



# Legal Study on Customary Land Business Agreements by Companies and Indigenous Peoples

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**Abstrack.** The issuance of Government Regulation 18 of 2021 is a renewal in exploitation of indigenous peoples land for company businesses. However, the presence of this government regulation raises a problem, because the national land law does not stipulate that corporate use rights can be cultivated on land with management rights because customary law community land is not regulated as management rights. This study aims to identify and analyze the process of ulayat land concession agreements by companies and the status of ulayat lands if the agreement between the company and customary law communities related to ulayat land concessions has ended. This study uses a normative juridical method, namely the data source used is secondary data, obtained from official documents, books, other written reports, as well as dictionaries and encyclopedias. Research data will be analyzed using descriptive analysis method. The results of this study, that the land use agreement process begins with an agreement related to compensation, the business period of the land that will be used by the company's business then submits an application to the local Land Office regarding management rights by customary law communities and cultivation rights by companies, while the status of customary land after When the agreement expires, the land with management rights on which the company's Cultivation Right on Landapply will return to being the customary land of the customary law community again.

**Keywords:** business agreement, customary land, indigenous peoples

## 1. Introduction

Land rights give the holder the authority to use a certain plot of land to meet certain needs. [1] Land rights are given to individuals or jointly with other people and can be given to legal entities. The transition from the status of Customary Land to Management Rights, and then on top of that, it was given land rights, namely Cultivation Rights for corporate businesses, which is very interesting to study, because it is a new policy that has never happened in Indonesia. Land with Management Right is state land whose exercise of authority is partly given to the holder. Where as customary land is land that is in the

territory of customary community control which in reality still exists and is not attached to any land rights.

Cultivation rights according to national land law are rights to cultivate land that is directly controlled by the State for a certain period of time, for agricultural, fishery or livestock companies. Cultivation rights are given for a maximum of 25 years and for companies that require a longer period can be given a maximum of 35 years. At the request of the right holder and taking into account the condition of the company the term can be extended to a maximum of 25 years, for agricultural, fishing or livestock companies.[2] This policy is followed up by Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration. Having Cultivation Right on Land with the status of non-owned land cannot violate the agreed terms and land use agreement.

With regard to the management rights of indigenous peoples over the granting of Cultivation Right on Land for companies, it is required that an area controlled by indigenous peoples must have territorial boundaries as stipulated in Law no. 6 of 2014 concerning villages. The application of the principle of horizontal separation by granting Cultivation Right on Land in customary land concessions by companies on the basis of indigenous peoples land management rights is recognized in Government Regulation Number 18 of 2021. The process of customary land concession agreements and the status of land rights after the expiration of the agreement will be discussed in this research.

Cultivation Right (HGU) is a special right to land whose validity period is limited to a certain period of time which requires clarity, both regarding the conditions for obtaining it, the procedures for granting it, extending the term and renewing the right, as well as the status of the land and objects on it after the time period expires. In applications for HGU Permits, legal problems often occur in the Granting of Licenses to extend Cultivation Rights due to Decision Letters which are deemed not to be in accordance with the General Principles of Good Governance or violate Legislative Regulations so that the legal consequences resulting from these Decisions are considered to be very detrimental to the applicant. and becomes a State Administrative dispute between the HGU Applicant and the Agency that issued the HGU Extension Permit as well as the local Regional Government and the community surrounding the HGU land.

Ulayat land is the land of a customary law community. According to Boedi Harsono, customary law community customary rights are a series of authorities and obligations of a customary law community that relate to land located within its territorial environment.[3] The subject of ulayat rights is the customary community as a whole, namely the entire archipelago. The community's control over ulayat rights must not be in the hands of private individuals but must be in the hands of the community. Objects of ulayat rights include land (mainland), water, plants (natural wealth) contained inside, and wild animals that live freely in the forest. [4]

Customary rights are the authority, which, according to customary law, is owned by customary law communities over certain areas that constitute the environment of their citizens. This authority allows the community to take advantage of natural resources, including land, in that area for their survival. The community and resources in question have an outwardly and inwardly connection from generation to generation and are unbroken between the customary law community and the area concerned.

