

Contextualizing Islamic Law in Resolving Customary Land Conflicts: A Siyasaḥ Syar'iyah Approach to the Semende Tribe's Dispute in Bukit Barisan Selatan National Park

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Abstract: This study aims to find a resolution to the forest ownership conflict between the Semende Tribe and the government in the Bukit Barisan Selatan National Park area. The conflict arose from the government's claim over the Dusun Lame Banding Agung region in Kaur Regency, Bengkulu Province, which was incorporated into the Bukit Barisan Selatan National Park (TNBBS), resulting in losses for the Semende Tribe, whose ancestral lands are located in this area. With the establishment of TNBBS, the Semende Tribe was displaced from their ancestral land. The conflict resolution needs to adopt the *Siyasaḥ Syar'iyah* approach to ensure social justice based on a win-win solution for all parties. This study employs a Normative-Empirical Legal Research method that is exploratory and descriptive in nature. Based on the study's findings, conflict resolution can be achieved through a collaborative approach grounded in the principles of *Siyasaḥ Syar'iyah*, which prioritizes utility, humanity, and justice over mere legal certainty. This is proposed through a social forestry management concept. Social forestry becomes an alternative if the release of the forest area is difficult to realize. At the very least, the Semende Tribe can continue to utilize their fields and paddies in Dusun Lame Banding Agung as before, although not under customary land rights or customary forests, but through community-based forest management schemes. **The contribution of this study** lies in: (1) integrating the *Siyasaḥ Syar'iyah* framework with agrarian and forestry policies to formulate a more humane conflict resolution model; (2) proposing concrete policy mechanisms such as zoning revision and social forestry as realistic legal solutions; and (3) strengthening the protection of indigenous communities through a *maqāṣid al-syarī'ah* perspective in conflict resolution within conservation areas.

Keywords: Conflict Resolution, Customary Land Rights, *Siyasaḥ Syar'iyah*, Semende Tribe, Community Based Forest.

Abstrak: Penelitian ini bertujuan untuk menemukan penyelesaian konflik kepemilikan hutan antara Suku Semende dan pemerintah di kawasan Taman Nasional Bukit Barisan Selatan. Konflik ini muncul akibat klaim pemerintah terhadap wilayah Dusun Lame Banding Agung di Kabupaten Kaur, Provinsi Bengkulu, yang kemudian dimasukkan ke dalam kawasan Taman Nasional Bukit Barisan Selatan (TNBBS), sehingga menimbulkan kerugian bagi Suku Semende yang memiliki tanah leluhur di wilayah tersebut. Dengan ditetapkannya TNBBS, Suku Semende terdesak dan kehilangan akses atas tanah adatnya. Penyelesaian konflik perlu menggunakan pendekatan *Siyasaḥ Syar'iyah* untuk memastikan keadilan sosial berdasarkan solusi menang-menang bagi semua pihak. Penelitian ini menggunakan metode Penelitian Hukum Normatif-Empiris yang bersifat eksploratif dan deskriptif. Berdasarkan temuan penelitian, penyelesaian konflik dapat dicapai melalui pendekatan kolaboratif yang berlandaskan prinsip-prinsip *Siyasaḥ Syar'iyah*, yang mengutamakan kemaslahatan, nilai kemanusiaan, dan keadilan di atas sekadar kepastian hukum. Hal ini diusulkan melalui konsep pengelolaan perhutanan sosial. Perhutanan sosial menjadi alternatif apabila pelepasan kawasan hutan sulit direalisasikan. Setidaknya, Suku Semende dapat tetap memanfaatkan ladang dan sawah mereka di Dusun Lame Banding Agung seperti sebelumnya, meskipun bukan dalam bentuk hak ulayat atau hutan adat, tetapi melalui skema pengelolaan hutan berbasis masyarakat. **Kontribusi penelitian ini** terletak pada: (1) integrasi pendekatan *Siyasaḥ Syar'iyah* dengan kebijakan agraria dan kehutanan untuk menghasilkan model resolusi konflik yang lebih humanis; (2) penawaran skema kebijakan konkret berupa revisi zonasi dan perhutanan sosial sebagai mekanisme legal yang realistis; dan (3) penguatan perlindungan masyarakat adat melalui perspektif *maqāṣid al-syarī'ah* dalam penyelesaian sengketa kawasan konservasi.

Kata Kunci: Penyelesaian Konflik, Hak Ulayat, *Siyasaḥ Syar'iyah*, Suku Semende, Hutan Berbasis Masyarakat.

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Introduction

The government's claim over the Dusun Lama Banding Agung region in Kaur Regency, Bengkulu Province, as part of the Bukit Barisan Selatan National Park (TNBBS), has caused significant harm to the Semende Tribe, whose ancestral lands are located there. "It is a land that comes from ancestors that is passed down from generation to generation through the female line".¹ With the establishment of TNBBS, the Semende Tribe was displaced from their ancestral homeland.² The situation escalated between July 9-13, 2012, and December 21-24, 2013, when a joint team from the Bukit Barisan Selatan National Park Authority (BBTNBBS) and other relevant agencies carried out evictions, demolitions, and the burning of crops, huts, and farming tools, accompanied by arrests and detentions. During this tragic event, 120 homes were burned,³ and several members of the Semende indigenous community were named suspects and received criminal sentences.⁴

This act of violence was not just an ordinary case but a vertical conflict between the state and its citizens, involving human rights violations. The incident left a traumatic scar on the Semende Tribe, forcing many of them to abandon their ancestral land and its memories. Ironically, more than ten years later, the issue remains unresolved. Not only has there been no clear resolution to the violence, but the root problem concerning the boundaries of the TNBBS area has never been definitively settled, leading to continued territorial disputes between parties and the

potential for further violence.

