article 9. Mineral resource, water resource, forests, mountains, pasture land, unreclaimed land, beaches, and other natural resources are owned by the State, that is, by all citizens, with the exception of the forests, mountains, pasture land, unreclaimed land, and beaches that are owned by collectives in accordance with the law. The state shall ensure the reasonable use of natural resources and protect rare animals and plants. The appropriation or damage of natural resources by any organization or individual by whatever means is prohibited.	It stipulates the ownership of natural resources, and protects the reasonable use as well as stipulating that it is against the law to appropriate and damage natural resources.
Environmental Protection Law of the People's Republic of China (adopted on December 26, 1989)	It aims to protect and ameliorate the natural environment and ecosystem, prevents pollution and other public hazards, guarantees the health of the people, and promotes the modernization and construction of the socialist society.	Article 17. The people's governments at all levels shall take measures to protect regions representing various types of natural ecosystems, regions that are natural habitats of rare and endangered wild animals and plants, regions of important watershed reservoir source, geological structures of major scientific and cultural value, famous regions where karst caves and fossil deposits are distributed, regions of glaciers, volcanoes and hot springs, relic sites of human history, old-age trees and precious trees. These shall have protective measures, and damages to them are strictly forbidden.	The objectives have not included such objective values for sustainable development of human society, such as promoting environmental safety, guaranteeing the environmental rights and freedom, safeguarding of environmental management and market regulation, realizing environmental justice, promoting better efficiency in development of economy, society, and environmental protection.

Title	Objective	Articles and Provisions	Advantage or Disadvantage
Forestry Law of the People's Republic of China (revised and adopted on July 1, 1998)	It is legislated to protect, conserve, and promote reasonable use of forest resources, to hasten the rate of afforestation, to promote the water-retaining and topsoil-holding capacity of the forest, to moderate the climate, to ameliorate the environment, and to supply forest resource products, as well as to adapt the forest to the needs of constructing the socialist society and the daily needs of the people.	<p>Article 8. The State adopts the following protective measures regarding the forest resources:</p> <ol style="list-style-type: none"> 1) To impose a quota on forest logging, encourage tree planting, close mountains for forest regrowth, and expand the area of forest cover; 2) To offer economic support or long-term loans to the collectives and private individuals who plant and cultivate forests according to relevant stipulations of the central and local governments; 3) To advocate comprehensive utilization of timber, reduce the use of timber, and encourage the development and utilization of timber and wood product substitutes; 4) To collect forest cultivation levy fee which shall be used exclusively for forest planning and forest cultivation purposes; 5) To ensure that coal and paper sectors shall apportion out of their output of coal, pulp and paper a certain amount of funds which shall be used exclusively for the cultivation of mine timber and timber for paper making; and 6) To establish a support fund for the forestry sector. 	The State establishes the forestry compensation fund to promote ecological benefit and efficiency for cultivating protective forest, and special use of forestry products, for planning, cultivation, management, and protection of forests. The forestry compensation fund is used exclusively for its designated purpose and shall not be used for any other purpose. Nonetheless, problems still persist. For example, the title and ownership of forest resources are inexplicit, the market mechanism is not sound, the legal system is not yet organized, the administrative responsibility is not clear cut, the public participation is low, the legal system pays little attention to regional differences, and the administrative system places more emphasis on economic benefits rather than ecological benefits, and distorts the relationship between economy and the ecosystem.
Enforcement Rule of Forest Law of the People's Republic of China (adopted on January 29, 2000)	It is formulated to fully implement the Forestry Law of the People's Republic of China.	<p>Chapter One: General Principles</p> <p>Chapter Two: Forestry Operation and Management</p> <p>Chapter Three: Forest Protection</p> <p>Chapter Four: Afforestation</p> <p>Chapter Five: Forestry Logging</p> <p>Chapter Six: Legal Responsibilities</p> <p>Chapter Seven: Supplementary Articles</p>	The rules fully disclose the categories of forest resources, confirms the ownership of forests, timbers and woodlands by legal registration, protecting the right of usufruct against any form of infringement, also further provide the operational articles for the implementation of the Forestry Law.

Title	Objective	Articles and Provisions	Advantage or Disadvantage
Environmental Protection Law of the People's Republic of China (adopted on December 26, 1989)	It is formulated to protect and improve the living environment as well as the ecological environment, prevent pollution and other public hazards, guarantee human health as well as promote the construction of the socialist society.	<p>Article 19. Measures must be taken to protect the ecological environment as natural resources are being developed and ways utilized.</p> <p>Article 23. In urban and rural construction, vegetation, waterways, and the natural landscape shall be protected, and must enhance the construction of gardens, urban green land, historic sites and scenic spots in the cities to combine with the special characteristics of the local natural environment.</p> <p>Article 44. Those in violation of this Law, causes damage to natural resources, land, forests, pasture land, waterways, minerals, fish, wild animals and wild plants shall bear legal liability in accordance with the provisions of relevant laws.</p>	It focuses on the protection of environment and the benefits thereof, with the objective of promoting the people to act in accordance to the natural social behavior, so to enable to develop the society and the economy in sustainable ways. Such protection is for the basis of existence for human beings, which is the natural environment, direct and comprehensive.
Mineral Resource Law of the People's Republic of China (adopted on March 19, 1986; effective on October 1, 1986, with amendment on August 29, 1996)	This law aims at the development of mining industry, promote mineral exploration, the exploitation and protection of mineral resources, and to guarantee the long-term needs for the construction of the socialist society.	Article 3. Mineral resources belong to the State. The rights of State ownership in mineral resources are exercised by the State Council. State ownership of mineral resources, either near the earth's surface or underground, shall not change with the alteration of ownership or right to the use of the land in which the mineral resources are found.	It declares State ownership of natural resources. The detachment of the rights, that of the inhabitants from the land and its attached resources have resulted in irresponsible attitude of the inhabitants towards the management of resources, even leading to the destruction of the mineral resources.

Title	Objective	Articles and Provisions	Advantage or Disadvantage
<p>Regulations of the People's Republic of China on Nature Reserves (promulgated on October 9, 1994)</p>	<p>It is implemented to improve the construction and management of natural reserves, as well as the protection of natural environment and the natural resources.</p>	<p>Article 18. Nature reserves may be divided into three parts: the core area, buffer zone, and experiment zone.</p> <p>The intact natural ecosystems and the areas where the rare and endangered animals or plants are concentrated and distributed within nature reserves, shall be included in the core zone into which no agencies or individuals are allowed to enter. Scientific research activities are generally prohibited in the core zone except for those approved according to Article 27 of the Regulations.</p> <p>Certain extent area surrounding the core zone may be designated as the buffer zone, where only scientific observations and other research activities are allowed.</p> <p>The area surrounding the buffer zone may be designated as the experiment zone, where it may be entered for various activities such as scientific experimentation, educational learning, field visit and investigation, tourism, and the domestication and breeding of rare and endangered wild animal or plant species.</p>	<p>It sets out clearly the zoning principles for nature reserve and types of permitted human activities. However, some reserves have been developed as tourism area. The supervision, observance, monitoring, and legal punishment measures, as well as implementation of the regulations, have not yet been fully enforced.</p>
<p>Regulations for the Protection and Management of Yulong Snow Mountain, Yulong Naxi Autonomous County of Yunnan Province (adopted on July 28, 2006 by the Provincial People's Congress of Yunnan, China)</p>	<p>It is formulated to improve the protection, management, and reasonable development and utilization of Yulong Snow Mountain, as well as to realize the ecological, economic and social benefits, and to coordinate these development.</p>	<p>Article 4. The protection, management, and exploitation of the natural reserves should observe the principle of protection first, reasonable development and utilization, with coordinated planning and enhanced management, so to realize the ecological, economic, and social benefits, and to coordinate these developments.</p>	<p>Yulong Snow Mountain in Lijiang region is a natural reserve at the provincial level, and was established in 1984. In fact, the main goal of a reserve should be the protection of natural environment and resources. Nonetheless, the said regulations focus mainly on the protection, management, reasonable development, and utilization of resources, as well as the realization of ecological, economic and social benefits. Even though it emphasizes "reasonable" development, the outcome is still an open question as to whether the ecological, economic and social benefits can be coordinated.</p>

Title	Objective	Articles and Provisions	Advantage or Disadvantage
The Organic Law of the Village Committee of the People's Republic of China (adopted on November 4, 1998)	It aims to promote the self-governance of the villagers, the development of fundamental democracy in the countryside, as well as to promote the material and spiritual advancement in constructing the socialist society.	Article 5. To educate the villagers on reasonable utilization of natural resources, and on the preservation and improvement of the ecological environment.	The meaning of the said article is not explicit enough and has since become outdated.
Forestry Law of Yunnan Province (adopted on February 1, 2003)	It is formulated to protect, conserve, and for the reasonable utilization of forest resources, to promote the development of forestry industry, and to improve the ecological environment.	<p>Article 3. According to national laws and regulations, the minority nationality autonomous regions can enjoy more rights and favored conditions in forest protection and utilization, timber quota, as well as the utilization of the forestry fund than the non-autonomous ones.</p> <p>Article 35. With certificate issued by the village committee, the villagers can log the sparse trees around their own houses or on their own reserve land, the trees on leased non-essential farmland and on the essential farmland, which can be taken for sale within the county area. If they want to sell the timber outside the county, they need to get verification and approval by township forestry office, then go to apply the certificate for timber transportation from county-level forestry office or from an approved township-level forestry office.</p>	It discloses explicitly more rights and favored conditions for the minority nationality autonomous regions in forest protection and exploitation. Meanwhile, it protects further the rights of the villagers to log and sell the timber of their personal property, as well as regulates the application procedure for such sale.

Title	Objective	Articles and Provisions	Advantage or Disadvantage
Forestry Regulation of Lijiang Naxi Autonomous County, Yunnan (adopted on April 7, 1993 by the Provincial People's Congress of Yunnan, China)	Said regulation is to improve the management of forestry sector; to protect, conserve, and the reasonable utilization of forest resources with more effective measures; to expedite afforestation on national land, as well as to better develop the forests with more functions and benefits, and thus to promote economic development.	<p>Article 14. To protect forest resources within the county, the following measures are to be implemented:</p> <p>(1) Logging of the forests must be restricted, the utilization thereof must follow the principle of "growth comes first" - annual logging must be controlled not to exceed the growth rate. Strict measures are taken to control the annual logging quota, to actively encourage afforestation, and provide for mountain closure to allow forest regeneration.</p> <p>(2) Burning efficiency of firewood must be improved. All institutions and residents should save energy, promote burning efficiency, avoid low-value consumption of forest resources, especially refrain from taking of premium quality wood for use as firewood.</p> <p>(4) Special protection measures must be implemented for endangered plants and animals.</p> <p>Article 17. Yulong Snow Mountain Reserve, the main forest zone of Hengduan Mountain, and the main forest zone of Laojunshan 99 Dragon Lake shall be specially protected. Logging, hunting, medicinal plant picking and digging, and other destructive activities are all strictly prohibited.</p>	The law discloses protective measures explicitly and prohibits any activities that destroy ecological protection. Nonetheless, many ethnic minority peoples inhabiting in these reserves consume large quantity of natural resources. Therefore, the official measures for preserving the natural resources are in direct conflict to the lives and benefits of the ethnic minority peoples. The said regulation is yet unable to solve these issues.

