



# ***Ulayat* Land Disputes in Minangkabau Customary Law Community: Customary Courts As An Alternative**

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***Abstract-*** Ulayat rights disputes must be taken seriously and resolved relatively in customary law communities. Customary justice aids. Minangkabau customary law community Ulayat land disputes, their resolution, and customary justice are examined in this study—normative legal research using secondary data. Data was analyzed using induction and deduction. Research shows that ulayat land conflicts are created by differences in views, beliefs, opinions, interests, and the position of ulayat and customary law groups over areas where land rights have not been awarded but are held by other parties. Litigation, non-litigation, or advocacy can resolve customary rights conflicts. Nagari Courts assist in settling community issues. Village Nagari Courts are governed by regional regulations, unlike statute-based courts. The 1945 Indonesian Constitution's Article 18B paragraph (2) and Transitional Rules Article II recognize customary justice institutions to respect customary law communities' rights.

**Keywords-** Customary Court; Dispute resolution; Ulayat Land

## I. INTRODUCTION

The word "customary law community" in Indonesia is synonymous with "rechtsgemeenschap." Van Vollenhoven is credited as being the originator of this terminology. Ter Haar (year) employs the term "adatrechtsgemeenschap" (customary law association) as a designation for customary law communities. According to Ter Haar's adatrechtsgemeenschap, units are characterized by possessing a well-organized and enduring structure, as well as their governance and tangible and intangible assets. Hazairin provided an alternative interpretation of societies governed by customary law. According to his statement, customary law communities can be defined as cohesive social entities possessing the necessary resources and capabilities to function autonomously. These communities exhibit legal coherence, authoritative unity, and environmental harmony, primarily stemming from their collective entitlements to land and water resources, which are shared among all community members. While there may be variations in terminology, the underlying concept of customary law communities and customary law groups is identical. [1]

Juridically, the existence of customary law communities is recognized by the State through Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia. However, until now, this recognition has been partially derived. Into statutory regulations under the constitution. Article 18 B of the 1945 Constitution of the Republic of Indonesia states that: 1) The state recognizes and respects unique or special regional government units regulated by law; 2) The State recognizes and respects customary law community units and their traditional rights as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law.

According to Article 28 I, paragraph (3) of the 1945 Constitution, there is a provision that acknowledges the need to respect cultural identity and the rights of traditional groups while simultaneously recognizing the need to adapt to evolving societal changes and advancements in civilization. Based on the laws above, it can be comprehended that the Constitution encompasses two phrases, specifically articulated in Article 18B paragraph (2), which denotes "Customary Law Community Unity." In contrast, Article 28I paragraph (3) defines the term "Traditional Community". An elucidation is required for the two terminologies employed by the Constitution. According to the Village Law, specifically Law Number 6 of 2014, the interpretation of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia refers to the concept of a "customary village." This concept is understood to be synonymous with the term "customary law community unity." Nevertheless, the implementation of the Village Law raises significant concerns on the social entities present within indigenous communities. The phrase "customary village" utilized in the Village Law fails to adequately encompass the entirety of the concept denoted by "indigenous communities." [2] However, this acknowledgment can serve as an initial step in the comprehensive recognition of the rights of indigenous communities. [3]

The acknowledgment and reverence towards customary law community units and their historic rights might be deemed an erroneous recognition. The philosophical interpretation of recognition and respect encompasses the implications for all existing orders and institutions, including the court, governed by customary law communities. [4]

The state's acknowledgment and consideration for the cohesion of customary law communities and their traditional rights need to be revised to offer comprehensive legal safeguards, particularly in delineating the rights of customary law communities. This statement aligns with the findings of Laurens Bakker, who asserts that while national law acknowledges adat as a legitimate basis for rights, how it does so creates significant challenges when attempting to assert land claims rooted in adat rights. [5] The rhetoric around the recognition and preservation of indigenous people's rights by the government or state has been limited, mainly functioning to mitigate the diverse claims made by indigenous communities for their rights to natural resources. [6]