In this context, the *siyasah syar'iyah* approach, or policies based on sharia principles, offers alternative solutions that have the potential to align the needs of indigenous communities with conservation goals. *Siyasah syar'iyah* prioritizes justice, mutual benefit, and respect for human rights, including the rights of indigenous peoples. This approach allows for dialogue and negotiations based on Islamic values, which are relevant to the culture and beliefs of the Semende people.

Method

This study employs a Normative–Empirical Legal Research approach that integrates doctrinal analysis with socio-legal inquiry to comprehensively examine the intersection between state forestry policies and Islamic legal principles in resolving customary land conflicts. The normative component analyzes primary legal sources—including the 1945 Constitution, the Basic Agrarian Law, forestry regulations, Presidential Regulation No. 88/2017, and relevant ministerial decrees—alongside secondary legal materials such as academic literature, policy reports, and previous studies on *Siyasah Syar'iyah*, customary land rights, and conflict resolution. Islamic legal sources, including Qur'anic verses, Hadith, classical fiqh, and contemporary interpretations of *maqāṣid al-syarī'ah*, are also examined to contextualize the *Siyasah Syar'iyah* framework within contemporary forestry governance. The empirical component complements the doctrinal analysis through

¹ Ilda Hayati, at.all. *Utilization of Land Pawning Objects in Minangkabau in The Perspective of The Scholars of Schools of Thought*, Al-Istinbath Jurnal Hukum Islam Vol. 7. No. 2, November 2022, 597-616 P-ISSN: 2548-3374 (p), 25483382 (e), <http://journal.iaincurup.ac.id/index.php/alistinbat>

² Shrimanti Indira Pratiwi, *Settlement of Customary Land Disputes Between Indigenous Law Communities and Tessonilo National Park*, Brawijaya Law Student Journal

Vol. 13, No. 1 (2015), p. 1.

³ Wina Khairina and Vera Valinda, *Sampan Kecil Berpendayung Bambu: The Voices of Semende Indigenous Women from Dusun Lama Banding Agung in Fighting for Their Customary Land*, Working Paper Sajogyo Institute, No. 4, 2015, p. 16.

⁴ Fajri Fadhilah, *Social Conflict in Conservation Forest Policies in Bukit Barisan Selatan National Park*, Journal of Forestry Science Vol. X No. 1, January-March 2016, p. 8.

semi-structured interviews with Semende community members, traditional leaders, local government officials, and TNBBS authorities, as well as field observations in Dusun Lama Banding Agung to document land use patterns and socio-cultural ties to ancestral territories. Respondents were selected through purposive sampling to ensure representation from parties directly involved in the conflict. All data were analyzed using a qualitative juridical technique with inductive reasoning, including systematic data reduction, thematic categorization, comparative display of legal and empirical findings, and verification to formulate a conflict resolution model aligned with both national law and Islamic legal values. This combined methodological design is essential because the conflict involves misalignment between formal legal norms, community practices, and moral-ethical considerations addressed by Islamic law; thus, it ensures that the proposed resolution model is legally grounded, socially feasible, and normatively consistent with the principles of justice, public welfare, and reconciliation in *Siyasah Syar'iyah*.

Results and Discussion

The conflict between the Semende indigenous community and BBTNBBS originated from the issuance of the Minister of Agriculture's Declaration No. 736/Mentan/1982, which designated the former wildlife reserve of South Sumatra 1 as the Bukit Barisan Selatan National Park (TNBBS).⁵ This designation was officially

announced by the Minister of Agriculture on October 14, 1982, during the Third World National Parks Congress in Denpasar, Bali.⁶ The announcement was made unilaterally by the government without setting boundaries that involved the local community, leaving them unaware that their settlement was included within the TNBBS area. Essentially the main purpose of the law application is to maintain the benefit and avoid damage, both in the world and in the hereafter. All kinds of law cases both explicitly mentioned in the Qur'an and Sunnah, as well as produced through *ijtihad*, should refer to that purpose. In law cases that have been explicitly explained in the Qur'an and Sunnah, the benefit could be traced through the existing texts.⁷

The inclusion of Dusun Lama Banding Agung in the TNBBS area only became known in 2003 when the BBTNBBS Unit carried out an awareness campaign about the TNBBS boundaries.⁸ However, if the area was based on the wildlife reserve of South Sumatra 1, established by the Dutch Government under *Besluit Van der Gouverneur Van Nederlandsch Indie No. 48 STB 612* on December 24, 1935, with a total area of 372,791.75 hectares, the Dusun Lama Banding Agung, where the Semende indigenous community resides, was not included in the reserve.⁹ As a result, the Semende community rejected the unilateral claim by BBTNBBS, leading to a vertical conflict between BBTNBBS and the Semende indigenous community over their customary

⁵ History of Bukit Barisan Selatan National Park Management, <https://programs.wcs.org/btnbbs/Profile/Sejarah-Pengelolaan.aspx>, accessed on October 4, 2021.

