

Existence of Customary Land According to the Basic Agrarian Law

Gevan Naufal Wala

Department of Law, Faculty of Law, Universitas Tarumanagara, West Jakarta City, Province of
DKI Jakarta, Indonesia

Email: gevan.205200235@stu.untar.ac.id

Abstract

Land tenure by indigenous peoples tends to be ignored. This situation occurs because government policies do not pay attention to developments in land tenure by indigenous peoples. In essence, customary law is law that is recognized for public purposes. Because of this, the state and government should provide protection for the rights of indigenous peoples which are included in the state constitution. This is also stated in Law Number 5 of 1960 concerning Basic Agrarian Regulations. Traditionally owned land or called ulayat land, in essence according to custom is land that cannot be contested and cannot be owned in the form of individuals. However, in these regulations, land can become land rights that can be owned individually without erasing the existence of customary land from customary law communities in Indonesia. The existence of customary law will never retreat or be displaced from the world of politics in building national law, considering that customary law has the ability to adapt and be flexible.

Keywords: Traditional Land, Customary Law, Basic Agrarian Law



This work is licensed under a [Creative Commons Attribution-NonCommercial 4.0 International License](https://creativecommons.org/licenses/by-nc/4.0/).

INTRODUCTION

Customary law is a legal system known in social life in Indonesia and Asian countries. The source is unwritten legal regulations that grow and develop and are cared for by the legal awareness of society. Unwritten rules with this growth and development, then customary law has the ability to adapt and be flexible. The definition of customary law itself is a law that was born out of real legal feelings, continues to grow and develop like life itself (Bushar: 1981).

Indonesia as a country is currently carrying out a legal transformation towards a written legal system (statutory of law) by pursuing a process of unification of various unwritten legal systems that exist and apply in Indonesian society. The plurality of indigenous peoples, their own cultures and traditions has resulted in different customary law practices. One of them, in this case, was taken as a sample of customary land or customary land (Hilman: 2003). Of all the existing ethnic groups, the Minangkabau tribe has a different, unique and very rare kinship system. Matrilineal kinship system with meaning according to maternal lineage (Yaswirman: 2006). A person who becomes a related customary law community, with the presumption that he is descended from an ancestor or a single mother, passes it on to his daughters and granddaughters. The smallest unit of matrilineal society with clans or relatives. Article 3 of Law Number 5 of 1960 concerning Basic Agrarian Regulations regarding the existence of customary law community customary rights, as long as in reality they still exist.

In his understanding, if in fact the customary land does not exist, then the ulayat rights will no longer exist or be created again. These customary rights will be left to the rules of each customary law community. From the reference to Article 5 Perkab Number 5 of 1999 concerning guidelines for solving customary law issues, the study and determination still have customary rights carried out by the local governments that participate. Community institutions or those that are still on the basis of land registration, put a sign with the possibility of delineating the boundaries and registration records (Urip: 2005).

Minangkabau indigenous people have their own rules regarding civil law. For example, in inheritance, ulayat rights as well as ulayat rights are rights of authority according to customary law that belong to the community. Land rights are regulated in the Basic Agrarian Act, including ownership rights, usufructuary rights, buildings, usufructuary rights, rental rights, land clearing rights and rights to collect forest products and other rights that are not included in these rights are stipulated by regulations that are temporary. This writing reviews customary land rights with reference to the Basic Agrarian Law, how existing customary land is linked to the rules of agrarian law, this scientific legal research is entitled "The Existence of Customary Land According to the Basic Agrarian Law". The problem formulation of this research is by looking at the existence of customary land rights associated with the Agrarian Law. The aims and objectives of the research are to see what is the existence of customary land in relation to the provisions of Law Number 5 of 1960 concerning Basic Agrarian Regulations.

Literature review

Definition of Ulayat Land and Ulayat Rights

Customary land in language and concept is the same as the term Ulayat Land as stipulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations. Ulayat rights are rights that are attached as a distinctive competence in customary law communities, from their authority or power with land affairs and regulations from all within the power of conduct or exit. With ulayat, the meaning is territory, so that ulayat land is the territory of the community with determined customs. In theory, the meaning of legal community and customary law is different. With a meaning that is fixed and bound, but also subject to law. Indigenous peoples are those that arise spontaneously in certain areas, with higher orders. This view is not as a member of society, but from the sources and benefits of members. Ulayat rights are a series of authorities, obligations and something from customary law communities, which are related to land and are located in the position of main support that lives in society. It is related throughout his time (Lebensraum). Ulayat rights of all land within the territory of the relevant legal community, whether they have become the rights of a person or not. In general, the boundaries of the area of customary rights cannot be determined with certainty. The Ulayat Rights contain the authority to: Rule and organize the use of land, settlements and others. Rules and determination of the legal relationship between people with land and objects that have been determined. Determination of the legal relationship of persons and legal actions related to land.

Arrangement of Tenure Rights over Ulayat Land

Boedi Harsono stated that the land tenure rights, with the contents and series of authorities, obligations and restrictions on the land holders they own. Something that is obligatory and permissible, or prohibited to do, is the content of the right to exercise land rights which is the criterion and benchmark for differentiating land rights. The concept of customary rights from legal references exists, with the formulation being a possible conception in individual land tenure, land and elements of togetherness. This was later confirmed by the statement: "Ulayat rights are the highest rights owned by a legal alliance, for orderly guarantees and benefits of land use. Ulayat rights are the rights of a legal alliance, where community members have the right to control the land. A plot of land that is around environmental rights where the implementation is arranged with the related partnership.