## **2. Problems**

This article will examine the following two issues:

- a. How is the concession agreement of customary land into management rights by the company based on Government Regulation No. 18 of 2021?
- b. How is the status of Indigenous Peoples' Land when the Company's Cultivation Rights expire?

## **3. Methods**

Research method is a step or method that researchers use when carrying out research. The method approach used in this legal research is the normative juridical approach. The normative juridical research method is library legal research, which is carried out by examining library materials or mere secondary data. This research was conducted in order to obtain materials in the form of theories, concepts, legal principles, and legal regulations related to the subject matter.[5] This approach method is a library research, namely a research on secondary data. Deductively starting with an analysis of the articles in Government Regulation Number 18 of 2021 and the national land law that regulates the issues that are the problems above.

The approach method above is used bearing in mind that the problems studied revolve around laws and regulations, namely the relationship between one regulation and another and its relation to its application in practice. This study uses descriptive analysis as a research specification. Descriptive describes a thing and certain conditions while analysis is analyzing the theory of applicable laws and regulations.

In analyzing the data that has been collected in this research, normative-qualitative data analysis is used for the data that has been collected. Normative means that this research starts with existing regulations as positive legal norms. The qualitative method means that the data obtained is then compiled systematically and analyzed qualitatively. Using descriptive techniques that explain legal events or conditions focuses attention on general principles that are analyzed in society to find out patterns that apply in society.

## **4. Discussion**

### **4.1. The Customary Land Concession Agreement Becomes Management Rights by The Company According to Government Regulation No. 18 of 2021**

Article 18B paragraph 2 of the 1945 Constitution of the Republic of Indonesia, as a result of the amendment, states that “The State recognizes and respects the units of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law.” The law here is national agrarian law.

Companies that wish to run their business on communal land must carry out the process in accordance with the applicable laws and regulations. These rules include the National Land Law, Government Regulation Number. 18 of 2021 and Minister of Agrarian Regulation Number. 18 of 2019.

Business companies using customary land must go through a licensing process. Before applying for a permit, the company enters into an agreement with the indigenous people either under the hand or in the presence of an authorized official with the knowledge of the customary leader and the local village.

Customary land management rights cultivated by the company are carried out based on cooperation with land use agreements. A land use agreement is an agreement between the parties to implement civil law provisions related to land rights.

An agreement is a legal relationship between two parties where one party has the right to demand something from the other party and the other party is obliged to fulfill that demand. This understanding means that an agreement is a promise, either verbal or written, that functions as evidence in the future if a dispute occurs between the parties making the agreement.

Some agreements have their form determined by statutory regulations; if this form is violated, then the agreement is invalid, such as the Mortgage Rights Agreement with APHT (Deed of Granting Mortgage Rights), which must be made with a deed from the Land Deed Making Officer. Agreements determined by the government must be based on the conditions for the validity of an agreement regulated in Article 1320 of the Civil Code.

Land use agreements between the Company and indigenous peoples are based on the provisions of Article 1320 of the Civil Code, namely the existence of an agreement between the parties who are binding themselves, the ability of the parties to make the agreement, certain matters specified in the agreement and the existence of a lawful cause that does not conflict with decency, ethics and applicable regulations.

The preparation stage for the application for management rights for indigenous peoples includes:

- a. To submit an application for management rights, the land must be physically controlled by the customary law community with physical and juridical data proven by the local agrarian office;
- b. How to obtain land for management rights from communal land;
- c. Customary law communities obtain land based on a land use agreement based on an application for cultivation rights over management rights by the company; and
- d. Customary land is not subject to land rights and is not included in state forest and conservation areas.