⁶ National Inquiry KomnasHAM, *Agrarian Conflicts of Indigenous Law Communities in Forest Areas: Sumatra-Java-Kalimantan-Sulawesi-Maluku-Bali Nusa Tenggara-Papua*, Jakarta: KomnasHAM, 2016, p. 55.

⁷ Bitoh Purnomo, *Maqâshid Al-Syar'ah And Human Rights Problems*, accessed from.

<https://jurnal.radenfatah.ac.id/index.php/Nurani/article/view/5631/3124>

⁸ Imam Mahdi, Ade Kosasih, and Etry Mike, *Model of Customary Land Rights Conflict Resolution*, Bengkulu: Zara Abadi, 2022, p. 4.

⁹ Deni, *Analysis of Forest Encroachment in Bukit Barisan Selatan National Park (Case Study of Tirom Village, Pematang Sawa District, Tanggamus Regency)*, *Journal of Forestry Science* Vol. V No. 1 (2011), pp. 9-20. <https://doi.org/10.22146/jik.578>

land.¹⁰ Control and utilization of land in this area has been a social reality of the community long before TNBBS, this social reality should be recognized and appreciated by the government. The social reality of society as a legal object can be observed directly by the senses, such as; history, customs, consideration of benefits and standards of living agreed upon in shared life. Legal development is an empirical process of historical events that takes place under the influence of social change and public opinion about what should be used as a habit.¹¹

From July 9 to 13, 2012, the eviction, demolition, and burning of crops, huts, and farming tools belonging to the Semende Tribe in Dusun Banding Agung were carried out by a joint team from the TNBBS Authority and other related agencies. This event was repeated from December 21 to 24, 2013, during a TNBBS Joint Operation, which this time involved acts of violence, arrests, and detentions. In this tragedy, 120 homes were burned.¹² The government's repressive actions have caused ongoing psychological problems, with many children living on the site with their parents when the evictions took place.

The government argued that the occupation, management, and destruction of forests, especially in conservation areas, are not justified under the law, particularly when such activities alter the spatial layout,

landscape, and function of the forest area. However, the repressive actions taken by the government were also not legally justifiable. The legal system of community participation plays a key role in the success¹³. In cases of mutual territorial claims, the government should have adopted a persuasive approach through dialogue to seek solutions to the problem, rather than a formal legalistic approach.

This situation is highly counterproductive to Indonesia's national goal of protecting all of its citizens. Article 18B(2) of the 1945 Constitution of Indonesia recognizes and respects the existence of indigenous law communities and their traditional rights, including customary land rights. The recognition and respect accorded by the state to indigenous law communities places them on an equal footing with the government as legal subjects. This equality implies that indigenous law communities have the right to fair treatment and the opportunity to develop as a subsystem of a prosperous and advanced nation.¹⁴ The state must guarantee the realization of people's rights and implement God's laws.¹⁵

Even the concept of *hak ulayat* (customary land rights) inspires the concept of state land control as regulated in Law No. 5 of 1960

¹⁰ Piriadi, Yunilisiah, and Nurhayati Darubekti, *Taboos as a Cultural Element Supporting Conservation in Bukit Barisan Selatan National Park*, Proceedings: National Conference Multidisciplinary, Darul Ulum University, Vol. 1 No. 1, 2021, p. 8.

¹¹ Yogi Prasetyo & Iffah Ja'a, *The Urgency Of Sociolegal Analysis Studies To See The Authenticity Of Law In Indonesia: Justicia Islamica* Jurnal Kajian Hukum dan Sosial, Vol. 16, No.2, Desember 2019 <https://jurnal.iainponorogo.ac.id/index.php/justicia/article/view/1685/pdf>

¹² Wina Khairina and Vera Valinda, *Sampan Kecil Berpendayung Bambu: The Voices of Semende Indigenous Women from Dusun Lame Banding Agung in Fighting for*

Their Customary Land, Working Paper Sajogyo Institute, No. 4, 2015, p. 16.

¹³ Nita Triana, at. All, *Legal System Of Community Participation In Environmentally Friendly Power Plants: A Socio-Legal Study Of Micro-Hydro Projects In Central Java*, Jurnal Hukum UNISULA, [Vol 41, No 3 \(2025\)](#), <https://jurnal.unissula.ac.id/index.php/jurnalhukum/article/view/43479/13409>.

¹⁴ Bagir Manan, *Welcoming the Dawn of Regional Autonomy*, Yogyakarta: UII Press, 2023, p. 13.

¹⁵ AliSodiqin, *The Dynamic of Islamic Constitution: From the Khilāfah Period to the Nation-State*, Journal of Islamic Law (JIL), Vol. 2, No. 2, 2021. <https://ejournal.iainptk.ac.id/index.php/jil/issue/view/39>

concerning the Basic Agrarian Law (UUPA),¹⁶ which ended the plurality of legal institutions and created a unified national land law, using customary law as its foundation.¹⁷ Therefore, the state should provide protection to indigenous law communities in Indonesia by maintaining the utility, local wisdom, social, and cultural aspects in the use of *hak ulayat*.¹⁸ In Indonesia, law formation aims to serve the nation's interests as outlined in the 1945 Constitution, focusing on improving public welfare and global peace. Pragmatic law development seeks to create laws reflecting national values, emphasizing justice, mutual cooperation, and alignment with both divine principles and democracy.¹⁹

State control of land should be directed toward achieving social justice for all Indonesian people, ensuring that it considers the public interest and does not lead to disputes. In practice, however, the justice produced is often no more than formal justice and not the substantial justice that those seeking fairness expect.²⁰ Therefore, in resolving land tenure conflicts, the government must not ignore the rights of the people and solely adhere to the Spatial Planning Law, Forestry Law, and other regulations formed top-down without public participation.