4.2 Policies

China is a country that is comparatively rich in natural resources. The exploitation and utilization of its rich natural resources has become one of the basic advantages for China's economic development. Especially at the present time, the massive utilization and consumption of natural resources are key factors supporting the rapid growth of China's economy. It is also especially notable in the utilization and consumption in the natural resource and energy sectors. As economic growth becomes the priority objective, the central government, down to the local government has set down laws and regulations concerning natural resources, which have placed more emphasis on the utilization of resources for economic development for the benefit of the peoples. Due to the accumulated economic growth and its effects, in recent years much negative impacts and destructive practices in the environment and natural resource sector have begun to manifest in many areas. These days, the government agencies are starting to seriously look into the balanced growth model, to harmonize the balance between the natural environment and socio-economic develop-

ment. The central government has also raised the “scientific development” perspective, where the concept of coordinated balance development between human and Nature are taken into the “scientific development” perspective. Even though in the government policy these sustainable and coordinated development concepts are included, it still needs time to be realized and effected within the legal framework, as there is a required process in going from the formulating or amending a law onto its promulgation and enactment. As it is, there are many laws and regulations on natural resources currently undergoing amendment and revision. These revision works are in progress in order to meet the needs of the modern society’s economic growth, while also achieving the goals of harmony and balanced development between the natural ecosystem and the socio-economic conditions.

The national government had commenced afforestation programs starting in the 1980’s. Thus the forest ecosystem and its resources are recovering gradually, with much improvement in the plant growth and vegetation covering. The Lijiang region has also established a forestry aeronautic station, for aerial reconnaissance and monitoring of forest fires and prevention work on spread of plant disease in the forest, as well as to carry out aerial seeding program on barren land and on denuded mountain slopes. The afforestation programs around Yuhu Village have achieved good result in the regeneration and protection of the forest ecology and its natural resources. During the study period at Yuhu Village, the interviewed elders all had mentioned the fact that the forests were destroyed during the indiscriminate logging in the 1980’s, but now because of the aerial seeding work the young trees planted in the years past have now grown into mature timber trees.

Alongside these human-labor afforestation programs, those national policies with far-reaching impact on the present-day ecosystem conditions and natural resources also include the policy for preserving natural forests, and the program for fallowing and regeneration of agricultural land to allow the growth of pastures and trees.

It was the devastating flood in the downstream drainage areas of the Yangtze River in 1997 that prompted the central government to focus on protecting the environment, in order to reduce the occurrence of these natural disasters. Thereafter, the “Natural Forest Protection Works” program began on Sept. 1, 1998, for the upstream regions of Yangtze River. According to the actual implementation of this “Natural Forest Protection Works” as approved by the State Council, a total budget amount of RMB 96.2 billion is to be spent for this public works program from 2000 to 2010. (Note: Prior to the program’s approval by the State Council, the central government had already allocated RMB 18.8 billion for the program.) Under this program, a number of natural forestry protection departments and institutions have been established from the central government to the local administration levels, and have also initiated the employment of villagers to work under this program (see Section 3.1).

It has to be established, however, that Lijiang region had started the work earlier. Before the national policy had even initiated the protection measures for natural forests, the Lijiang City Government (formerly the Lijiang administrative office on the provincial level) had already begun the transformation of the region’s finance structure, which was to change from the “timber economy”- based incomes, into tourism and development in other sectors. From this policy focus, the region started the protection of the forests in 1994. Afterwards, with the official enactment of the national policy on natural forest at the State-level, the protection of forest and the natural ecosystem combined together to achieve even greater

effect and promoted the objectives, with the guarantee of the policy implementation.

The program for fallowing and regeneration of agricultural land (to allow the growth of pastures and trees) started with some experimentation work in 2000. It is mainly focused on those fields with severe destruction of trees, pastures, and plant covering, and lands with severe soil erosion problem. Until the end of 2006, there have been a total of 90 million hectares of land undergoing the fallowing and regeneration program throughout the whole country, and a total of 13 million hectares of land undergoing the program of afforestation and regenerating growth of barren land and barren mountains. It is estimated that the central government has put in more than RMB 130 billion into these programs. In the Yuhu Village area, over 100 acres of agricultural land were provided for fallowing and regeneration into pastures. The farmers with fallow agriculture fields receive an annual subsidy for their compensation, from the central government finance department.

Also, the Environmental Protection Department has printed and issued booklets on "Program Outline on Protecting Vulnerable Ecosystem Environment Regions in the Nation". This is to enhance the protection measures on the vulnerable ecosystem, help control the degenerating condition of the ecosystem, promote the recovery of the ecosystem, and improve the quality of the living environment.

Besides the national laws and regulations on protecting land and natural resources, the central government has followed the national land policy which has strict protection measures for agricultural land resources, and is strongly focused on strict management of the land. In 2004, the guideline on "State Council on strengthening economic reform with decision on strict land management" was published. This was followed by the "State Council announcement on issues relating to strengthening of land standardization and control" in Sept. 5, 2006, which pronounced and outlined even stronger measures for strict protection of agricultural land as an important index, with added weight points in the year-end review and assessment on the performance of local government administrations.

The local laws and policies of Lijiang region's government have also been quite effective, in preserving the natural resources of Yuhu Village. In the years of the last century, the Lijiang City construction plan's main trend was development towards the north. This was due to Lijiang's north lands being poorer and less fertile, whereas the land to the south had better soil and water conditions. Thus, this development had a potential threat to the natural environment and ecology of areas around Yuhu Village, especially a substantial impact on the glaciers on the peaks of Yulong Snow Mountain. The glacier had been found to be receding at a higher rate than before. In later years, the Lijiang City Government started to better comprehend the importance of protecting the natural environment and ecology, thus the city's new planning is directed towards the south now. This has reduced the pressure on the north area of the Lijiang Plain (which included Yuhu Village). It also reduced the threat to Yuhu Village's surrounding land being expropriated for urban construction projects. Thus the protection of land resources has improved to a great extent, especially with better preservation of the agricultural land resources.

There are many varieties of mineral ore resources in the Yulong Snow Mountain area, and the minerals are of high grade and quality. However, the Lijiang City Government and administrations at all levels have realized that protecting the natural environment and its resources, in conjunction with developing tourism, is more important and also the best

way for the Lijiang region to go towards sustainable development. Therefore the laws and policies are in place to strictly forbid any mining activity in the areas around Yulong Snow Mountain. These local laws and policies are effective in preserving the region's natural environment and the ecosystem, and also enable the protection of the region's natural resources.

In recent years, China has also been establishing a legal framework and supplementary structures on which to base the laws governing water use, and the multi-levels of managing the water resources. The legal framework is to ensure the overall national standardized management and control of the water resources, with the mandate to carry it out by the national water administration. It also has the purpose to promote the development, utilization, reduced use, protection, and the management of water resources.

Within the boundary of Yuhu Village, the protection and management of water resource is to guarantee the availability of water for Lijiang City for production use and daily living. However, the Lijiang City has not yet initiated local laws or regulations regarding water resource management.

From the above cases of policies on protecting natural resources, from the state to the local administrative levels, these policies are playing active roles and have much impact on all the natural resources. Together with advancing socio-economic growth, the government administrations at all levels are putting in diligent efforts to co-ordinate the balanced development of the natural resources, with the needs of the economy and the society.

5. Framework of Ownership and Usufruct for Natural Resource Management

The Naxi people's traditional ways of natural resource management system with Yuhu Village as a representative example was introduced at the start of this report. One is the sustainable utilization and management of natural resources based on the Dongba religion. The other is the village institution for general affairs management which is the "Council of Elders". Another is the reverence for the natural environment within the traditional religious belief that prevented people from over-exploiting natural resources. It also instilled a "debt payment" mentality as a way of compensation for using the natural resources. In the long run, it became a compensation-for-use mechanism. The "Council of Elders", on the other hand, was the product of the early form of grassroots democratic election. Nonetheless, this institution was not endowed with any absolute dominant leadership figure. It is more like a legislative body which functions in management of village affairs, arbitration and mediation of disputes.

In China, there are different state and local management bodies for the different types of resources. In the current Resource Management Acts, these were all drafted by first-level administrative sectors responsible for resource management. The acts were passed by the National People's Congress and ratified by the State Council. The power for resource management of the administrative sectors is approved by the National People's Congress, while the criteria of implementation thereof are the laws drafted by the administrative sectors themselves. Such kind of laws is called "Sector Laws" in China. While tough administrative measures are necessary to prevent the destruction of natural resources resulting from unreasonable and arbitrary socio-economic activities, the usual extension of the adminis-

trative sector's domain control in drafting the laws have at times led to conflict among the law articles and regulations of different sectors.

5.1 Framework of Ownership

The essence of ownership of natural resources is that the owners possess exclusive rights toward said resources, including the four actions of possession, use, income, and empowerment, which can be ascribed to or be separated with the same party.

According to Naxi people's traditional way of thinking, the owner of natural resources is "Su" - the brothers of human beings. Natural resources do not belong to human beings. Nonetheless, there is a parallel system for registration of ownership, such as "title deed for land", "title deed for house", "title deed for mountain land", etc. The origin and application of these documents came after the Naxi people's inclusion into the PRC's unified national administration, where they had to follow the top-down system of official verification and registration of resource ownership. This coexists with the concept and style of natural resource management based on traditional religious belief. In China's current legal system, the dominion of natural resources is categorized according to the type of owners, for which there are the national dominion, collective dominion, and individual dominion. To follow according to the type of natural resources, there are different ownership of resources in the categories of land, forest, water, pasture land, minerals, as well as wild animal and plants.

Nowadays, the collective ownership of natural resources of Yuhu Village includes land, forest, water, as well as the plants, sand and gravels in the forests. They have the collective title deed for the land and forest, but not the mineral resources. According to current laws, all the mineral resources belong to the State. In the early 1970's, large tracts of forest resources were delineated as State owned, which led to the transfer of village collective ownership to State ownership. It is now restricted in use and must be compensated after its utilization. Consequently, there are only two types of ownership at the present time: either the collective ownership or the State ownership.

5.2 Framework of Usufruct

(Usufruct is a legal term which denotes the right to use and enjoy another's property and derive benefits from it, without changing the character of the property.)

The usufruct of natural resources is taken as the right of owners to use natural resources and to reap the ensuing benefits. There are two types of use of natural resources, the compensated use and the uncompensated use. The value of natural resources is mainly reflected by compensated use. In Yuhu Village, the traditional use of natural resources is the compensated one pursuant to the religious belief. The compensated use of natural resources is to compensate the owner "Su" with sacrifice offering to pay the debt. Meanwhile, within the boundary of the village, the natural resources are shared by all (except for land, due to its production use). Then there are the resources which are used without compensation, including water and medicinal plants, which are also shared with people from outside the village, as they belong to the rest of society to be used.

All the lands of Yuhu Village are now contracted to the villagers, while the contracting people possess the usufruct right. In the past, the contracting people needed to submit

money as deposit, as it was compensated use. Now, they can receive various agricultural subsidies, thus becoming uncompensated use. Logging of the forest is now prohibited, but the collection of firewood for fuel is uncompensated use within the boundary of the village. "Sansikai" River is the main water source for production activities and water use for daily living in the whole Lijiang Plain. Yuhu Village now does not supply water for free to the whole Lijiang Plain as before, as the village currently receives financial subsidy from the government for the water use. However, when Yuhu Village's water use for their own production activities comes into conflict with the water use for daily living of the people in the downstream plain area, Yuhu villagers have to concede their right as the downstream population has the priority.

6. Possible Integration of Customary Law and Current Law in Natural Resource Management

The State Government has enacted several thousands of law articles and regulations with the intended effects of promoting social progress and economic development, as well as stimulating the protection and construction of modern communities in the ethnic minority regions. For customary law, it acts as a standard of social interaction and behavior and it is not just found in the Naxi communities, but also throughout the world. Customary law can be seen as a social standard, somewhere between the morality code of the community and the official legal code. There are distinctive features depending on the regional variation, and the applications on production activity.