Land parcels management rights are measured based on the request of the customary law community, namely by submitting a request for measurement of the land parcel after obtaining and controlling the land. The results of the land being measured are included in the land plot map, and if there are buffer areas, water body borders, and/or conservation areas of the land parcel, they will be measured too.

Applications for management rights to customary law communities' customary land are carried out by:

- a. Applications for customary law community customary land management rights are addressed to the head of the agrarian office where the customary land is located;
- b. Requirements for files to be photocopied and legalized by an authorized official;
- c. DP4T (Land Allocation, Use, and Utilization Planning Document) must be completed according to the specified requirements;
- d. KKPR (Spatial Utilization Activity Suitability) is given according to the land area submitted to the Head of the local National Land Agency; and
- e. Submission of files with a cover letter to obtain determination of customary law community customary land management rights is under the authority of the Minister and/or Head of the Agrarian Regional Office.

The material truth of the application file and statement of physical land control is the civil and criminal responsibility of the management rights applicant, in this case, the customary law community.

Management rights of the customary law community Customary land is given to indigenous communities that have been designated as customary law communities (Article 32 Government Regulation Number 18 of 2021). The obligations of management rights holders, in this case, customary law communities, are to use their land according to the stipulated provisions, prevent land damage, maintain land and increase fertility, as well as protect the environment, supervise the conservation function of water borders, plan space utilization with an integrated spatial plan, release management rights if

ownership rights are granted for the public interest, and report at the end of each year regarding the use of management rights land.

Things that are prohibited by management rights holders include closing other plots of land from public access, destroying the environment, abandoning land, and building permanent structures so that embankment conservation becomes less functional.

Ulayat land applied for land management rights must provide the applicant's identity or power of attorney, accompanied by a power of attorney, regulations determining it as a customary law community, a floor plan or map of land data, DP4T (Land Allocation, Use, and Utilization Planning Document), proof of tax payment, a statement of physical control of the land, and the responsibility that the land truly belongs to him. Customary land status and physical control in good faith and land acquisition in accordance with actual land data Land is not a government asset.

The customary law community, represented by traditional officials (traditional leaders and traditional administrators), submits an application for management rights to the agrarian office regarding the agreement that has been made with the company. Submission of an application for customary law community management rights based on Article 17 PP No. 18 of 2021, which states that "in the case of land management rights originating from customary land, customary law communities can submit an application as long as the customary law community's customary land does not have land rights attached to it and is not in a forest area." Management rights originating from customary land can be granted to customary law communities that have been determined by authorized officials in accordance with applicable provisions, namely Minister of Home Affairs regulations Number 52 of 2014.

The land use agreement at least contains the identity of the parties, the location, boundaries and area of the land, the type of use, utilization of the land and/or the building to be erected, provisions regarding the type of rights, term, extension, renewal, transition, encumbrance, change, and/or cancel the cancellation of rights granted on land with management rights, and provisions on ownership of land and buildings after the end of land rights, the amount of tariffs and for annual mandatory fees and payment procedures, as well as terms and conditions that bind the parties, implementation of development, fines for non-performance including sanctions clauses, and cancellation/termination of the agreement (Article 8 paragraph 2 Government Regulation Number 18 of 2021).

In the land use agreement by the company, it must be stated what business the land is being managed for, the type of business, the determination of the annual fee and/or mandatory payment and the provisions stipulated in the applicable regulations so that it is clear what land rights will be given to the company. Determination of tariffs and/or mandatory annual fees must be included in land use agreements between indigenous peoples as holders of management rights and companies that will exploit the land. Likewise, the agreed timeframe for managing the land. After the agreement is concluded, the company then applies for a location permit to the local regional government by

attaching a copy of the land concession agreement made between the company and the indigenous peoples.