Ulayat Rights in National Land Law

National land law recognizes the existence and existence of customary rights, with provisions and the fact that they still exist, recognized by the Basic Agrarian Law in article 3: the reality still exists, it must be in such a way with the national interest and does not conflict

with laws and other higher regulations. In its development, in fact, the strength of these Ulayat Rights tends to have the weaknesses of the residents and members of the related customary law community. Because of this, there is no regulation and government regulation of these customary rights.

RESEARCH METHODS

The method used is only using normative legal research. According to Marzuki, what is meant by normative legal studies is the method used by analyzing secondary data. The secondary data referred to, for example books, legal regulations, court decisions, as well as the opinions of legal scholars presented. Meanwhile, what is meant is to see the existence of customary land which is associated with the Basic Agrarian Law.

RESEARCH RESULTS AND DISCUSSION

Arrangement of customary rights of Indigenous peoples in the Basic Agrarian Law

The position of ulayat rights in the Basic Agrarian Law in Article 3, the existence of customary land, in this case ulayat rights, gets a place and also recognition from as long as in reality it still exists. The aspect, or the practice and also in practice must not conflict with national interests and higher laws. In this case, what is meant is that an indigenous peoples must submit to the public interest, the nation is also a high and also broad country. Because of this, it is not justified in this atmosphere of nation and state of a customary law community, there is still an absolute defense of the contents of customary rights.

The position of Ulayat Rights in the Regulation of the Minister of State/Head of the National Land Agency Number 5 of 1999 is determined by Article 1 paragraph (1), namely: "Ulayat rights and similar rights of customary law communities, hereinafter referred to as customary rights, are the reference authority of customary law owned, with which is determined to take advantage and continuity of life and live uninterruptedly between customary law communities and the area concerned".

The realization of this rule is used as a reference in the regions for the implementation of land management, especially in relation to the problem of customary customary rights and the fact that they still exist in the related areas. This rule contains a clear policy of customary rights, with customary law communities. Article 3 of the Basic Agrarian Law includes Boedi: 2004): Equal reference to customary rights; Criteria and determination of the existence of customary rights and similar rights of indigenous peoples; The authority of customary law communities on customary land.

The right is considered to still exist if there is a group of people who feel they have an attachment to the legal order of the people, with the legal community together that is determined, recognized by daily provisions. There is customary land which is determined by the environment of the law community members, a place to take daily necessities. There is a customary law system, control and use of communal land from residents and their partners.

The Existence of Customary Rights of the Minangkabau Community

Minangkabau customary rights are obtained in the same way as Minang Kabau customary rules that apply generally. The descendants who get customary rights are the descendants of seranji. Ranji is a Minangkabau family tree, from the mother's lineage. With the understanding, if customary rights are inherited from generation to generation, with their family tree with supervision from the tribal chieftain. According to the author, customary rights in Minangkabat may not be sold or pawned unless the condition for inheritance is high. Because it can only be used for generations and fairly. From the results of the author's study and reading, that the daughter of a clan has absolute status in managing customary land. If a dispute occurs, it is

initially reported to the ninik mamak. If the parties do not want to reconcile, the party who reports so that the dispute can be resolved. There is an agreement from customary officials in matters of land disputes and listening to statements from owners or those who belong to adat.

CONCLUSION

The existence of customary land customary rights is currently weak due to violations and disputes over customary land rights. This problem is caused by a lack of understanding of issues regarding customary rules and a lack of people to explore and recognize community interests. The prohibition to sell or pawn land is regulated by customary law, which is spelled out in regional regulations. The role of the ninik mamak, the head of the village government, is also starting to weaken. The dispute is the cause of the lack of clear oversight in customary rules, clear boundaries of customary land. The role of the headman is to resolve disputes only. Because half of the cases that enter the lawsuit in court. References to customary rights and communal land have been clearly regulated and recognized in Law Number 5 of 1960 concerning Basic Agrarian Regulations. Whereas customary law, customary land is still recognized in the community and conforms to the Basic Agrarian Law. Ulayat land and customary law are still recognized in the daily lives of indigenous peoples, but people need awareness of the existence of these customary lands.

Suggestion: Customary rights, customary land must be protected by traditional officials or those with local authority. Indigenous peoples must prevent selling and pawning communal land without fulfilling the customary rules that apply. The need for customary rights, rules regarding customs. So that the existence of customary rights, namely customary rights can be properly maintained. Regarding the limitations that must be determined and the rules that apply. The role of indigenous peoples must be carried out properly. So that they can resolve any disputes, carry out socialization about the rules of customary rights. Because it is very useful and effective in its use. Communities are required to be more sensitive about the existence of customary land rights related to the current Basic Agrarian Law.

BIBLIOGRAPHY

- Azrial. 2003. *Budaya Alam Minangkabau*. Angkasa Jaya. Padang.
- Boedi Harsono. 2003. *Hukum Agraria Indonesia*. Djambatan. Jakarta.
- Bushar Muhammad. 1981. *Asas-asas Hukum Adat*. Pradnya Paramitha. Jakarta.
- Hilman Hadikusuma. 2003. *Pengantar Ilmu Hukum Adat Indonesia*. Mandar Maju. Bandung.
- Urip Santoso. 2005. *Hukum Agraria dan Hak-Hak Atas Tanah*. Kencana. Jakarta.
- Yaswirman. 2006. *Hukum Keluarga Adat dan Islam*. Universitas Andalas. Padang.
- Zulkarnain. 2003. *Budaya Alam Minangkabau*. Usaha Ikhlas. Bukit Tinggi.