The land tenure conflict in TNBBS is a complex issue that requires a comprehensive

solution. An approach based on *Siyasah Syar'iyah* could be a relevant alternative for resolving this conflict, considering the welfare of all parties involved. By implementing the right strategies, the conflict can be resolved justly and sustainably, ensuring that TNBBS remains preserved and continues to provide benefits for future generations. with the fairest possible resolution by involving the victim. Restorative justice is a pattern of dispute resolution which emphasizes the responsibility of the perpetrator for the consequences of his actions while at the same time paying attention to the position of the victim.²¹

Siyasah Shar'iyah in the sense of science is a field of science that studies the subject of regulating the affairs of society and the state with all forms of laws, rules and policies made by holders of state power in line with the spirit and basic principles of Islamic law to realize the benefit of society. that *siyasah Shar'iyah* is any policy of the ruler whose purpose is to safeguard human interests, or enforce the law of Allah, or maintain ethics, or spread security in the country, with anything that does not contradict the text, whether the text exists (explicitly) or does not exist (implicitly). Many verses of the Quran state that nature is a gift from God, especially for the benefit of mankind. Therefore, humans must protect this gift from harm and use it in the right way.²²

Ibn Taymiyyah also discussed several

¹⁶ Adonia Ivone Laturette, *Settlement of Customary Land Rights Disputes in Forest Areas*, Journal of SASI Vol. 27 No. 1 (2021), pp. 102-112. <https://doi.org/10.47268/sasi.v27i1.504>.

¹⁷ Shidarta, *Demonstration of Legal Reasoning Patterns in the Study of Customary Land Dispute Case Rulings*, Journal of Yudisial, Vol. 3 No. 3 (2017), pp. 207-219. <https://doi.org/10.29123/jy.v3i3.208>

¹⁸ Isyrofah Amalia Ahmad, Ghinmas Risdiwanto, Jordy Gerry Rezandy, *State Authority Over Customary Land Rights in Protected Forest Areas*, Soumatera Law Review Vol. 3 No. 1 (2020), pp. 81-92.

¹⁹ Imam Mahdi, *Indonesian Legal Dynamics in Global Capitalism Reality: Analysis of the Formation of*

Indonesia's Regulations, Jurnal Ilmiah MIZANI Vol. 09. Issue 02, October, 2022 <https://ejournal.uinfabengkulu.ac.id/index.php/mizani/article/view/2924/3861>

²⁰ Natangsa Surbakti, *Restorative Justice in Empirical, Theoretical, and Policy Frameworks*, Yogyakarta: Genta Publishing, 2018, p. 189.

²¹ Ariefulloh Ariefulloh, at.all, *Restorative justice-based criminal case resolution in Salatiga, Indonesia: Islamic law perspective and legal objectives*, Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan Vol. 23, No. 1 (2023), pp. 19-36. doi : 10.18326/ijtihad.v23i1.19-36.

²² Nita Triana, *The Perspective of Islamic Law on The*

issues that fall under the authority of *siyasah Shar'iyah*. He based the theory of *siyasah Shar'iyah*. As the word of Allah SWT in Surah An Nisa verses 58 and 59:

Meaning: Verily, Allah enjoins you to deliver the trust to those who are entitled to it, and (enjoins you) when you set a law among men to set it justly. Indeed, Allah gives you the best teaching. Indeed, Allah is All-hearing, All-seeing (58). Hi you who believe, obey Allah, and obey His Messenger, and the law among you; then if you differ in opinion about anything, then refer it back to Allah (the Quran) and the Messenger (his Sunnah), if you truly believe in Allah and the Last Day. that is better for you and more beneficial for you (59).

In the context of the TNBBS conflict, this principle emphasizes the importance of seeking solutions that benefit not just one party but consider the interests of all involved, including the local community, national park management, and the preservation of the TNBBS ecosystem itself. Through *Siyasah Syar'iyah*, the success of conflict resolution is not only marked by reaching an agreement between the parties but also by ensuring that the resolution is fair to all and prevents the recurrence of future conflicts. In other words, conflict resolution must be approached collaboratively by all relevant parties. The national park management needs to establish good communication with the local

community, listen to their aspirations, and work together to find mutually beneficial solutions. Its revitalization not only breathes life into customary law but also reinforces local identity and reduces dependence on formal legal systems, which are often perceived as repressive or inaccessible.²³ Understanding Islam in this global world requires the right method so that it can bring peace, tranquility, and blessings to all humanity in general and Muslims in particular. In this global world, many legal issues arise that require immediate legal action, as they are considered urgent and concern the well-being of humanity.²⁴

The use of the *Siyasah Syar'iyah* approach aims to reconcile the interests of the community with agrarian legal policies in the forestry sector. In resolving the conflict, it is crucial to build open and honest communication among all parties involved to seek mutually beneficial solutions.²⁵ Justice in Islam is not only oriented towards granting rights to those entitled but also encompasses the restoration of social and individual harmony.²⁶ This means that a compromise approach must align with forestry laws and regulations, as well as other laws related to forestry policies, such as spatial planning.