Land use rights cultivated according to agreed land use agreements can be extended or renewed at the request of the company to the indigenous peoples. Indigenous peoples can provide recommendations for extending or renewing land use rights cultivated by companies based on customary deliberations. The extension of the Cultivation Right on Land period is proposed after the company's business is running or no later than two years after the expiry of the Cultivation Right on Land period. Extension of Cultivation Rights is the company's obligation to register at the Agrarian Office where the land is located. Thus, according to the author, the Cultivation Right on the Land The management rights of indigenous peoples can be extended at the request of the company if the indigenous peoples get approval if the land is cultivated properly and correctly in accordance with the land use agreement.

#### **4.2. Status of Indigenous Peoples' Land When the Company's Cultivation Right Has Expired**

The Basic Agrarian Law (UUPA) does not clearly regulate customary law community land or ulayat land. Based on the 1945 Constitution, customary land must not conflict with applicable laws and regulations.

Customary law communities, as community groups (genealogical, territorial, and genealogical-territorial), have a legal area called customary rights. Customary law communities with customary law rights cannot be separated from one another, so the existence of customary law rights is very dependent on the existence of customary law communities. So it is clear that customary rights cannot be owned or controlled individually. [6] The determining criteria for whether customary rights still exist or not must be seen in three ways, namely: 1) The existence of customary law communities that fulfill certain characteristics as subjects of customary rights 2) The existence of land or territory with certain boundaries is the object of customary rights. 3) The existence of the authority of customary law communities to carry out certain actions. [7] The inward validity of customary rights shows how customary rights are regulated and used for the benefit of members of the customary law community concerned.[8]

In Regulation of the Minister of Agrarian Law No.18 of 2019 concerning Procedures for Administering Land of Customary Law Communities, that land of customary law communities is the land of traditional associations that contain customary areas of indigenous peoples, which in reality are still maintained to this day. In addition to the recognition of individual ownership of customary land, there is also communal land (ulayat rights). Customary land can take the form of rice fields, agriculture, gardens, cemeteries, rivers, and forest areas.

Indonesia is a country based on law, not solely on power; therefore, all legal policies must recognize the rights of citizens. The rights of customary law communities are included here. Customary law communities are also Indonesian citizens (WNI).

The legal provisions of customary rights state that there is a relationship between indigenous peoples, their territories, and the natural environment. Customary law communities have customary institutions to supervise customary land. The traditional leader with the community, who uses customary rights as members of the group, supervises their customary land.

Everyone has the right to use customary land individually. Mastery of customary rights in customary law communities takes place according to the granting of their rights for a certain time. Even though there are personal rights, there are still collective rights in customary law communities.

The company's business carried out on the management rights of indigenous peoples in the agreement stated the expiry period. This is in accordance with the regulations governing Cultivation Rights on Land. The Cultivation Right on Land for the company's business can be erased due to the end of the land use agreement between the company and indigenous peoples, for land with Cultivation Right on Land over land with management rights.

The Cultivation Right on Land that have expired whether agreed or not can be extended or not depends on the decision of the indigenous people whether to give permission or recommendations for extension at the Land Office or refuse. The refusal of the permit for the extension of the company's land use rights from the customary community's management rights will result in the land becoming the possession or property of the indigenous people again.

The company's cultivation right on land are not given back either for the extension or renewal of rights, so the buildings and objects on the usufructuary land are regulated in the clauses of the land use agreement between the company and indigenous peoples. Based on the rules of Cultivation Right on Land that are not extended, the Cultivation Right on Land are automatically deleted due to the end of the land use agreement, for Cultivation Right on Land on land with customary land management rights. Therefore, according to the provisions of Article 15 paragraph 3 of Government Regulation Number. 18 of 2021, that land use rights expire and customary land management rights are erased, so customary community land rights become customary community land or communal land again.

Before the enactment of Government Regulation Number. 18 of 2021, according to the provisions in the Regulation of the State Minister for Agrarian Law Number 5 of 1999 concerning Guidelines for the Settlement of Indigenous Peoples' Ulayat Rights Issues, the position of the land for Cultivation Rights originating from communal land when the term

expires, the Cultivation Rights are deleted based on the provisions of the applicable law, then the land becomes state land.