Furthermore, this can be seen in the lack of autonomy of customary law communities in defending their ulayat rights when in contact with the state. [7] Maria S.W. Sumardjono asserts that the lack of prescribed criteria on ulayat rights contributes to the marginalization or disregard of the rights of indigenous groups governed by customary law. The lack of objective standards for determining the legitimacy of customary law communities in conflicts between government and private parties might result in the unilateral denial of their existence or recognition. The significance of the government and private sector's bargaining stance in their interactions with customary law communities is heightened politically and to the ownership of financial resources. [8] This fact catalyzes conflict within customary law groups, encompassing horizontal and vertical dimensions. [9]

The ulayat rights, which originated among the Minangkabau indigenous community in West Sumatra, have been officially recognized and incorporated into formal law by the local government. [10] The ulayat land, as seen by the Minangkabau people, encompasses notions of self-sufficiency, cultural heritage, and economic value, all safeguarded by constitutional provisions. Nevertheless, to entice and encourage investors to allocate their resources in West Sumatra, the local authorities frequently allocate ulayat property for this purpose. The absence of clear legal frameworks and regulations on ulayat land serves as a compelling rationale for the marginalization of indigenous peoples' ulayat rights. Furthermore, the legal certainty about the demarcation of ulayat lands is also questionable as it mainly relies on the subjective recollection of customary chiefs rather than concrete legal documentation. These circumstances are among the contributing factors to disagreements and controversies regarding ulayat rights. [11]

The issues on ulayat rights necessitate a diligent and earnest approach, with a concerted endeavor to identify equitable answers to the greatest extent possible. The optimal solution to be pursued is the one that minimizes its impact and potential for conflict. This entails finding a resolution that effectively mitigates horizontal conflicts among layout rights holders and vertical conflicts between layout rights holders and the government. One pertinent approach to address disputes over ulayat rights is employing customary justice systems. [12] One pertinent approach to address disputes over ulayat rights is employing customary justice systems.

The practice of customary justice in several regions of Indonesia persists and demonstrates efficacy, while its presence has diminished in certain areas, rendering it non-operational. According to Adi Sulistyono (year), contemporary social and economic transformations have resulted in shifts in individuals' approaches to conflict resolution, transitioning from a cultural inclination towards amicable problem-solving to a propensity for resorting to litigation in court. [13] The situation above is further aggravated by the legislative enactment of domestic statutes, which disregard and even undermine alternative methods of conflict resolution rooted in indigenous communities.

The concentration of legal authority within the State judiciary in Indonesia has resulted in customary justice being relegated to a mere "sociological fact" without officially recognizing its legal standing by the State. [14]

When adjudicating problems related to ulayat rights, judges frequently encounter two challenging situations that necessitate resolution by the court. Initially, the presiding court would encounter a predicament about conflicting ulayat rights, supported by evidence derived from a customary law federation. Furthermore, the judge will encounter a predicament concerning ulayat rights that lack substantiating proof under customary law. When reaching a final settlement in a conflict, the judge's primary focus is prioritizing legal certainty, also known as legal justice, as a guiding principle. This takes precedence over employing analogies or interpreting elements that may not be explicitly relevant when determining a matter on ulayat rights. [15]

Given the circumstances above, resolving ulayat land disputes through customary courts becomes pertinent for scholarly discourse. The proliferation of ulayat rights disputes in various regions of the Republic of Indonesia might be attributed to the state judiciary's limited capacity to address and settle these conflicts effectively. Alternatively, should this situation endure, it will yield consequences for the ulayat rights of the customary law community, which are intrinsically linked to the community's very existence.