In reviewing the official legal code viz. customary law since the founding of the PRC, customary law has been rather limited in its application as the basis within the official legal code, though it has not disappeared yet. For example, in the state government's published "Common Programs of Political Consultation Meeting" in 1949, Article 53 states: "All ethnic minority nationalities within the State have the freedom to use and develop their own language and own forms of written text, and have the freedom to maintain or to reform their custom practices and religious belief." In the PRC Constitution, Article 4 Item 4 stipulates: "All ethnic nationalities have the freedom to use and develop their own language and own forms of written text, and have the freedom to maintain or reform their own custom practices". In the current "Ethnic Nationality Region Autonomy Law", Article 10 stipulates, "In the ethnic nationality autonomous region, the autonomous governing administration shall guarantee all ethnic nationalities within the region to have the freedom to use and develop their own language and own forms of written text, and have the freedom to maintain or reform their own custom practices." These above-mentioned law articles have firmly established the basis for customary law within the national Constitution, as well as its position within the legal system of the State. Thus in both civil and judicial laws, the customary law shall have its respected position and relevance⁸.

The better protection of the ecosystem that comes from the perspective of preserving the forest resources can be based on the advantage conferred by the regional autonomy framework in the Naxi people areas. Finding the commonality between the national law and customary law, the inadequacy in the current system can be supplemented by customary law. On the other hand, when dealing with specific circumstances, the positive aspects

8 http://www.shenmeshi.com/Social/Social_20080522002418.html

within the ethnic nationality's customary law can be taken up to enhance the autonomous law and the villagers' own local regulations. Thus the area's Naxi customary law, where appropriate and beneficial, can be elevated to become the local or regional law or as part of the autonomous governing framework of the village. To elevate it to become the local or regional law might take more expenses and effort. At this stage, it is more practical to apply the Naxi customary law into the self-governance aspects of the local rules and regulation of the villagers. This way the management of resources can better be accommodated into the local Naxi people's current socio-economic development and adapted to the characteristics of the local environment, enabling the achievement of goals of sustainable utilization of the natural resources. For people's use of natural resources as regulated in the customary law, the key is "do things in moderation". The relationship between human and Nature is based on the essence of their balanced and harmonious relationship. For applying customary law to the local regulation of villagers, it can embody the intent of the current legal framework on resource management, and also it can express the overall interdependency relationship between human and Nature from the perspective of modern scientific advancement.

7 Conflict Between Customary Law and Legal Framework in Natural Resource Management

The customary law of Naxi people has its obvious advantage in the management of natural resources, and also has much compatibility with the current national laws. However, there are also conflicts with the current legal system. First of all, the Naxi customary law and ways of resource management are mostly linked with the Naxi religious beliefs, associated activities and worship rituals. Even though the State ascribes to the principle of freedom of religion, the religious belief and its worship by the ethnic nationalities have declined to a very low level, because of the lasting effects of the "Cultural Revolution". The laws and government policies cannot enforce the ethnic religious belief upon any individual person, and thus also cannot forcefully make people accept and adopt the traditional compensation practice for the use of the natural resources.

As well, the traditional way of dispensing punishment is more arbitrary. Though there are limits, the degree and amount of punishment are dependent on the decision of guardians (i.e. mountain guardian, seedling guardian). The mountain guardians, who are now selected by the village committee, are not allowed to violate the national law provisions for the protection of private properties when dispensing out punishment to violators. The criteria for type of punishment depend on the action and level of the violation. According to Naxi customary law, the mountain guardians can keep nearly all the fines or the confiscated goods. In today's management system, all fines or the confiscated goods must be passed on to the local village treasury, or belong to the whole village collectively.

In the past, the aforementioned mountain guardians were selected by the "Council of Elders" and approved through election by the villagers. In return for their labor work, they were paid in the form of material goods as compensation from the villagers, but the latter also have the right to monitor the guardians' work. In the present forest management system, the natural forest protection workers are selected from among the villagers and they receive the monetary subsidy from the government, thus villagers are not burdened with the payment for their labor. The current system resulted to a substantial number of forest

protection workers whose efforts are not effective. Because villagers are not responsible for the wage of the forest protection workers, and also do not have the right to use the natural resources, the villagers have little incentive to monitor the actual work effects and efficiency of the forest protection workers. Hence the villagers have by default given up their monitoring role in the management of the forest resources.

8 Conflict Among the Different Models of Development

Looking from the traditional viewpoint, natural resources are those materials that can be utilized in our daily lives. However in modern society, people place more emphasis on the inherent value of the natural resources; only through their exploitation and utilization can their value be fully realized. Given the ways of different societies that have developed and evolved, they hold different perspectives regarding natural resources. This is especially so in the natural resource management system of the present day, where people have introduced many of the modern concepts on property rights. Thus the natural resources are more characterized as property assets of the society.

For the ethnic minority peoples, they have always taken good protection of their natural resources in accordance to their traditional ways of resource management. However, they are not able to receive the compensated benefits as users of the resources or for their protection practices. This is why the ethnic minority peoples are lagging behind in their economic development compared to other regions. In the case of Yuhu Village, this resulting process can be seen. The traditional natural resources of Naxi people have been taken by the national government on one hand, and were exported to the outside region as cheap raw materials on the other hand. Consequently, it led to very serious destruction within a short time. For example, parts of the original forest of Yuhu Village were appropriated and delineated as belonging to the State. Likewise, the developed area of Yulong Snow Mountain Reserve had also included large tracts of forest which originally belonged to Yuhu Village, but were delineated as belonging to the State. Currently, there is the rapid socio-economic development of the Lijiang region as driven by the tourism industry of Lijiang and Yulong Snow Mountain. With this development and with the villagers having to transfer the ownership of their traditional natural resources in the past, it is worth asking: Is it possible to give the villagers their suitable compensation, so that they can cope in stride with the socio-economic development of Lijiang region? Moreover, even if parts of the forest resources are now in collective ownership, the villagers, when in need of construction material, cannot go freely to the forest to cut down trees for timber. Rather, they have to buy the timber at a high price from people who have logged the trees illegally. While the government has to deal with the many problems of indiscriminate and illegal logging of forest resources, at the same time, can it implement policies to compensate the villagers with subsidy for protecting their forest? Or maybe the government can supply the villagers the confiscated timber materials at a low price, as a way of compensation for their protection of natural forests?

During the study of Yuhu Village, there was still ongoing illegal logging by some people and not all of these illegal activities will be punished by law. The derived economic benefits for the vested interests of these illegal acts have far exceeded those of the law-abiding villagers, so the disparity of income is getting larger. This has serious impact on the thinking of the law-abiding villagers, and also weakens the restraining power and the influence of

government laws. It also has much negative influence on the attitude of the villagers on their willingness to actively protect the natural resources.

9 Sensible Use of Resource Management System According to Traditional Ways of Ethnic Minority Peoples

The bases and objectives of implementing resource management system in accordance with the traditional ways of ethnic minority peoples are as follows: First, it utilizes the advantage of ethnic minority people's knowledge system regarding natural resources, which centers on the harmonious relationship between human and Nature. This way, sustainable development of natural resources is achieved during the course of socio-economic development. Second, it aims to learn the ways of utilizing natural resources as practiced by the ethnic minority peoples. In China, most of the areas inhabited by ethnic minority peoples still have much better preserved natural resources and ecosystem. The key is their way of utilizing natural resources, which is practiced with imposed conditions and with limitations. They also follow the mode of their traditional customary law as a standard and as their way of life. Third, it takes up the system of collective management of the forest resources as practiced by the ethnic minority peoples, whereby the management institution and the forest managing workers are selected through democratic election in the village, which ensures fairness and legitimacy. At the same time, this traditional system of limited use of resources and its "compensate-for-use" guarantees the protection of natural resources. This kind of resource utilization practice is totally different from the approach of the industrial production mode of resource utilization. It can be set up to take the traditional customary law as the basis for resource management, and also as monitoring mechanism by the villagers to ensure much better working result and efficiency by the resource management workers. The integration of ethnic minority peoples' customary law and the current system of resource management would enable the better protection of natural resources. More than just being an effective supplement to the national government's system of resource management, it can also consolidate the people's identification with the state judicial law. Thus for the ethnic minority peoples whose traditional culture is based mostly on the representation and symbolism of the natural ecosystem, these can be better protected and passed on to future generations, by officially recognizing the use of the traditional customary law.

At the national level, the laws and policies of the central government of China have always been respectful of the rights of the ethnic minority peoples and their local communities, of the traditional ways of living in the local communities which are beneficial to the preservation and sustainable utilization of biodiversity. The laws and policies of the State have been quite supportive of the participation by ethnic minority peoples and the local communities in those activities that work towards the goals of the Convention for Biological Diversity (CBD) to promote the recording and compilation of traditional knowledge, for its continual practice and passing on to future generations. The "China's Agenda for the 21st Century" treatise clearly underlines the importance of preserving traditional knowledge, and also encourages ethnic minority peoples, women, and local communities to participate in the works of conserving biological diversity.

At the level of local government law, the Yunnan Province enacted the "Dongba Cultural Protection Statue Law of Yunnan Province" on June 1, 2006. It has the objective of

strengthening the protective measures for Naxi Dongba culture, and also promoting and venerating the renowned cultural heritage of Naxi people and the Dongba priests. The “Dongba Cultural Protection Statue Law” clearly outlines the inclusion of Naxi Dongba culture for preservation, including the Dongba grand priests and teachers with their command of traditional knowledge and skills, the folk activities with Naxi Dongba cultural features, and other Naxi Dongba cultural elements worthy of preservation. It also clearly outlines the responsibilities of the government administrative offices in charge of Dongba culture, and provides for all levels of government administration to establish Naxi Dongba culture protection area in the districts with large congregation of Naxi people inhabitants, where there are active Dongba traditional activities and with good development of teaching and transmission of Naxi Dongba culture.

With the enactment of this statute law, it can be stated that the protection of Naxi Dongba culture has arrived at a new historic era, with the legal basis established. Currently, there is quite a great amount of work and diligent effort to preserve the Dongba culture by many local government administration offices. It is now a new period of glory and prominence for the Dongba culture, in the post-Cultural Revolution as many Naxi communities are experiencing an upsurge of interest in learning the Dongba knowledge and rituals. The new development of the cultural industry has also relied upon the uniqueness of Dongba culture, to allow the industry to develop rapidly. Unfortunately, the general public still only has a superficial and shallow understanding of the concepts of traditional knowledge. Currently, there are a number of research reports on Naxi people’s traditional knowledge on natural resource management already published. Despite this, the government administrations and the agency departments have ignored these reports, and thus far have not incorporated these into the drafting and implementation of the official legislation and regulations.

Therefore, it is hoped that this study would be able to further advance the works and objectives of the “Dongba Cultural Protection Statue Law”. It is recommended that along with establishing a Dongba culture preservation area, the restoration of traditional worship ceremony and traditional cultural art performance be promoted, at the same time incorporating the traditional resource management system and the ways of collective community management. This way the preservation work can be more fully encompassing and comprehensive.