Although an agreement between the two parties brings about a positive outcome, namely the manifestation of peace, it must still adhere to the rules of *sharia*,²⁷ not actions that

Application of The Polluter Pays Principle in Indonesian Environmental Law, AL-ADALAH Vol. 17, Nomor 2, 2020, <https://ejournal.radenintan.ac.id/index.php/adalah/article/view/8223/4416>

²³ Ajidar Matsyah, at.all, Cultural Continuity and Legal Adaptation: The Evolution of Suluh in Aceh's Conflict Resolution System, JURIS (Jurnal Ilmiah Syariah) Vol. 24, No. 1 (2025), pp. 101-110 ISSN: 1412-6109; E-ISSN: 2580-2763 DOI: 10.31958/juris.v24i1.13272, p. 102-110.

²⁴ Hamzah Kamma, Urgensi Masalah dalam Pembaruan Hukum Islam di Era Global. Al-Manahij: Jurnal Kajian Hukum Islam, Vol 8 No 2 (2014), <https://garuda.kemdikbud.go.id/documents/detail/1404>

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²⁵ Moh. Subhan, M.E.I, *Rethinking the Concept of Nusyuz: Creating Harmony in Family Relationships*, Al 'Adalah: Journal of Sharia and Islamic Law, Vol. 4, No. 2, December 2019, p. 195.

²⁶ Bunya, at. All, *Reforming Indonesia's Correctional System: The Role of Maqāsid Al-Syarī'ah in Ensuring Justice and Rehabilitation*, De Jure: Jurnal Hukum dan Syar'iah Volume 17 Issue 1, 2025, p. 52-71 acsseted from <https://ejournal.uin-malang.ac.id/index.php/syariah/article/view/29258/pdf>.

²⁷ Qahthan Abdu al Rahman al Duri, 'Aqdu al Tahkim, p. 481, see Abdullah bin Ahmad bin Qudamah al Maqdisi,

permit what is forbidden or forbid what is permissible, as explained in the hadith of the Prophet (peace be upon him): "Making peace is allowed among Muslims, except for agreements that permit what is forbidden and forbid what is permissible."²⁸ Therefore, any agreement reached between the parties must be based on their legal awareness of their rights and obligations in compliance with the prevailing laws and regulations.

According to Presidential Regulation No. 88 of 2017 on the Settlement of Land Tenure in Forest Areas, it is affirmed that if land was occupied or granted rights before the designation of a forest area, the land may be excluded from the forest area, and the boundaries of the forest area may be adjusted.²⁹ The forms of partial release of forest areas as regulated in Presidential Regulation No. 88 of 2017 on the Settlement of Land Tenure in Forest Areas can be carried out as follows:

1. Excluding land parcels from the forest area through boundary changes;
2. Exchanging forest areas;
3. Providing access to forest management through social forestry programs; or
4. Conducting resettlement.³⁰

Before reaching the stage of resolving the conflict over forest area control, the government must first take responsibility for the human rights violations committed by the BBTNBBBS against the Semende Tribe during the violent incidents in 2012 and 2013. Therefore, the *Siyasah Syar'iyah* approach begins with a process of restorative justice

between the government and the Semende Indigenous Community. Both parties must act with good intentions. The government must consciously apologize for the repressive actions that resulted in the deprivation of the victims' human rights. The granting of forgiveness by the victims of violence, in response to the government's apology for the human rights violations, is one of the key elements of the restorative justice process. Within the framework of restorative justice, forgiveness, as a sign of the resolution of a case, is always accompanied or preceded by various agreements, the underlying philosophy and process of which are inseparable from the local community's way of life.³¹

Based on the principle of *Siyasah Syar'iyah* as indicated in the verse, Presidential Regulation No. 88 of 2017 on the Settlement of Land Tenure in Forest Areas provides an opportunity for the Semende Tribe to return to Dusun Lame Banding Agung, which the government claims is within the TNBBS area, by excluding land parcels from the forest area through boundary changes. However, the partial release of forest areas is not easy and requires dialogue and compromise between parties, given the status and function of TNBBS as not only an asset of Indonesia but also a UNESCO World Heritage site, part of the Tropical Rainforest Heritage of Sumatra (TRHS).³² Additionally, the National Park serves as a conservation forest with a dual purpose: the absolute protection and preservation of various ecosystems and species diversity, as well as serving as a natural resource for the sustainable welfare of the broader

al Mughni fi al Fiqhi al Imam Ahmad bin Hanbal al Syaibani, Vol. 8, (Beirut; Dar al Fikr, 1405 H), p. 167.

²⁸ Muhammad Imron, Junaidi Lubis, and Jumni Neli, *A Legal Review of the Islamic Concept of Mediation in Divorce Cases Based on Maslaha Mursalah*, *Journal of Sharia and Law*, Vol. 2 No. 3, 2023, p. 1042.

²⁹ Gamin, *Forest Area Conflict Resolution Between the Role of the State and KPH*, Yogyakarta: Deepublish, 2019, pp.

59-60.

³⁰ See Article 8 paragraph (1) of Presidential Regulation No. 88 of 2017 on the Settlement of Land Tenure in Forest Areas.