Regulation of the Minister of Agrarian Law Number 5 of 1999 has been revoked and now the Regulation of the Minister of Agrarian Law Number. 18 of 2021. Meanwhile, the process of land use rights for the company's business on land with communal land management rights based on Government Regulation Number 18 of 2021 jo Regulation of the Minister of Agrarian Law Number 18 of 2021 starts from the land use agreement then submitted by both parties to the local Land Office to obtain land certificates for Management Rights and Cultivation Rights. If the company's Cultivation Rights land has ended, then the Indigenous People's Management Right land will become customary land for the Indigenous Peoples again.

Management rights originating from customary land as regulated in Government Regulation Number 18 of 2021 are expected to be a solution that benefits both parties. On the one hand, investors have their land needs met for investment and can guarantee their land rights over management rights originating from customary land. On the other hand, customary law communities as owners or rulers of customary land receive mandatory annual rates and/or money, as well as not losing their customary land because the customary land returns to them after the term of cooperation in using their customary land for investment ends. [9]

## **5. Conclusion**

The agreement on the utilization of the company's land use rights over the customary community's management rights land benefits both parties. Companies in the context of their business can manage land with usufructuary rights so as to obtain large revenues. Meanwhile, indigenous peoples with customary lands that are management rights, receive compensation and obligatory annual money that can be used to improve the economy of their indigenous peoples. The good thing is that indigenous peoples will not lose their customary lands because customary lands will be under the control of indigenous peoples again after the land use agreement expires.

Suggestions from the authors of the national land law must be revised so that they do not conflict with Government Regulation Number 18 of 2021 which regulates land related to customary land management rights and land use agreements with business use rights above management rights. This is in the hope that there will be no anomalies or contradictions between laws and regulations. Where in the national land law and its implementing regulations, Management Rights are State Ownership Rights or state lands where some authority is given to government agencies, but in Government Regulation Number. 18 of 2021 states that Management Rights can be given to Indigenous Peoples. Revision of the national land law regarding management rights holders is required.

## References

- [1] Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. Jakarta: Djambatan, 2003.
- [2] I. G. A. G. S. Dewi, *Hukum Agraria di Indonesia*. Surabaya: CV. Jakad Media Publisng, 2020.
- [3] D. C. Jatnika, N. Mulyana, and S. T. Raharjo, “Residivis Anak sebagai Akibat dari Rendahnya Kesiapan Anak Didik Lembaga Pemasarakatan dalam Menghadapi Proses Integrasi ke dalam Masyarakat,” *Share Soc. Work J.*, vol. 5, no. 1, Jul. 2015, doi: 10.24198/share.v5i1.13086.
- [4] B. Muhammad, *Pokok-Pokok Hukum Adat*. Jakarta: Pradnya Paramita, 1983.
- [5] S. Soekanto and S. Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Rajawali Pers, 2015.
- [6] P. O. Ngakan, A. Achmad, D. Wiliam, K. Lahae, and A. Tako, *Dinamika Proses Desentralisasi Sektor Kehutanan Di Sulawesi Selatan*. Bogor: CIFOR, 2005.
- [7] M. S. W. Sumardjono, *Kebijakan Pertanahan Antara Regulasi dan Implementasi*. Kompas, 2009.
- [8] K. Warman and H. Andora, “Pola Hubungan Hukum Dalam Pemanfaatan Tanah Ulayat Di Sumatera Barat,” *Mimb. Huk. - Fak. Huk. Univ. Gadjah Mada*, 2015, doi: 10.22146/jmh.16031.
- [9] D. Cahyaningrum, “Hak Pengelolaan Tanah Ulayat Masyarakat Hukum Adat untuk Kepentingan Investasi (Management Rights of Customary Law Communities Ulayat Land for investment purposes),” *Negara Huk. Membangun Huk. untuk Keadilan dan Kesejaht.*, 2022.

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