## II. RESULT AND DISCUSSION

Resolving societal conflicts or disputes is necessary to ensure the continuity of social stability. The conflict can be effectively addressed through various techniques, including litigation, non-litigation approaches, and advocacy strategies. The following statement was authored by Iwan Permadi, who asserted that: "Conflicts or disputes concerning legal certainty and rights in which the parties have lost all motivation to reconcile, or deliberate may be resolved through litigation. Litigation is employed in situations involving human rights violations or offenses against humanity. The final decision is rendered more coercive. Conversely, non-litigation mechanisms are favored when safeguarding the parties' interests in the presence of the public and opposition to their intense desire for reconciliation and deliberation. A more voluntary decision results from the process. In the interim, advocacy mechanisms may be applied to community disputes or conflicts, including those involving labor, trafficking, or victims of violence and human trafficking who are women and children." [12]

Land-related cases can be categorized as legal conflicts and conflicts of interest. It is said to be a legal conflict because the incident involves 2 (two) parties who have different views on their respective legal status to ownership of certain land or have different views on matters relating to land. Meanwhile, conflicts of interest involve 2 (two) parties or groups. However, they are more due to differences in interests between the two rather than based on their claims as juridically entitled parties. [11]

Land disputes mainly arise between indigenous communities who assert their customary land rights and large-scale investors who get concessions for forest exploitation, mining (including oil and gas extraction), and agribusiness development utilizing the PIR (Perkebunan Inti Rakyat) model. [16]

Disparities in perceptions, values, opinions, and interests on the status of ulayat land and customary law communities in specific areas drive land conflicts. These conflicts involve both parties that possess land rights and those who do not but are controlled by other entities. [17] Furthermore, Iwan Permadi explained that conflicts related to ulayat rights are caused by several things, including: a. Conflicts between ulayat rights holders caused by unclear land boundaries; b. Conflicts over the area of water sources; c. When investors use ulayat rights land, conflicts will occur due to unclear boundaries of ulayat rights land; d. Some ulayat rights holders, without coordinating with other members of the customary alliance, took the initiative to register ulayat land with the local National Land Agency. This raises several issues, namely, whose authority can administer the layout rights, e. The customary inheritance law often clashes with national inheritance law, making conflict resolution increasingly tricky. [12]

Understanding the multifaceted origins of land disputes is inextricably linked to efforts to resolve them. Maria SW argues that the fundamental issue at hand pertains to the outline of the land dispute. A Sumardjono may be induced by the following: 1. Bilateral conflict of interest arising from conflicting interests concerning procedural, psychological, and substantive (e.g., land and agrarian resource rights); 2. Unbalanced control of ownership or distribution of resources, power and authority imbalances, geographical, physical, or environmental factors impeding cooperation, and destructive interaction patterns contribute to structural conflict. 3. Disagreement in values resulting from variations in the standards by which concepts or conduct are assessed; disparities in the way of

life, ideology, or religion • 4. Discord in relationships resulting from the manifestation of misguided negative behavior, irrational emotions, or misunderstandings regarding perception; 5. Varying opinions on pertinent issues, disparate data interpretations, inaccurate information, incomplete data, or inconsistencies in evaluation methodologies contribute to data conflicts. [18]

As previously elucidated, ulayat rights necessitate a diligent approach, with a concerted endeavor to identify the most equitable resolution. The primary objective is to identify a solution that minimizes the impact and potential conflicts by mitigating horizontal conflicts among layout rights holders and vertical conflicts between layout rights holders and the government. [18]

Land acquisition, particularly the ulayat rights of customary law communities for the benefit of infrastructure development, industry, housing, tourism, and large-scale plantations, gives rise to the phenomenon of ulayat rights disputes, which can occur between the government and the community, the community and investors, or the government and the government and the community itself. [16] Conversely, even though ulayat rights are non-waivable, there are still many disputes concerning the government's encroachment upon the ulayat rights of the customary law community. [19]