³¹ Natangsa Surbakti, *Restorative Justice...*, *Op.Cit.*, p. 44.

³² Fungky Widiaryanto, *Indonesian National Parks: National Heritage Jewels*, Jakarta: Kepustakaan Populer Gramedia, 2021, p. 73.

community.³³ This means that the possibility of releasing forest areas within TNBBS is very limited.

One challenge in changing spatial planning is that a review of spatial planning can only be conducted at least every five years. Meanwhile, Regional Regulation No. 2 of 2021 on the Spatial Plan of Kaur Regency for 2021-2040 is less than five years old. Furthermore, the process involves many stakeholders, given that spatial planning is integrated at the national level. The release of forest areas through an enclave requires a spatial planning review, involving proposals to change the forest area's designation, which would impact spatial planning adjustments that must be enacted through applicable legislation. Consequently, regional regulations governing spatial planning, from the Kaur Regency Regional Regulation to the Bengkulu Province Regional Regulation on the Regional Spatial Plan, must also be amended to accommodate the space requirements related to the resolution of the dispute.

The lengthy procedures and low likelihood of releasing forest areas in TNBBS through spatial planning changes must be addressed with alternative solutions. According to Wahyu Trimurti in Imam Mahdi et al., the management of national parks is more flexible compared to protected forests. This means that if it is possible to grant permits for the utilization of protected forests, then the national park—in this case, TNBBS—can also be utilized as long as it aligns with the zoning designations regulated within TNBBS itself. However, this does not mean that the national park area can

be released or repurposed.³⁴

Land use planning is carried out based on regional spatial plans to achieve public prosperity while taking into account people's land rights and the social function of land ownership.³⁵ If the zoning of Dusun Lama Banding Agung within the TNBBS area does not allow for agricultural or plantation activities by the Semende Tribe of Dusun Lama Banding Agung, the solution would be to review the zoning. Referring to the Director General of PHKA's Decree No. 80/IV-KKBHL/2014 on the Zoning of Bukit Barisan Selatan National Park, TNBBS zoning consists of:

1. Utilization Zone covering 13,553 hectares;
2. Core Zone covering 144,054 hectares;
3. Wilderness Zone covering 98,323 hectares;
4. Rehabilitation Zone covering 54,450 hectares;
5. Traditional Zone covering 3,030 hectares;
6. Special Zone covering 156 hectares.

Of these six zones, Dusun Lama Banding Agung is located in the core zone, which makes it impossible for the community to utilize the area. The zoning of TNBBS should take into account the local community's need for access to natural resources while preserving the ecosystem's sustainability. Fair zoning can be achieved through participatory mapping, involving the local community in determining territorial boundaries. However, Presidential Regulation No. 88 of 2017 on the Settlement of Land Tenure in Forest Areas offers a solution through forest area exchange. The forest area exchange referred to here involves the exchange of zones within TNBBS, by swapping

³³ Herman Hidayat, John Haba, and Robert Siburian, *Ecological Politics in National Park Management in the Era of Regional Autonomy*, Jakarta: LIPI Press, 2019, p. 7.

³⁴ Imam Mahdi, Ade Kosasih, and Etry Mike, *Model of Customary Land Rights Conflict Resolution of the Semende Tribe through the Restorative Justice Approach*, Bengkulu: Zara Abadi, 2022, p. 72.

³⁵ Rizani Puspawidjaja, *The Social and Cultural Rights of Traditional Communities from a Contemporary Perspective; Interpreting Land Rights Disputes as Fundamental Rights*, in Muladi, *Human Rights: Nature, Concept, and Implications from a Legal and Social Perspective*, Bandung: Refika Aditama, 2007, p. 250.

the core zone with the utilization or traditional zones through a zoning review.

Regarding this opinion, from a *fiqh* perspective, the idea of utilizing TNBBS through a zoning review falls within the realm of *ta'aqquli*, which is dynamic and open to development through *ijtihad*. Its benefit lies in contributing more significantly to legal development and the well-being of the community.³⁶ As stated in the *fiqh* rule: "The basic principle in all forms of *muamalah* is permissibility unless there is evidence that forbids it."³⁷ Thus, because there is no explicit prohibition or restriction on the utilization of forest areas or zoning reviews, based on the basic legal principle, such activities are permissible. Therefore, in the formation of legislation, the reciprocal relationship between the government and citizens must be taken into consideration, this is in accordance with the principle of industrial governance. *Siyasah dusturiyah*, a reciprocal relationship between the government and its citizens, and the protection of the rights of the citizens relate to this matter from the *Fiqh Siyasah* standpoint.³⁸

A zoning review offers the most effective and rational solution to the conflict between the Semende Tribe and BBTNBS, as the procedure is straightforward, requiring only a Ministerial Decree to establish zoning changes. This is different from the partial release of forest areas, which would alter spatial planning and require regional regulations, along with meeting other legal requirements.³⁹ However,

the zoning review must be conducted jointly, involving the local community in the mapping process of the TNBBS area to identify areas that have historically been utilized by them. Clear utilization zones should then be established, such as the core zone, wilderness zone, traditional utilization zone, and rehabilitation zone, while granting limited and sustainable access to natural resources for the community within the designated zones.