10 Works Done by NGO in this Area ⁹

10.1 The Compilation and Maintenance of Traditional Knowledge

With funding support from the Ford Foundation, the Kunming Institute of Botany (under the Chinese Academy of Sciences) has undertaken a major study on the traditional slash-and-burn cultivation of Hani and Jinuo ethnic communities in the mountain regions of Xishuangbanna district. The study found that many traditional cultivation practices emphasize the preservation of the forest. Those plant species with special economic and ecological values are often preserved on the land of slash-and-burn cultivation, including the banyan tree, wild mango tree, and other timber wood species. The traditional way of resource

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 9 Parts quote from: Information Exchange Forum on the National Biodiversity of China Government: http://www.biodiv.gov.cn/rdwt/200403/t20040302_88660.htm

management is found to have an irreplaceable and active role in the preservation of ecosystem and biological diversity. The Ford Foundation has also provided funding support for the Xishuangbanna Tropical Botanical Garden (under the Chinese Academy of Sciences), for studies on the relationship between Dai people's traditional religion (Buddhism) and botanical garden plants, and the role of their religious belief played in preserving biological diversity. It was found that more than 100 plant species have direct and important meanings to their religious belief.

10.2 Ethnic Minority Peoples and Local Community Participation in Preserving Biodiversity

With the aid of international organizations, a number of natural reserves have started to develop management mechanisms which involve the participation of the local community. Local people are recruited and the community and the women are encouraged to take part in the management of the nature reserve. In many localities throughout China, the "sacred mountains", the important historic sites of Taoism and Buddhism, are the places with good preservation of the biological resources. Many were done with local ordinance and guidelines, so the good qualities of traditional knowledge are preserved and taken up for recognition and promotion, and thus enable the protection of the biological diversity. For example, there are about 400 "sacred mountains" in the Xishuangbanna Prefecture, and the sacred forests in these mountains are strictly safeguarded and protected by the Dai people's community co-operatives.

10.3 Traditional and Intangible Cultural Heritage Forum in Lijiang

"Traditional and Intangible Cultural Heritage Forum in Lijiang" was held in Sept. 22 to 23, 2008. It was organized by Action Aid China, and co-organized by the National Affairs Study Unit of Chinese Academy of Social Sciences, China WTO Network, and the American Bar Association. During the forum, the PRC Intangible Cultural Heritage Protection Act took up the discussion focused on laws and guidelines relating to community with traditional knowledge, and those who are teaching and passing on the traditional knowledge. Also, the second article of the Act which defines the concept of intangible cultural heritage did not clearly list the community collective management system and other knowledge regarding nature resource management system. This meant that in the discussion at this forum, these types of traditional knowledge were not listed as among the intangible cultural heritage and did not allow for them to be further developed and deliberated, which is quite disappointing.

Overall, this study had carried out on-site investigation at Yuhu Village along with a study of related national and local laws and guidelines. The authors found that to better preserve the biodiversity in the ethnic minority peoples' areas, to better protect the ethnic minority peoples themselves, and to better preserve the local and national environment for the whole humanity, we recommend the government and the responsible administration departments to fully understand the true value system of the Naxi people's traditional natural resource management. It is important to pay focused attention to the roles and functions of the traditional knowledge in resource management that had been effective in the past, to incorporate them into the current laws and guidelines. Also it is recommended to officially integrate this knowledge within the local community's collective management system, for these ethnic minority communities where some traditional ways of resource management

are still preserved. From these incorporation and integration, a more effective resource management system can be explored and arrived at, so that all humanity can benefit from these wise knowledge left for us by our ancestors.

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Part B: Haruku's Natural Heritage Protectors

1. Introduction

Community-based conservation is a matter often discussed and it is one of the major projects by both the Moluccas Government and a local college organization. It is also a model for environmental management and sustainable natural resources and is environment friendly.

The knowledge and wisdom of indigenous peoples are expressed through indigenous institutions that are regarded as efforts in protecting the existing territory and natural resources.



KALPATARU AWARD, 1985 Awarded for saving environment by using Haruku's customary law

Some research studies show that traditional wisdom on natural resource management in Indonesia is in fact unable to survive due to various influences from central and local government policies. The same show that indigenous peoples, who are the rights holders over the territories and natural resources have no rights at all in maintaining natural resources within their territory.

The top-down development system that exploits the natural resources has ignored the existence of indigenous peoples. The government, as reflected in its national development policies is of the assumption that indigenous peoples are less civilized and have to be modernized (Gama, 1993; Adimiharja, 2001). This has caused so many traditional village institutions in Moluccas to lose their functions in society. Groups who practice indigenous knowledge and wisdom in managing natural resources are instead accused of being PKI (Communist Party of Indonesia) members or RMS (Republic of South Maluku) and so on. Such was the case of Eliza Kissya, Head of Kewang Haruku who used traditional wisdom

known as Sasi Law to maintain the customs of the territory (petuanan) of Haruku village from the expansion of PT. Aneka Tambang to mine gold in the Haruku Island, particularly in Haruku village in 1998.

The problems that arise at this time is that, many of the government's natural resource management that aim for prosperity and welfare of the people, have a negative impact on the environment, including the community. The government then realized that traditional societies actually have the ability to manage natural resources, so that the government set out various policies which involve the community.



1998, Satya Lencana Pembangunan awarded for defending the environment by using customary law

However, the community's involvement in the actual management of natural resources, was not done the proper way. Ecological considerations and economic resources and wisdom that were used by indigenous peoples were not considered at all (Dahuri, 2003).

Haruku Village had their own local institution and they had shown strength in the face of varied laws and policies that were forced on them by the central and local governments in the management of natural resources. Their efforts to maintain their customary law received various forms of stigma from the government with the title PKI or RMS as these are considered against the state.

Indigenous wisdom as the customary law in Haruku Village and how it is enforced, in relation to Indonesia's regulations can be depicted clearly in the following explanation.

2. About Haruku Village

Haruku village is geographically situated in the western part of Haruku Island. The village is bordered on the west by the Sea - Strait Haruku, on the east by Oma village, on the north by the Rohomoni village and on the south by Oma village and Rural Affairs Sameth.



Kalpataru's monument, with crocodile and sasi's fish (abundant jumping fish) as its symbol lampa di atasnya. Sasi Lampa and crocodile are a folklore that nowadays is preserved and prohibited in Haruku's customary law

The total population of 2359 is composed of 1138 males and 1221 females. The customary system is the social system that prevails in the community which is still bound by indigenous knowledge and various customary rules. The customary land system in Haruku is backed by some indigenous institutions including:

- 1) King of Haruku village
- 2) Big Saniri
- 3) Village Saniri
- 4) Kewang
- 5) Kapitang. (panglima perang adat)
- 6) Land Author
- 7) Marinyo. (Hubungan Masyarakat)
- 8) Clans

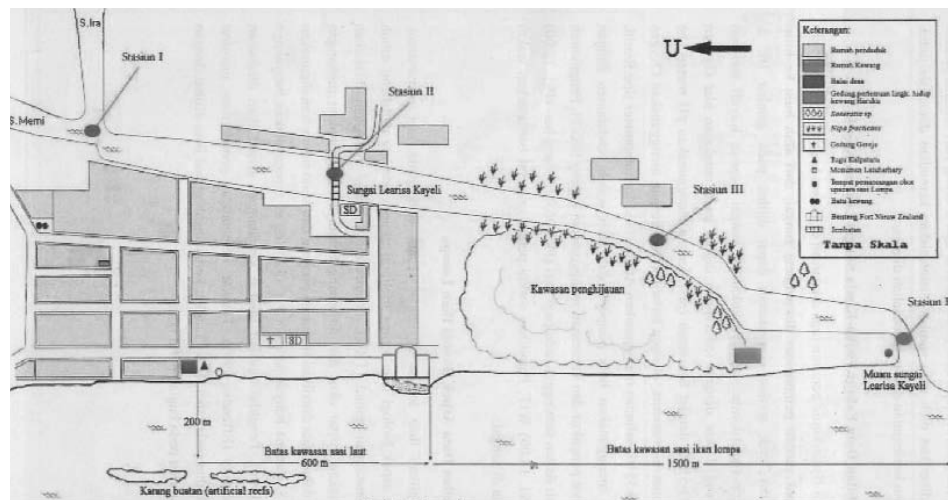
The first inhabitants of Haruku village were the original Moluccan indigenous people who originally came from Seram island. The search for the ancestral land of the ancient Haruku began when they sailed out from Seram island and arrived at Haruku village which is still occupied by the present generation.

The customary law known as Sasi sets and maintains the social relationships between Haruku indigenous peoples and their territory (petuanan) and natural resources contained therein.

Sasi law in Haruku had been implemented since the time of the ancestors in 1600, and this existing law is still read every year at customary events. Various problems arising in Haruku, including land ownership between clans and between Haruku and other neighboring villages are resolved by employing applicable customary law.

3. Sasi Areas in Haruku and Types of Natural Resources in Sasi

Natural resource management in Haruku is based on customary rules known as Sasi law. The implementation and application of Sasi are carried out by traditional institutions called Kewang (customary police). Sasi law enforcement is categorized into two namely, Sasi for a particular area, and Sasi for certain types of natural resources.



Prohibited Area and Utilized zones in Haruku's coast and Haruku's sea

Sasi for a particular area is applicable to a specific territory as well as all natural resources within it like for instance there is Sasi for the sea and rivers, Sasi on watersheds prohibits any activity that would disturb or alter the condition of the watersheds; there is also Sasi on protected marine area for coral reefs and marine life in the sea, as well as protected "Lompa fish" areas. On the other hand, Sasi for certain types of natural resources is applicable to certain types of natural resources, which are in the territory of Haruku village. This customary law has rules for the protection of several types of natural resources such as pineapple, walnuts, Cempedak, durian, areca nut, nutmeg, and sago leaves.

Both the Sasi for particular areas and Sasi for natural resources are conducted in order to maintain the capacity of the environment and natural resources.

The application of both types of Sasi on the natural resource management systems as enforced and guarded by the Kewang, aims to keep potential and protected areas intact. The impact is monitored from year to year, so that Haruku and the community in general can increase their economic income.

From the social point of view, the Sasi affects the relationship between individuals and clans as it strengthens their relationship as brothers. Any violations of Sasi laws face enforcement of sanction by the Kewang Indigenous Police.

The Haruku community believes that solving problems among them is more effective when settled by customary law because the conflict would be resolved without a grudge. Bringing the problem to the Public Police can resolve the issue but there is still dissatisfaction on either side, which can create new conflicts between them.



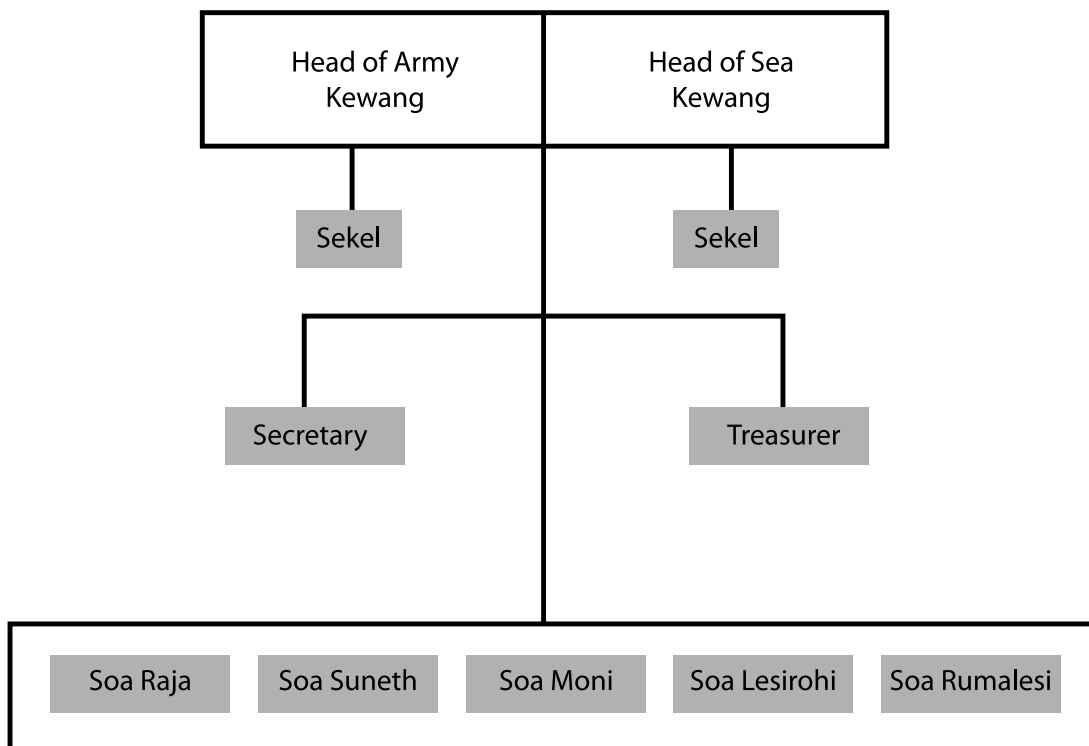
This image is showing a Sasi (prohibited) sign is marked in the forest after Sasi's ceremony in the house of Kewang as a sign for the community that sasi's is implied in the that particular places.