As previously stated, there are generally three methods for resolving disputes or conflicts: advocacy, non-litigation, and litigation. Non-litigation is the most appropriate of the three alternatives for resolving disputes involving ulayat rights. If the non-litigation approach fails to be successful, litigation may be pursued as an absolute last resort. Exploring non-litigation approaches represents a concerted effort to identify more equitable and compassionate alternatives to litigation. This approach is frequently referred to as Alternative Dispute Resolution (ADR) in foreign languages. Although numerous indigenous communities in Indonesia have long employed its tenets to settle disputes, this technique is still relatively novel in Indonesia. In both Europe and the United States, this model is viral. ADR is a multifaceted concept in Indonesia, encompassing cooperative settlement mechanisms, Alternative Dispute Resolution Mechanisms (MAPS), and Out-of-Court Settlement Option. [12]

Justice for customary law communities has yet to be achieved through resolving agrarian conflicts, particularly disputes over the ulayat rights of such communities. Due to this, litigation mechanisms are typically employed to resolve disputes involving ulayat rights, focusing on formal legality. In contrast, should the dispute be resolved through litigation, the ultimate decision will benefit the parties who can establish the legality of the contested subject matter under established norms. In contrast, although ulayat rights have been governed for generations, ownership of such rights in customary law communities typically fails to satisfy this formal legal requirement.

According to Gustav Radbruch, justice, expediency, and legal certainty are the three components that must be considered when enforcing the law. Preserving the public from capricious governmental actions is the objective of legal certainty. In the interim, justice endeavors to eradicate monopolistic practices, implement gender justice, ensure equitable distribution of economic resources and assets, and prevent discrimination by establishing clean and professional legal institutions and apparatus. Moreover, law enforcement must contribute to the betterment of society or be beneficial from a utility standpoint. [20]

In light of Gustav Radbruch's theory above, the current approach to resolving ulayat rights tends to emphasize elements of legal certainty. Customary law communities, meanwhile, have yet to experience its benefits and justice. This is evidenced by societal resistance against the government, private sector, and investors, which continues to be a significant source of contention among customary law communities. Traditional law communities are engaged in this conflict as part of their endeavors to defend their rights, including ulayat rights.

In the province of West Sumatra, specifically within the Minangkabau customary law community, the Regional Regulation of West Sumatra Province Number 6 of 2008, Article 1 number 6, provides an overview of the concept of Ulayat Rights. According to this regulation, Ulayat Rights refer to the collective control and ownership rights held by customary law communities in West Sumatra Province over specific parcels of land and the natural resources contained within them. The term "ulayat land" refers to a specific type of land, as defined in Article 1 number 7. According to this article, ulayat land encompasses inherited land with natural resources. This land has been passed down through generations and is recognized as the rightful possession of the customary law community in the province of West Sumatra.

Within the Minangkabau society, ulayat rights encompass land, water, and the associated natural resources. [11] The following statement is derived from the traditional proverb of the Minangkabau community: "All elements within the forested area, including individual stones, grains of sand, blades of grass, jarak trees, and the sky and the earth, are considered Ulayat land. [21]

Article 5 of the West Sumatra Regional Regulation on Ulayat Land specifies the various classifications of Ulayat land in Minangkabau. they are as follows: "Tanah ulayat nagari, tanah ulayat suku, tanah ulayat kaum, and tanah ulayat rajo are the different types of ulayat land." First of all, Tanah ulayat nagari "ulayat land and the natural resources that exist on and within it are the right of control by the Ninik Mamak of Nagari Customary Density (KAN) and are utilized as much as possible for the benefit of the Nagari community, while the Nagari Government acts as the party that regulates its utilization." Second, the term tanah ulayat suku "ownership rights to land and the natural resources that exist on and within it are collective property rights of all members of a particular tribe whose control and use is regulated by the tribal leaders." Third, tanah ulayat kaum refers "ownership rights to a plot of land and the natural resources above and within it are the property rights of all members of the clan consisting of jurai/paruik whose control and utilization is regulated by mamak jurai/mamak head heir." Fourth, tanah ulayat rajo encompass "property rights to a plot of land along with the natural resources above and within it, the control and utilization of which is regulated by the eldest male of the mother's lineage who is currently still alive in some Nagari in West Sumatra Province."