Once the zoning exchange is completed, the next stage is utilization. One of the utilization schemes offered by Presidential Regulation No. 88 of 2017 on the Settlement of Land Tenure in Forest Areas is the management of forest resources through social forestry programs. These social forestry management programs include Village Forest Management, Community Forest Management, People's Plantation Forest Management, Customary Forest Management, and Forest Management Partnerships.⁴⁰

Among the five social forestry schemes mentioned above, it is hypothesized that customary forest management is the most suitable approach for the Semende Tribe. When a conflict arises between the Semende community in Dusun Lame Banding Agung and the BBTNBS, it is speculated that bridging the opposing claims between both parties would be more appropriately handled through the customary forest management scheme.

Customary forests are defined as forests located within the territory of an Indigenous Law Community.⁴¹ However, this definition

³⁶ Fathurrahman Djamil, *Philosophy of Islamic Law*, 3rd ed. (Jakarta: Logos Wacana Ilmu, 1999), p. 52.

³⁷ Supardi & Zahrotul Hanifiyah, *Causes of Mediation Failure in Divorce Processes (Case Study at Kudus Religious Court January-April 2017)*, *Journal of Legal and Islamic Law Thought*, Yudisia, Vol. 8 No. 1, June 2017, p. 162.

³⁸ Abdul Kadir Jaelani, at.all, *Land Reform Policy in Determining Abandoned Land for Halal Tourism*

Destination Management Based on Fiqh Siyasah, *El-Mashlahah* Volume 14 No. 1, June 2024, <https://ejournal.iain-palangkaraya.ac.id/index.php/maslahah/article/view/8051/pdf>

³⁹ *Ibid*, p. 73.

⁴⁰ Article 3 of Minister of Environment and Forestry Regulation No. 9 of 2021 on Social Forestry.

⁴¹ See Article 1 Point 8 of Minister of Environment and

presents an obstacle to achieving conflict resolution through the customary forest management scheme. This is due to the numerous and stringent requirements under the applicable laws and regulations for recognizing an Indigenous Law Community, including:

1. The existence of a living traditional authority structure in the form of a customary government.
2. Clearly defined territorial boundaries.
3. The presence of legal institutions, especially customary courts, that are still adhered to.
4. The community still harvests forest products to meet their daily needs.
5. Official recognition of their status as an Indigenous Law Community through a decree issued by the regional head.

Meanwhile, the current socio-cultural condition of the community in Dusun Lame Banding Agung shows that many residents are from outside the area. The original Semende Tribe of Dusun Lame Banding Agung largely migrated and settled in Tanjung Beringin village after the violent incident. However, they still maintain and cultivate their assets, such as rice fields and farms. Therefore, one of the legal requirements regarding the presence of traditional governance and customary legal institutions, including customary courts, is not fulfilled. Moreover, the Kaur Regency Government has not yet formally recognized the Semende community in Dusun Lame Banding Agung as an Indigenous Law Community.⁴²

Referring to the current socio-political conditions in Dusun Lame Banding Agung, it

can be stated that the conflict resolution model between the Semende Tribe in Dusun Lame Banding Agung and the BBTNBS through customary forest management is no longer relevant. However, it is still possible to implement this conflict resolution model through customary forest management if the original Semende community of Dusun Lame Banding Agung and the local government work together in synergy to meet the legal requirements of the applicable laws and regulations.⁴³

If the customary forest management model is unattainable, then community forest management becomes the most suitable conflict resolution model, fulfilling the legal requirements that can be applied in the conflict between the Semende community and BBTNBS in Dusun Lame Banding Agung/TNBBS area. To prevent the misuse of community forest management by the community, there must be a role for the government in community development. This community forest management model will accommodate the interests of local communities living around TNBBS by granting them rights to sustainably utilize natural resources. Conflict resolution must provide a fair solution for the community,⁴⁴ such as access to land for cultivation, alternative economic development programs, and capacity building in natural resource management. In stages, legislation explains the binding legal force of the clause on the choice of dispute resolution forum. However, it may not have legal force because there is a choice of forum clause for dispute resolution in district court with conventional contract

Forestry Regulation No. 9 of 2021 on Social Forestry.

⁴² Imam Mahdi, Ade Kosasih, and Etry Mike, *Model of Conflict Resolution*, Bengkulu: Zara Abadi, 2022, pp. 78-79.

⁴³ Shrimanti Indira Pratiwi, *Settlement of Customary Land Disputes Between Indigenous Law Communities and*

Tessonilo National Park, Brawijaya Law Student Journal, Vol. 2 No. 2, 2015, p. 19.

⁴⁴ Masril and Ade Kosasih, *The Applicability of Ne Bis In Idem to Customary Court Rulings in the Indonesian Legal System*, Al-Imarah, Vol. 4 No. 1, 2019, p. 53.

agreements.⁴⁵

In practice, this community development scheme has already been implemented in TNBBS, located in West Lampung Regency, Lampung Province. Community empowerment in this context refers to empowering communities through sustainable forest conservation. To date, the BBTNBBS cooperation partners include 18 community groups, formalized in cooperation agreements. These empowerment collaborations are part of a strategic development initiative aimed at restoring and strengthening forest functions and conserving biodiversity.⁴⁶

This community empowerment scheme is a new breakthrough while still adhering to Minister of Environment and Forestry Regulation No. P.85/Menhut-II/2014 and Minister of Environment and Forestry Regulation No. P.44/MENLHK/SETJEN/KUM.1/6/2017. Local communities need to be provided with sustainable livelihood alternatives that do not harm the environment. This can be achieved through the development of ecotourism, organic farming, and the utilization of non-timber forest products. The goal of this empowerment scheme is to ensure that areas of TNBBS that have been converted into plantations by residents can still be utilized while preserving the forest's natural state through conservation partnership programs. Conflict resolution efforts must ensure that no further damage is done to the ecosystem and biodiversity within it.