In Haruku cultural system, there are rituals to open and close Sasi which directly give good lessons to Haruku generations about the importance of maintaining the rules of customary law.

4. Kewang in Haruku Village

Kewang institutions, as one of the traditional institutions in the Moluccas, particularly in the Haruku village have been around since the ancestors in the year 1600. The Kewang institution has its own management structure for the performance of their duties. These are headed by the *Latukeang* or *Latukewano*. The Kewang head oversees several administrations and Kewang members. The institutional management structure consists of two Kewang heads namely (1) Kewang of Army and (2) Kewang of the Sea, one *sekel* (helper) each for the Army Kewang and Sea Kewang, a secretary, a treasurer and 40 Kewang members. Kewang Leaders and *sekel* are positions handed down to generations, while the members are selected from the Soa Kewang (the institution or gathering place of several clans), in the community. There are five Soa in Haruku and for every Soa, eight people are chosen as Kewang members. (Kissya, 1993; Saad 2003).

Kewang institutional management structure can be seen in the picture below;



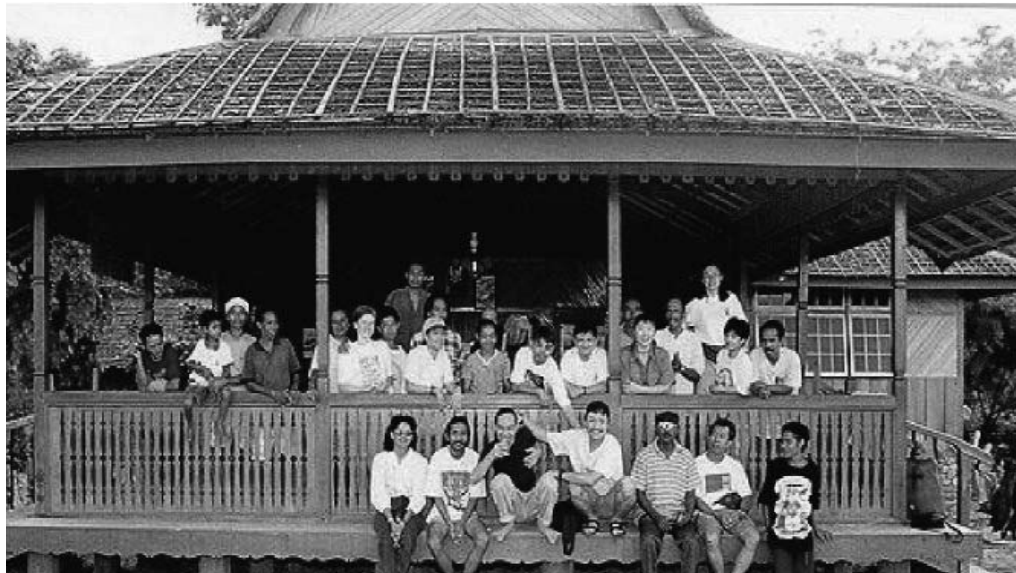
Kewang Structure in Haruku

Kewang customary structure does not change, but on the basis of development, the Secretary and Treasurer were added. These additions were made since the year 1979 because many environmental destruction such as bombings required a secretary for the documentation and preparation of reports. Since the time of the patriarchs, Haruku had only Chief Kewang, Sekel (Head Kewang assistant) and members.



Member of Haruku's Kewang territory

The changes in the system of Indonesian government and legislative enactment of a variety of regulations related to natural resources, both on land and at sea, did not alter the structure, duties and authority of Kewang. It consistently implemented measures to protect natural resources although the state constitution does not agree with that. For example in 1997, there was conflict between Kewang Haruku member who represented the Haruku village against PT. Aneka Tambang which was granted permission to conduct exploration and exploitation of gold resources in petuanan Haruku. The Kewang persisted in the fight and rejected PT. Aneka Tambang in regional, national and international activities. The company was then finally kicked out of petuanan Haruku but they still had secured a license from the central and local governments. A similar incident occurred in 2007 when one of the PT. consultants got permission from the central government and local governments to do research on the geothermal resources in Haruku. The rejection by Kewang Haruku was published and advocated at the levels of the local and central governments which resulted to the cessation of the study. The Haruku community rejected the implementation of the research study on geothermal resources because the company had violated the customary rules particularly Sasi which requires that every person, whether from the community or outside must not do activities on Sundays. At that time, the research was conducted every Sunday, and the community could not go to the forest for fear of violating Sasi law.



House of Haruku's Kewang territory

Certainly, the existence of Kewang, with their corresponding duties and authorities are not dependent on changes in the policy from the Indonesian government, but on the decision of the Saniri Besar, in Haruku Affairs.

4.1. Duties and Authority of Kewang

Kewang as one of the traditional institutions whose function is to maintain the sustainability of natural resources has the following duties and powers;

- 1) Secure the execution of all Sasi rules.
- 2) Implement sanctions on people who break Sasi rules.
- 3) Determine and check the limits (boundaries) of land, forests, rivers and sea areas included in Sasi.
- 4) Install signs of Sasi.
- 5) Hold meetings relating to the implementation of Sasi.
- 6) Implement environmental education to Kewang cadres and new cadre known as the small Kewang. This is for the regeneration of management skills for the future.

This is a traditional institution that was born of Haruku civilization in the country. Kewang Haruku has an important position, although it has been marginalized in the new era of regulation. There are several variants of Kewang's role:

4.2. Kewang as Natural Resource management institution

Kewang's role in the management of natural resources is to plan, execute, monitor and ensure security. In order to maintain sustainable resources, it has allocated Kewang-protected areas, area and resource utilization. It also enforces the law on the violators of sasi.

In connection with these functions, Kewang's main responsibilities include:

- Mastering the limits of the village
- Examining the types of plants that have been or not been harvested and to determine the process of growth
- Acting against Sasi violators
- Determining the area where trees are to be cut down or should not be felled
- Other authority/ power as the customs rule

4.3. Kewang as the economic regulator of the people

It is possible to sustain the exploitation of natural resources while maintaining an active but intact economy. When opening Sasi on this, the Labuang Kewang prioritizes the distribution of shares to the widows and orphans.

4.4. Kewang as the power of advocacy

In 1993 there was gold mining exploration by the PT. Aneka Tambang that caused damage to resources. The exploration was accompanied by intimidation of the citizens which certainly did not get the people's sympathy thus the project was rejected. Kewang as resources management institution advocated measures to resist any effort to utilize the resources that would cause long-term damage.

4.5. Kewang as the identity of indigenous peoples

Kewang as a traditional institution was born and grew from a society, representing an institutionalized set of values and rules, thus becoming a symbol of identity of an indigenous community.

4.6. Kewang institutional relationship with the village

a. Kewang's relationship with the King.

The King is the head of customs, who organizes the administration. He holds and chairs a traditional customary court on any Sasi violation based on a Kewang report. He also mediates on any violation of the village boundaries by the village people and/or neighboring villages.

b. Head of Soa.

The Head of Soa heads a group of trial judges that is organized to participate in the observance of customs. There are five Soa heads in Haruku. Kewang membership also comes from the children selected in Soa, facilitated by the Soa head.

c. Saniri of the Village.

The Saniri as an institution is at the level of domestic legislation that creates various rules including natural resource management regulations. After a rule is prepared by the Saniri, this is discussed together with the King. Kewang will secure and supervise the implementation of these rules.

4.7. Kewang Relations with Local Government and Central Government, National and International events

Kewang of Haruku, so far has established cooperation with several parties, either on the initiative of Kewang Haruku Affairs, or the parties. The activities among others are:

- 1) Environmental Education for Public Affairs and small Kewang of Haruku, Kewang Haruku in cooperation with the Center for Environmental Studies - University of Pattimura - Ambon, 1991-1992.
- 2) Counseling of Indigenous Peoples Rights to the Environment and Coastal Management. MAHUPALA Program (Law Students of Nature Lovers) along Kewang Haruku Affairs, 1995.
- 3) Kewang Capacity Building Seminar on Lease (Saparua, Nusalaut Island and Haruku Island); cooperation between the Ministry of Environment, Republic of Indonesia with the Center for Study and Review of Local History, Network Baileo Maluku jointly run by Kewang Haruku Affairs, 2007.
- 4) Recipient Role, Kalpataru revitalization; cooperation between the Ministry of Environment, Baileo Maluku Network and Kewang Haruku, September 2008.
- 5) Protection of indigenous conservation areas in Haruku, as a Maleo breeding place. This program was in cooperation with FAO, Faculty of Agriculture and Kewang Haruku, 2008.

Note: The executor of those activities is Kewang Haruku, Environment Conference Building - Kewang Haruku Affairs.

In addition to the activities that are in cooperation between Kewang Haruku and the Government and the other party, Kewang Haruku also often represents the people's organization in Maluku in activities at the national and international levels. For example:

- 1) National Conference II, Coastal and Ocean Resources Management in Indonesia, held in Makassar, May 2000;
- 2) Workshop on Empowerment of Indigenous People in Environmental Management, held in Bogor, September 2002;
- 3) As Representative of Indigenous Peoples, with a delegation from the Ministry of Environment, in the International Conference on the Environment, held in Madrid, Spain, in 1997.

4.8. Vision for the Future of Haruku Kewang Affairs

- a. Protection of the Territory.
- b. Struggle for the recognition of country and the protection of indigenous peoples, strengthen Kewang and make it as the control agency of state policies related to environmental development.
- c. As an educational place for environment advocates, to build advocacy for the

protection of indigenous conservation area.

d. Incorporate environmental education (Sasi education) into the school curriculum, from the Elementary School (SD) to Senior High School (SLTA).

5. The tasks of Kewang as Sasi executor

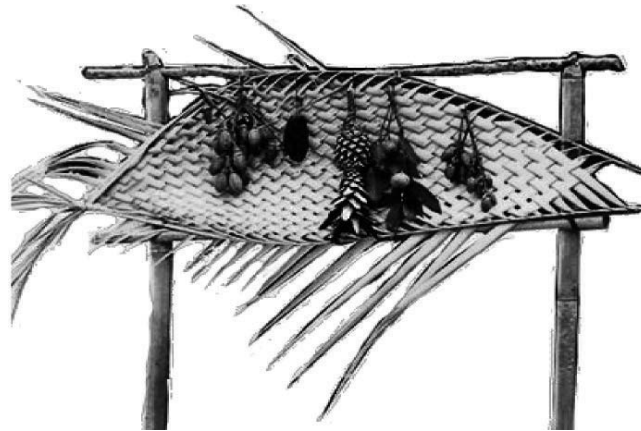
The tasks of Kewang as Sasi executor are as follows:

5.1. Sasi

Sasi is one local knowledge supported by customary law which is still in use. Some ethnic groups in Maluku use different words because they have their own language, but find common understanding with Sasi, like Yot in Kei Besar and Yutut in Kei Kecil. It is not clearly known when Sasi practice was started and first used by the ancestors, but legend shows that Sasi had been carried out since the fourteenth century. Most people today think that Sasi is a good effort to conserve natural resources, or a form of traditional conservation which sustains the resources.