Ulayat land disputes in Minangkabau society are predominantly characterized by tensions of tanah ulayat kaum, which occur within the clan and between clans and parties. As a result of the transfer of rights to tanah ulayat kaum, disputes may arise regarding inheritance issues, which the title of sale and purchase, pagang gadai, or both may govern. [22]

Conflicts over tanah ulayat kaum, in principle, occur because of violations of customary signs. If each clan knows the principles outlined by custom, the conflict will not occur. Dadi Suryadi says, "When examining the principles contained in the tanah ulayat kaum, the tanah ulayat kaum cannot be transferred. However, the transfer of rights must be with the agreement of all community members. Usually, disputes occur because the transfer of rights is carried out by one or several community members without the agreement of all members." [22]

Disputes on tanah ulayat kaum within the Minangkabau community are customarily resolved through consensus-building deliberation. The methodology for implementation is outlined in the provisions. If a dispute arises within the kaum, the nine mamak in the kaum are responsible for resolving it. If a resolution cannot be reached among the kaum members, the ninik mamak ampek jinih of the tribe is engaged in the subsequent settlement. Should the dispute remain unresolved, the Nagari Customary Density (KAN) will be consulted for assistance in resolving the matter. Discord between kaum or among individuals is also resolved using the precise settlement procedure. [22]

According to Article 1 point 15 of the West Sumatra Regional Regulation on Ulayat Land, KAN is "The highest customary consultation and consensus representative institution of the nagari that has existed and has been inherited from generation to generation in the midst of the nagari community in West Sumatra." One of the duties of the KAN is to resolve customary civil matters and customs, including one of them resolving ulayat land disputes. This is as stated in Article 12 paragraph (1) of the West Sumatra Regional Regulation on Ulayat Land: "that ulayat land disputes in the nagari are resolved by the KAN according to the provisions of the applicable customs, and are attempted by way of peace through deliberation and consensus in the form of a peace decision." The provisions in this article imply that ulayat land disputes are resolved out of court through a non-litigation process. The position of KAN is not as a party to decide the case but to straighten out the customary issues that occur from the dispute. Customary justice owned by KAN is interpreted as a process, namely a way to resolve a customary dispute by a customary institution. [22]

Non-litigation mechanisms, which do not seek to ascertain right or wrong, are utilized to settle. However, the participants in the dispute are ultimately granted a favorable decision. [16] In contrast to resolving disputes regarding ulayat rights via litigation mechanisms or state judicial institutions, these provisions exhibit notable distinctions. According to Rahmadi Uman, "conflict resolution through court channels (litigation) aims to obtain justice and legal certainty, while out-of-court conflict resolution prioritizes peace in resolving disputes that occur between disputants and not looking for the right or wrong party." [23]

Determining who is entitled and who is not entitled and right and wrong should not be the sole objective when attempting to resolve disputes over ulayat rights. In litigation mechanisms to resolve ulayat rights conflicts, the party that can substantiate its rights, irrespective of the method employed, shall be deemed victorious. Non-litigation resolutions, including the revival of the customary justice mechanism, must be pursued in light of these possibilities. [24]

Distinction mechanisms for resolving customary disputes and customary infractions are exclusive to the regions of Indonesia where customary law is prevalent. Many regions continue to acknowledge and employ customary justice to secure legal recourse. According to Marc Levin, methods that were once regarded as antiquated, conventional, and obsolete are now regarded as progressive. [25] Diverse disputes/conflicts and issues arising from transgressions of codes of conduct among community members, nature, and the surrounding environment may be resolved through traditional justice, whether in its most basic or fully institutionalized form. Certain factions regard customary justice as a viable alternative in lieu of feeble or insufficient state judicial institutions that administer justice to the villagers. [26]