Through the community empowerment program in the framework of this conservation partnership, the Directorate General of Natural Resources and Ecosystem Conservation grants

land management permits to communities residing and farming within the TNBBS area. The latest data shows that 21,000 hectares within TNBBS have received approval/permits for management/use over five years. The areas that have received management/use permits from the community are located in the districts of Lumbok Seminung, Sekincau, Suoh, and Way Tenong. Beneficiary communities must demonstrate a strong commitment to preserving and maintaining the forest's sustainability. This commitment must be shown by planting the specified plants provided by the Directorate General of Natural Resources and Ecosystem Conservation to restore forest functions. In addition, the beneficiary communities are also obligated to protect the wildlife within the TNBBS area.

This community empowerment model is expected to be a starting point for opening effective communication as part of conflict resolution between the Semende Tribe in Dusun Lame Banding Agung and the government, particularly BBTNBBS. Through this community empowerment partnership model, the government and the community can work together to support conservation and rehabilitation programs for TNBBS as a World Heritage site. Therefore, the community empowerment partnership model in the TNBBS area implemented in West Lampung can serve as a reference for the Kaur Regency government in bridging the conflict resolution between the Semende community in Banding Agung and BBTNBBS.

To grant forest management permits through social forestry, the first step is the preparation of the Indicative Map of Social Forestry Areas (PIAPS), conducted

⁴⁵ Abdul Hakim Pratama, At. All, *The Position of Choice of Forum and Alternative Dispute Resolution Principles in Contemporary Sharia-Based Property Dispute*, MILRev : Metro Islamic Law Review ISSN: 2986-528X Vol. 4 No. 1

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⁴⁶ Imam Mahdi, Ade Kosasih, and Etry Mike, *Model of Conflict Resolution...*, Op.Cit., pp. 78-79.

participatively by the Ministry of Environment and Forestry along with the community or stakeholders. The resolution through this community-based forest management scheme is facilitated by the local government and relevant partners until the Forest Management Rights (HPH) are obtained. Once HPH is issued, the legality and legitimacy of both the forest area and the community-managed area can be realized.

According to Wahyu Trimurti, social forestry management is an alternative if the release of forest areas is difficult to achieve. This way, the Semende Tribe can continue to use their fields and paddies in Dusun Lame Banding Agung as they did before, although not under *hak ulayat* or customary forest status, but through community forest management schemes.⁴⁷ Furthermore, social forestry will enhance the community's capacity in natural resource management and environmental conservation, strengthening traditional institutions and community groups in managing natural resources and resolving conflicts locally.

To maintain harmonious relations between the government, specifically TNBBS, and the Semende Indigenous Community, a multi-stakeholder communication forum should be established. This forum would involve the community, government, national park management, NGOs, and academics to openly and transparently discuss issues related to TNBBS, prioritizing a persuasive and dialogue-based approach to conflict resolution. Additionally, the government must take a persuasive approach and provide guidance to the Semende Indigenous Community to raise legal awareness through socialization and educational activities about conservation-related laws and regulations.

Conclusion

Siyasaḥ Syar'iyah prioritizes utility, humanity, and justice. The implementation of Siyasaḥ Syar'iyah begins with a process of restorative justice, demanding that the government take responsibility and apologize for human rights violations that have occurred. Siyasaḥ Syar'iyah supports Social Forestry as an alternative conflict resolution that allows the Semende tribe to continue to utilize their land through a community-based management scheme, which is a form of legality and legitimacy of management under Indonesian positive law in line with the spirit of Maqosid Syariah, namely protecting human interests. This approach is based on Allah's command to establish justice, which emphasizes the importance of finding solutions that benefit all parties.

As a recommendation from this study, a multi-stakeholder communication forum involving the community, local government, TNBBS management, NGOs, and academics should be established immediately. The government should use a persuasive approach to raise legal awareness by providing outreach and educational activities on conservation laws and related regulations to the Semende Indigenous Community. Although the Indigenous Forest scheme is not relevant at this time due to administrative barriers, the government should work together with the indigenous Semende Community to help them meet the legal requirements for obtaining legal recognition as an indigenous community.

Credit Authorship Contribution

Etry Mike conceptualised the research idea, formulated the primary objectives, and drafted the introduction, background, and conclusion while ensuring the integration of Siyasaḥ Syar'iyah within the conflict

⁴⁷ Ibid.

resolution framework. Imam Mahdi developed the theoretical and legal foundation, conducted doctrinal analysis of agrarian and forestry regulations, and refined the arguments linking Islamic legal principles with Indonesian positive law. Arini Azka Mutia collected and analyzed empirical data from field observations and interviews, contributed comparative socio-legal insights, and assisted in synthesizing the findings as well as refining the manuscript to meet international academic standards. All authors collaboratively revised and approved the final version of the manuscript for publication.

Declaration of Competing Interest

The authors declare that they have no known financial, institutional, or personal conflicts of interest that could have influenced the research findings or interpretations presented in this study.

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