Sasi can be seen from several viewpoints, in terms of legal and social culture.

From a legal perspective, Sasi is interpreted as a prohibition. Sasi is a system that has more legal aspects than the traditional ethics. Sasi however, does not cover the matters relating to the rituals of birth, marriage, death or inheritance. It is more related to taboo matters or bans on many public obligations addressed to individuals and community groups in managing the natural resources they own.



Sasi's symbol for Abundant Jumping Fish (Sasi Lompa) at the coastal and sea area, which are prohibited area.

From the socio-cultural point of view, Sasi can be interpreted as a traditional institution, which not only regulates the usage of natural resources but also includes understanding the relationship between man, nature and the Gods, ancestors and spirits. Sasi institution controls land and sea areas and the natural resources within these by using a set of regulations.

In general, Sasi in Maluku has the same mechanism, namely Closed Sasi and Open Sasi. Closed Sasi is a sign of the enactment (prohibition) which means with the commencement

of the process, no one is allowed to take freely the natural resources imposed by Sasi. Violation of these rules will be subject to Sasi sanction in accordance with the applicable customary law. The announcement of Sasi is made by the Kewang and this is generally preceded by a ceremony called Panas Sasi. Panas Sasi literally means “warming the Sasi”, but the real meaning is to strengthen the effectiveness of Sasi. A series of Panas Sasi ceremonies began with Sasi sign installation. Sasi expiration is dependent and set by Kewang agreement. Closed sasi can be valid for three months, six months or even more than one year, depending on the natural resources imposed by Sasi.

Open Sasi is marked by the removal of the prohibition signs. Open Sasi also begins with Panas Sasi ceremony. With the expiration of Sasi, the community is free to take the natural resources according to their needs. Time Period or open Sasi enactment, depends on the natural resources and Kewang agreements.

5.2. Sasi in Haruku Domestic Regulation

There are four Sasi types which are categorized as Sasi of Haruku namely:

- a) Marine sasi,
- b) Sasi Kali (river),
- c) Forest Sasi; and
- d) Sasi in the Village

5.3. Sasi regulations prevailing in Haruku

Sasi regulations prevailing in Haruku are as follows:

a. Regulation of Marine Sasi

- Limits of the Marine Sasi starts from the northern corner of the Haruku government hall, 200 meters to the west of the sea and south to the Wairusi headland.
- Sasi limit for Lompa fish; ranging from Vetor harbor, 200 meters into the west part of the sea and south to Hi-i headland.
- Within the Sasi area it is prohibited to fish using any type of fishing gear, except with nets, but it must be done by wading, not boating. Requirements for those who use the nets are only on the depth limit of adult waist-high water.
- Free harbor region starts from the corner of the village government hall to the north of Waimaru cape. In this free harbor area, one may catch fish with nets. If it turns out there is a dispute, then the free harbor will also be applied with Sasi.
- When there is Lompa fish in the free harbor area, fishing with nets is prohibited.
- In the Sasi area or free harbor areas, it is forbidden to catch fish using Karoro nets.

b. Regulation of Sasi Kali (River)

- Limits of River Sasi are as follows:
 - Wai Learisa Kayeli estuary to Wai Harutotui.
 - Estuary of Wai Learisa Kayeli to the Air Kecil.
- When Lompa fish enter the river, the people are banned from catching them, although there are other types of fish with the Lompa that come into the river.
- At the open Sasi time of Lompa fish, cleaning or disposing Lompa fish heads into the river is prohibited.
- Bringing of kitchen materials such as washing dishes, and so on in the river is prohibited.
- Men and women taking bath together is prohibited. They must be in their own designated places as follows:
 - Men should be in Big Water, Lemon Tree Water, in Small Water, in Water of Tree Lenggua, beside the water - determined by the Sasi sign that has been established by Kewang.
 - For men: in light socket Water, Two Branch Water, Dug Water and determined by the signs that have been established by Kewang.
- Also forbidden are those who enter with a motor boat or speed boat on the river.
- Taking a drink of water, washing clothes or dishes and kitchen materials in the river are prohibited.
- Cutting of trees is prohibited at the edge of the river around the location of Sasi, except sago tree.



The ceremony during the lifting of the "Sasi Lompa" and the prohibition of various natural resources Tertentu

c. Regulation of Forest Sasi

- The community is prohibited from taking fruits before the time of picking like pineapple, walnuts, Cempedak, durian, areca nut, nutmeg and others.

- Cutting of Areca nut tree is banned. Likewise the cutting of tree, or fruit trees to build a fence.
- Cutting the leaves to make house roof or taking a young stem of sago (hahesi) before getting permission from the owner and also from Kewang are prohibited.

d. Sasi in Domestic Regulation (Village)

- People are prohibited from making noise on Saturday nights
- Night events like parties must obtain permission from Saniri of the village.
- Fishing on Sunday, from 07.00 until 19.00 Wit. (Taba) is prohibited.
- Going into the woods on Sundays is prohibited, unless there is a very important purpose, but must get permission from Kewang.
- Hanging roof, burning grass, shell and others on the road is prohibited.
- Hanging of clothes to dry on the fence along the road is prohibited.
- Defecating on the grass by the river is prohibited.
- Grasses (garbage) must be disposed at least 4 feet from the edge of the river and in places that have been determined by Kewang.
- Prohibition of all women who are using just a chest cloth when going home from the river
- Men are prohibited from wearing gloves at day time, except if sick, and should not be wearing underwear or a towel (salele) on the highway.
- Women are prohibited from climbing trees in the village except with decent clothes.
- Java Pool is declared closed and protected and guarded so as not to be polluted by anyone.

Those who violate the rules of the Sasi will be penalized as follows:

Mengambil buah-buahan muda Taking the young fruits	: Rp. 5000, -
Annoying Lompa fish in the river	: Rp. 2.500,-
Those girls who come home from river only wearing chest cloth, and men who wander in the village wearing only underwear or towels (salele)	Rp. 10.000,-
Washing dishes, and defecating on the grass along the river, etc.	Rp. 2500, -
Going to the woods or to the sea on Sunday	Rp. 5.000,-
Saying the curse words or curses	Rp. 5.000,-

Taking marine coral	Rp. 10 000, -
Cutting timber or other types of vegetation in the Java Pool	Rp. 5.000,-
Being rowdy and noisy on a Saturday night	Rp. 2.500,-

Fourth sasi rules above cannot be separated from one another, both in content and implementation. Examples are the rules for Sasi Lompa, listed both in the regulation of marine sasi, sasi kali (river) and also in domestic Sasi (village).

6. Position of Indigenous People on Natural Resources Management System With Sasi Laws and the Indonesia Regulations Perspective

Sasi system is in a dilemma because the government is not firm in giving the respect, recognition and protection of indigenous peoples. It can be concluded that this is due to the policies issued during President Suharto's reign some of which are still valid until today, which directly or indirectly do not respect, protect and recognize the existence of indigenous peoples.

After the collapse of Suharto's rule in 1998, there was the emergence of various movements ranging from farmers' groups, fishing groups, hunting groups, including community groups who were fighting for their interests. During this period there was also pressure to repeal various policies that had the potential to cause human rights violations and castrate the basic social rights of the communities.

Indigenous groups refuse to stay silent. The NGOs organizing and working on issues of indigenous peoples campaign for the repeal and amendment of the various laws and regulations that have been problematic for indigenous peoples.

The movement of indigenous groups seemed to be fruitful, with the lifting of Law No. 5 in 1979 on the principal of village government, which has been used by Suharto as a tool to rob the rights of indigenous peoples of their natural resources, through a system of government which is controlled directly by the authority, from central level to the level of villages.

The indigenous movement continued and finally during the MPR session in year 2001, the Assembly issued Decree No. MPR. IX/MPR/2001 on Agrarian Reform and Natural Resources Management. This assessment was issued on the basis that the laws and regulations relating to agrarian resources management / natural resources were weak and overlapping each other, and thus the management of natural resources must be reformed to be equitable, sustainable and environment friendly and should be done with the community's integration and coordination and should accommodate the dynamics, aspirations and participation of the community and lead to conflict resolution.

In the same decree, the government is obligated to pay attention to the principle of agrarian reform and natural resources management, one of which is associated with indigenous peoples in article 4 point j, which reads; "recognize, respect, and protect indigenous rights and cultural diversity on the nation's agrarian resources / natural resources."

The same decree should serve as a basis for the government in reviewing, amending and establishing law regulations and other policies. Thus the laws and regulations and policies set forth, should give recognition, respect and special protection for indigenous peoples, as holders of rights to the natural resources they possess based on the historical origins and customs.

Although the decree has firmly ordered that the government should immediately conduct a study and change various policies on agrarian resources / natural resources and not overlap each other, to give recognition, respect and protection of indigenous peoples, in practice, the government is not serious in implementing the mandate of such assessments. This is evidenced by the enactment of Law No. 41 Year 1999 on Forestry which is still valid. The law does not recognize customary forests that have existed long before the state, which communities have been managing all along.

The government is not serious in implementing the decree and this has resulted to a clash between government policies and the values, indigenous knowledge and customary law prevailing in indigenous communities where the customary law is related to the natural resource management systems.

Despite the strong pressure exerted by the government in encouraging the implementation of a policy that has been issued in relation to natural resource management, indigenous communities are consistently using customary law in their daily lives and in the management of natural resources in the indigenous areas.

This consistency in applying indigenous customary law in the management of natural resources has gotten pressures from the national law that does not side with the indigenous peoples. The traditional and indigenous stakeholders in Haruku remain consistent in implementing the Sasi law which is directed at one particular region or in certain types of natural resources.

Reforms in 1998 began with the resignation of President Suharto and this resulted in changes in some policies, but it has not been able to resolve the fundamental problems faced by indigenous peoples. For more details, here are some laws issued by the government before the Assembly issued MPR Decree No. IX/MPR/2001 on Agrarian Reform and Natural Resources Management. Legislation is as follows;

6.1. Amendment II - Constitution of 1945

The Constitution of 1945 has been amended four times. Second Amendment of the 1945 Constitution was made on August 18, 2002, wherein the enactment of Article 18B paragraph 2 reads;

“The State recognizes and respects the unity of society and the traditional rights and customary law is alive and fit along with the development of community and the principle of the Unitary Republic of Indonesia, as stipulated in laws”

The article has been addressed to the government, communities and the parties, however, this assertion is not complete because it is still followed by the phrase “all still alive and according to the development of society and the principle of the unitary Republic of Indonesia.” For 35 years, indigenous peoples have suffered from various

laws and regulations issued during the reign of the new order with the aim to shut down the values, wisdom, customs and rules that have been with the indigenous communities. The moment a community builds resistance aimed at protecting their indigenous rights against a government policy, they will be charged as a PKI or RMS followers because they oppose the government. This tactic was used to scare the movement of indigenous peoples at that time.

6.2. Law No.39 Year 1999 on Human Rights

On September 23, 1999 the government of Indonesia enacted the Law No. 39 Year 1999 on Human Rights. Determination Act No. 39 Year 1999 on Human Rights is based on the 1945 Constitution and Decree of the People's Consultative Assembly of the Republic of Indonesia Number XVII/MPR/1 998 on Human Rights. Both these provisions assigned the high state institutions and the entire government apparatus to respect, uphold and disseminate an understanding of human rights to all citizens, and to immediately ratify the various instruments of the United Nations on Human Rights, as long as this was not contrary to Pancasila and the Constitution of 1945.

With regards to the recognition, respect and protection of indigenous peoples, Law No. 39 Year 1999 on Human Rights, article 6 paragraphs 1 and 2 assert that: (1). In order to uphold human rights, diversity and community needs in customary law must be respected and protected by law, society, and the Government. (2). Community cultural identity of customary law, including customary land rights are protected, in harmony with the times.

This article suggests that indigenous rights are human rights. Because it is a human rights issue the government has the responsibility to uphold the various policies in the framework of protection, respect and recognition of indigenous peoples and their rights and the wisdom they possess based on historical origins. The second passage asserts that the customary land rights are protected at all times. That means that development and modernization cannot alter or eliminate customary land rights as known and owned by indigenous peoples. The government is urged to immediately take steps to protect, respect and recognize indigenous peoples rights, especially indigenous rights or the rights known as the "Petuanan rights" for Moluccas.

The Law No. 39 Year 1999 on Human Rights shows that the lives of indigenous peoples are no different from other people's lives. Indigenous peoples also have a number of rights which are the responsibility of states to fulfill, protect and respect, among others; right to life, the right not to disappear forcibly, right to have family and continue the descent, the right to develop themselves, the right to obtain justice, the right to personal liberty, the right to security, welfare rights, the right to participate in governance, women's rights, child rights, and rights to freedom of religion. Several other rights are expressly set forth in the Law No. 11 Year 2005 concerning Ratification of the International Covenant on Economic, Social and Cultural Rights, ratified on October 28, 2005 and Law No. 12 Year 2005 concerning Ratification of International Covenant on Civil and Political Rights, ratified on October 28, 2005, and the United Nations Declaration on the Rights of Indigenous Peoples.

The declaration issued by the United Nations means that all UN members are bound

by this, and are obliged to make it as a basic norm in policies in their relations with indigenous peoples.

6.3. Law No. 32 Year 2004 on Regional Government

On October 15, 2004, the Government of Indonesia enacted Law No. 32 Year 2004 on Regional Government which is an amendment of the Act No. 22 Year 1999 on Regional Government. The articles that govern indigenous communities include certain clauses as follows;

Article 1, paragraph 12, explains the sense of village. This law explains that rural or called by another name, hereinafter referred to as the village, is the unity of public law which has territorial boundaries, has the authority to regulate and manage the interests of local communities, based on the origin “and the local customs recognized and respected in the system of Government of the Republic of Indonesia.”

Understanding these laws, the sense is that the village is a unity of indigenous peoples in the Maluku Islands. Based on Regulation Number 14 Year 2005 on Determination of Village, the unity of the Customary Law Society in Maluku Provincial Government Area, in Article 1 point (e) defines the village as the community unit defined by customary that has boundaries and is authorized to regulate and manage their rights-based origin and local customs within the territory of the Unitary Republic of Indonesia.

Village as defined in this law has a government system based on the historical origins and customs as stipulated in Article 203 paragraph 3 which reads: “Selected village head in the customary law community unit along with their traditional rights over the living and the recognized prevailing local customary law provisions set out in legislation based on Government Regulation”. Thus after the enactment of Maluku Provincial Regulation No. 14 about Determination of Village, the unity of the Customary Law Society in Maluku Provincial Government Area is recognized. Then the process of electing the king in the village should follow the local customary law. The village chiefs / kings are bound to the authority that placed the village under Act No. 32 Year 2004 on Regional Government. One of the authorities of village chiefs / kings is to govern the village government which consists of the Consultative Board of the Village. The village chief can make the village regulations, as affirmed in article 209. The Village Consultative Board sets a regulatory function with the village headman for accommodation and community aspirations.

This article gives authority to the village government to make the rules in order to fulfill the needs of community life. Land regulation should be based on the historical origins of the customs prevailing in the village. According to Article 203 paragraph 3 of Law No. 32 Year 2004 on Regional Government, the Provincial Government of Maluku and the District Government had set a regional regulation to provide protection and recognition of indigenous peoples and their rights over natural resources and governance. The Maluku provincial government issued Local Regulation No. 14 Year 2005 on Determination of Village as the unity of the Customary Law Society in Maluku Provincial Government Area, Ambon City Government and established the Regional Regulation No. 3 Year 2008 About the Country in the city of Ambon,

Central Maluku District Regulation No. 1 Year 2006 About Affairs, as well as other districts that had passed the similar law.

6.4. Act No. 27 Year 2007 About the Management of Coastal and Small islands

In July 17, 2007, the Government issued Law No. 27 Year 2007 About the Management of Coastal and Small Islands. This is the only current law that gives recognition to indigenous peoples who occupy the coastal region and the recognition of coastal areas and sea as having been managed by communities based on indigenous knowledge, traditional values and customary law applicable in their territories.

Article 1 paragraph 33 of the same law interprets that indigenous coastal communities are groups living in certain geographic areas and that because of the bond with ancestral origin / genealogy, there is a strong relationship with the Coastal Resources and Small islands, and the existence of a value system that determines economic institutions, political, social, cultural and law.

This article affirms that indigenous peoples' ownership is not limited to the coastal region bounded by the sea, but also on the small islands which originally had a strong relationship with the indigenous communities. With regard to the rights of coastal and marine areas that are part of indigenous customary areas in Maluku, this law has affirmed that the administration of Healthy Places, Prosperous People or HP3 shall consider the interests of indigenous peoples and HP3 can also be given to indigenous peoples. In terms of operational requirements, the HP3 holders are obliged to recognize, respect and protect the rights of indigenous peoples. This article describes the authority given to the community to be actively involved in the determination of the HP3 in their areas. As such the acceptance of HP3 would depend on the local indigenous community.

To set more technical applications of HP3, the government is required to establish regulations associated with HP3, as defined in article 20 paragraph 4 Law No. 27 Year 2007 About the Management of Coastal and Small islands. But up to now the government regulation which will determine the Procedures, Registration, and lifting of HP3, has not been enacted yet by the government. The Draft Regulation on the HP-3 is still in the preparatory stages. The preparation of the Draft of the Regulation on HP-3 will involve the Alliance of Indigenous Peoples of the Archipelago (AMAN), including AMAN Maluku.

Regarding the conservation area, Law No. 27 year 2007 About the Management of Coastal and Small Islands, in Part 3, On the Conservation, Article 28 paragraphs 1, 2 and 3 it is stated that;

1. Conservation of Coastal and Small Islands is done to;
 - a) Coastal Ecosystems and to preserve the small islands;
 - b) protect the migration of fish and other marine life;
 - c) protect marine habitats; and

- d) protect traditional cultural sites.
2. For conservation purposes referred in paragraph (1), part of the Coastal Zone and Small Islands can be designated as a Conservation Area.
 3. Conservation areas referred to in paragraph (2) that are characterized as a unit organized to protect the ecosystem:
 - a) fish resources;
 - b) stopping area and / or other marine migration channel;
 - c) territory governed by a certain indigenous system such as sasi, mane'e, Panglima, awig-awig, and / or certain other terms customary; and
 - d) coastal ecosystems are unique and / or susceptible to change.

This article directly gives recognition to the indigenous conservation areas in Maluku, known as Sasi, as stated in paragraph 3 points c. Determining an area as a conservation area must be done by the Minister, as stipulated in Article 28 paragraph 4. With regards to the conservation area as stipulated in this legislation, a study is needed again because there are articles that are directly contradictory and do not give recognition to the rights of indigenous peoples in managing conservation areas that have been allocated since the ancestors.

6.5. Law No. 10 Year 2004 on the Establishment of Law Regulations

On June 22, 2004, the Government of Indonesia established Law No. 10 Year 2004 on the Establishment of the Regulations. In terms of village regulatory positions, the first and second paragraphs of article are on the following:

1. Types and hierarchy of legislation are as follows:
 - a) Constitution of the Republic of Indonesia Year 1945;
 - b) Law/Government Regulation which changes the Law;
 - c) Government Regulation;
 - d) Regulation of the President;
 - e) Local regulations.
2. Local regulations as referred in paragraph (1) letter e include:
 - a) Local regulations made by the board of the provincial representatives council together with the governors of the provinces;
 - b) Districts/city regulation created by district/city representative council with the regents / mayors;
 - c) c. Village regulations, created by the village representative body or any other

names along with the village head.

3. Further provisions on procedures in making Village Regulations set by related District/City Rule.

4. Type of legislation that is not referred in paragraph (1), is recognized and has legal binding to be enforced upon order by the higher legislation

5. Enforceable legislation is in accordance with the hierarchy as referred in paragraph (1).

This article provides a legal basis for the village in Moluccas to arrange Village Regulations. Regulations issued by the Head of Village / King of the village are part of the Hierarchy of Laws that have been stipulated in this law, and thus have the power of law in their application. In the preparation of Village Regulations the principle of regulation must be considered; that the current lower legislation cannot contradict the higher rules. The substance of the village regulation is in view of the affairs of the village, or the translation of higher legislation. With regards to the village in Moluccas, the substance of the village regulations includes boundaries setting, rights of origin and local customs. The rights of the origins and customs include the system of ownership and management of natural resources.

6.6. Local Rules and Regulations of Middle Maluku District

a) Regional Regulation of Maluku Province no. 14 Year 2005 on Determination of Village as the unity of the Customary Law Society in Maluku Provincial Government Area

The Provincial Government on August 18, 2005 set a Regional Regulation No. 14 Year 2005 on Determination of Village as the unity of the Customary Law Society in Maluku Provincial Government Area. The Local Regulations is the umbrella legislation for regional districts and also the basis for drafting legislation tailored to local economic, social, and cultural conditions. These local regulations are intended to set boundaries, authority to control and manage their rights-based origins, and local customs within the unitary Republic of Indonesia.

With the enactment of these bylaws, the land which was forced to change its name to the modern village (non-customary village) during the period of the enactment of Law No. 5 Year 1979, was set back into the village. It had the right to build a system of governance and management of natural resources based on the historical origins, customs and local culture.

Local regulations also specify the elements of unity of indigenous peoples which include;

- Elements of indigenous peoples
- A clear element of the region
- Elements of customary institutions

- Elements of community relations with the region
- Elements of social institutions
- Symbol of customary elements
- Elements of customary behavior
- Other element in accordance with the customs and cultures of local communities.

The most important element for an indigenous community in relation to the region is public relations. Because within the territories of indigenous peoples, there are areas which are both occupied and unoccupied, and these have become the property of the indigenous peoples. The areas are usually located on the small islands that are not occupied but are managed by indigenous communities who have relationships with the region. And their management is based on historical origins and customs of local people.

These regulations state that the initial position of indigenous peoples in the Maluku archipelago had been returned, which was changed during the enactment of the Law No. 5 Year 1979 About the Governance Principles of the Village.

b) Middle Maluku District Regulation No. 1 Year 2006 About Affairs

This is the follow up of the Local Regulation No. 14 Year 2005 on Determination of Village as the unity of the Customary Law Society in Maluku Provincial Government Area issued by the Provincial Government of Maluku Province, on 9 February 2006, Middle Maluku District Government stipulated Middle Maluku District No. 1 Year 2006 About Affairs.

The concept of the village in Middle Maluku District Regulation No. 1 Year 2006 is the customary law community unit-bound because of the genealogical relationship (blood relations) and territorial (regional) relations. These have boundary jurisdiction and functions to regulate and manage the interests of the community based on its origin and local customs.

What is meant by the Village/Indigenous territory is the village which consists of land and sea areas, as affirmed in article 61 paragraph 1 of Middle Maluku District Regulation No. 1 Year 2006 About Affairs. This article explains that the stipulated boundaries are defined by regional regulation and by remembering the origins of rights based on local customary laws and law regulations. This article provides legal certainty for indigenous peoples residing in the territory of Middle Maluku district, with regard to recognition of indigenous rights to the territory (petuanan), both on land and sea.

To determine the region and the boundaries of one indigenous community, the district government will form a team consisting of elements from the district, sub district and village governments concerned and cultural leaders in the village. The map of the indigenous area is issued by the team subsequently established by the regulation of Middle Maluku District government including the customary territories of the community. Then the law itself provides legitimacy that indigenous territories belong to the indigenous peoples. Thus there are no more excuses from the government to impose on a community of indigenous peoples.

7. Efforts made by Governments, NGOs, Indigenous People and Community Organisation in Promotion and Recognition of Indigenous Conservation Area

Encouraging the promotion and recognition of indigenous conservation area to obtain juridical recognition has been done by several components including the government, NGOs, indigenous and community organizations. These four components perform their role - respectively, based on their capacity. The process that has been done by these components can be explained as follows;

7.1. Government

means the central government and the local government. Regarding the promotion and recognition of indigenous conservation areas, policies have been issued by the Central Government, Government of Maluku and Middle Maluku district in the form of laws that are in hierarchy of Act: legislation to regional regulation to provide a legal basis in the process of promotion and recognition of the region, which includes indigenous conservation areas. Several roles of the government have been described in detail in issuing several laws that took the form of legislations, government regulation, the Provincial Regulations and Local Regulation of City/District. The amendments to the Act II - Constitution of 1945, as the highest state constitution provide explicit recognition of indigenous peoples as stipulated in Article 18B paragraph 2. This is then translated into some laws that include Indonesia Law No. 32 Year 2004 (About the Local Government), Law No. 27 Year 2007 (About the Management of Coastal and Small Islands), Law No. 10 Year 2004 (Establishment of the Regulations), and other rules relating to the rights of indigenous peoples.

In implementing some laws that have been submitted previously, the Maluku provincial government established the Regional Regulation No. 14 Year 2005 on Determination of Village as the unity of the Customary Law Society in Maluku Provincial Government Area.

Following up on Regional Regulation No. 14 Year 2005, the government of Middle Maluku District established the Regulation of Middle Maluku District No. 1 Year 2006 About Affairs. The recognition of the territories of indigenous peoples in this area covers land and sea, thus the conservation of lands and species and natural resources, have the legitimacy of these bylaws. For more details, the roles of Middle Maluku regency government in legitimizing indigenous territories stipulated in article 62 paragraph 1,2,3 and 4 are with the following conditions;

- a) To determine land boundaries, team assertion of village boundaries is formed.
- b) Team Assertion of land boundaries is composed of district governments, sub-district governments, representatives of communities and indigenous leaders.
- c) The number of members, duties and authority of team assertion of land boundaries is set by Regents.
- d) Local governments are required to provide facilities and funding for the implementation of the task team assertion of land boundaries.

When the team has finished carrying out the assertion, the result is submitted to the Regional Government of Middle Maluku district to be set by the Local Regulation. This aims to give legal certainty to the land boundaries.

7.2. NGOs and Indigenous Peoples

The Role of NGOs and indigenous organizations is to encourage the promotion and recognition of indigenous conservation areas, through several activities including: advocacy, training, workshops and mentoring. Training which is done by most NGOs is in the form of Participation Mapping, Training and Preparation of Local Regulation Training. In the program implementation, strategies always start with workshops on affairs planning in order to encourage local autonomy in indigenous communities. In this workshop various problems - economic, social, cultural and legal in-depth analysis are brought out, then the argument by speakers from the academe who are involved in the workshop. A result of the workshop is the program of the community to build local autonomy with a number of activities. The one responsible for implementing the government plan in the village is a team formed at the time of workshops. The NGOs and indigenous peoples are involved in the implementation of these programs as companions and facilitators.

In carrying out both trainings, the role of NGOs and the organization of indigenous peoples, are as companions who are also facilitators. They facilitate the discussions, implement the action plan, and facilitate a variety of information that is used to support the action plan.

The following roles of the indigenous communities in advocating for the model built at the community level is to obtain legal recognition / legitimacy of the government at the district level.

7.3. Indigenous Communities

There are efforts to encourage the promotion and recognition of indigenous conservation area through values, wisdom and customary law that regulate resource management system. Thus Sasi law which has been the reference for indigenous communities in Maluku must remain in control by indigenous stakeholders. Traditional institutions that maintain the natural resource management processes using the Sasi laws, known as Kewang, should enable maximum results although there has been no acknowledgment from the government. Consistency in the attitude of stakeholders in carrying out Sasi can be seen on Haruku Affairs, where stakeholders of the customary law, run the rules that apply both in marine, forest or in village areas.

What was done by indigenous stakeholders in Haruku is a process that must be done by all indigenous communities in Maluku. The process of encouraging the promotion and recognition of the indigenous conservation area can be successful, and is largely determined by the attitudes of indigenous stakeholders and members of indigenous communities. What is being done by NGOs and indigenous peoples organizations, is only to facilitate the course. The power to declare what is valid or not, the wisdom and customary law which relates to the management of natural resources, both of the types of natural resources, as well as a protected conservation

area, is determined by the indigenous communities themselves.

8. Conclusion

From the various data and policies which were issued by the government, the conclusions that can be explained are:

- a) Managing territories of indigenous peoples is protected by customary law. As indigenous conservation areas, they have always been managed by ancestors with various rules that bind custom from generation to generation whether internally (meaning people who are in indigenous communities) or externally (referring to people from outside the community who enter into an indigenous community).
- b) Haruku village is one village in Moluccas which still retains the customary law on managing Sasi area and natural resources within it, including the types of natural resources that are prohibited to be taken because it was not time yet to be harvested. This prohibition applies to Sasi on one particular customary area and Sasi for some types of specific natural resources, as has been described previously. Sasi on certain natural resources are now affected by the existence of religions and beliefs held by indigenous peoples of Haruku. So that what is going on now is some members of Haruku indigenous community impose religious values against certain types of natural resources. Therefore, the Sasi which are in force in Haruku today is customary Sasi and the church Sasi. Customary Sasi is still applicable to four areas: Marine Sasi, Sasi in the village and Rivers Sasi and Forests Sasi. On the other hand, church Sasi applies only to the forest, and only limited to some specific types of natural resources such as coconut, pineapple, rambutan, tan etc. Sasi sanctions against the church are not real, but these are returned to the territories' owner or natural resources owners. Therefore, according to their beliefs, if there is someone who intentionally takes or damages natural resources that are prohibited by church Sasi, then the punishment will be given by God. This also influenced their faith, so that people are more obedient and fearful of committing an offense against the Church Sasi than Customary Sasi. Customary law, which relates to marine Sasi in Haruku, gives protection to breeding areas and Lompa areas, and still remain valid until today. Materials prohibited on marine sasi as described previously, in both the region and type of marine resources are defined by using customary law.
- c) Kewang of Haruku as one of the traditional institutions, continues to fulfill the role of supervisor and protector and is still effective. Members of Kewang alternately control the community towards the implementation of all applicable Sasi laws. Haruku Kewang's development has gone through changes based on community development. One example of a fundamental change is the inclusion of women as members of Kewang who deal with the government's violations of customary law.
- d) A Managing Area of indigenous peoples can be considered as a conservation area protected and regulated by management mechanism based on customary law. It is an area that has been reviewed in depth by indigenous peoples, that has the advantages of its historical origins, and has an evidence of ownership. With the Marine Managing Area of Haruku, the management still uses the customary law known as sasi, to keep and protect the environment from the damages caused by bad practices and abuse.

For example using fish bombs, drugs, traditional and local trawl known as “Karoro Net.” Karoro Net is a type of net that has very small holes, and when used in fishing, catches all sizes of fish from small to big. The mechanism applied on sea territory management is for the interests of the community and is based on local wisdom. Specifically it aims to maintain life and conserve natural resources in these locations, and directly affects the potentials of fish in the sea. This kind of management mechanism is not only carried out in Haruku, but also in other countries with similar Maluku customs with the difference in social and historical values. Among indigenous communities in Maluku, especially in Haruku, they believe that this management has a positive impact and should be maintained by generations for the future interests of children and grandchildren, because with this effort, indigenous peoples can protect marine areas from damage and will ensure the availability of marine resources for the public interest and the interests of the village.

- e) Ideally, what is developed by indigenous peoples should receive recognition from the government in a systematic form of protection using the policies, both by central, provincial and district governments. If we look at the variety of laws that have been described previously, apparently there are still different views of government in providing recognition, respect and protection of the rights of indigenous peoples. Differences in the government views can be found in the contents of legislation and between Law and a local regulation. For example, in Law no. 27 Tahun 2007, the Management of Coastal and Small Islands, in article 1, paragraph 33 states that Indigenous Coastal Communities are hereditary groups living in certain geographic areas because of ties to the ancestral origins. There is a strong relationship between Coastal Resources and Small Islands, and the existence of a value system that determines economic, political and social institutions, and law. Thus this article gives indigenous authority to impose a value system which regulates the economic, social and legal institutions. Value system that includes institutions includes the rule of customary rules, which regulate both social and economic conditions in indigenous communities. Speaking of the economic aspects, meals will be directly related to natural resources within the territory of the village boundaries. Therefore, in connection with the village boundaries, article 1, paragraph 33 has given an implied recognition, thereby has directly given legitimacy to the governance of indigenous peoples that are managed by using the values, wisdom and customary law which exist.
- f) In the first paragraph of article 12, Law No. 32 Year 2004 on Regional Government, village or any other name is defined as follows: “The village or called by another name, hereinafter referred to as the village, is the unity of public law, which has territorial boundaries of the authority to regulate and manage the interests of local communities, based on the origin and local customs are recognized and respected in the system of Government of the Republic of Indonesia.



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- g) Having boundaries which are intended in the Law number 32 Year 2004 About Regional Government is that each village in Maluku has a limit - known as boundaries or "petuanan". And within the limits, the village has the right to manage natural resources within it, for the public interest of the community according to their origin and customs.
- h) This is inconsistent with the law no. 27 Tahun 2007 About the Management of Coasts and Small Islands, which states that authorized to give legal legitimacy to a conservation area is the minister, in the form of Minister Regulation, as stipulated in Article 28 paragraph 4.
- i) It can be concluded that Article 28 paragraph 4 Law No. 27 Year 2007 which is About the Management of Coastal and Small Islands will have a negative impact on indigenous peoples in legitimizing indigenous territories. This article is also to streamline the government's policy in relation to the granting of investment licenses for coastal management, ocean and small islands. This can be the conclusion as in the customary annexation case, that includes conservation areas or Sasi areas of indigenous Paperu, Saparua subdistrict, Middle of Maluku district, conducted by the government through the Investment Coordinating Board, in Jakarta, which is supported by the provincial government of Maluku and Central Maluku district, to one of the Swiss foreign businessmen, is one obvious example that is currently happening against indigenous people in the Moluccas. This case was handled by the National Commission on Human Rights in Jakarta.
- j) Thus, the various laws on one side gives the recognition to indigenous peoples, but on the other side with the reasons to maintain security and the stability of investments. There are articles that do not directly provide the recognition, respect and protection on the rights of indigenous peoples.
- k) Presumably the time will come when the holders of political power in this country can make the right policy to give recognition, respect and protection on the rights of indigenous peoples, who are also part of the inhabitants of the earth which also have human rights.