As stated by I Ketut Sudantra, the word "adat court" or "adat court" is commonly employed as a translation of "inheemsche rechtspraak," which refers to a legal framework established by the Dutch East Indies government to adjudicate disputes among the indigenous community. [14] Consequentially, according to Sudikno Mertokusumo, "customary justice" denotes a judicial establishment that facilitates harmonious relations among members of customary law communities that already exist. [27]

In sociology, "customary justice" does not appear to be an everyday occurrence within the community. Incommunity usage of the phrase "customary justice" is uncommon. According to the definition above, researchers generally agree that all customary law communities in Indonesia have a problem-solving system or mechanism that can be interpreted as a justice system. However, the term "customary justice" is never used in the everyday vernacular of the community. [28]

Subsequently, "a justice system practiced in the unity of customary law communities" can be defined as customary justice. This interpretation is grounded in a substantial constitutional foundation, as stated in I Ketut Sudantra. This is because Article 18B, paragraph 2, which affirms the unity of customary law communities, must also be construed as "recognition of the governance and structure established in accordance with the standards of regional customary law, including recognition of the customary justice system." [14]

Resolving disputes or conflicts on the ulayat rights of the customary law community is incredibly challenging via litigation or state court mechanisms in the Minangkabau customary law community, which has a distinct social system that differs from the majority of other customary law communities in Indonesia. As a result, alternative dispute or conflict resolutions on Ulayat land are normatively delineated in the West Sumatra Regional Regulation on Ulayat Rights. [22]

West Sumatra Province Regional Regulation No. 7 of 2018 on Nagari ratified the abovementioned provisions in the West Sumatra Regional Regulation on Ulayat Land. Article 1, Number 8 of the Nagari Regional Regulation states, "The Nagari Customary Court, also known by alternative designations, is a judicial institution operational in Nagari that mediates community disputes in accordance with Nagari customs." Article 15 provides additional information concerning the Nagari Customary Court.

In addition to mediating customary disputes (paragraph (3) letters a and b), the Nagari (Customary) Judicial institution also functions as a judicial institution in general (paragraph (3) letter c) under the provisions of the Nagari Regional Regulation. In contrast, the West Sumatra Regional Regulation on Ulayat Land solely governs the presence of KAN as an empathetic mediation organization that reconciles the disputing parties.

Community-wide conflict resolution is highly relevant to traditional justice institutions, such as the Nagari Court, which resolves ulayat land disputes. Regional Regulations are the only means by which the Nagari Court, which operates at the village level, is governed, although statutory provisions are the foundation of judicial institutions. On the contrary, constitutional recognition of customary law is associated with the theory of recognition of the rights of customary law communities. [29] Constitutional Transitional Regulations of the Republic of Indonesia from 1945 recognize the legitimate existence of traditional justice institutions under Article 18B, paragraph (2) and Article II. Notwithstanding the pre-independence of the Republic of Indonesia and the formulation of its 1945 Constitution, the perpetuation of traditional justice institutions ensured their legal recognition remained intact, given their intrinsic connection to customary law communities and the rights inherent to such communities. [26]

### III. CONCLUSION

Horizontal and vertical conflicts frequently arise in utilizing ulayat land by communities governed by customary law. Alternative dispute resolution methods include litigation in a state court or non-litigation

mechanisms such as mediation facilitated by a third party. Until now, these disputes have been resolved through litigation. In order to address ulayat land disputes, particularly those affecting the Minangkabau community in West Sumatra, one viable approach is to employ non-litigation mechanisms, such as customary tribunals. As a site to satisfy physical needs and establish social identity, communal land is significant to the Minangkabau people. Therefore, West Sumatra Provincial Regulation No. 6 of 2008 on Ulayat Land and Its Utilization, supplemented by West Sumatra Provincial Regulation No. 7 of 2018 concerning Nagari, is expected from the West Sumatra Provincial Government. In addition to resolving ulayat land disputes in West Sumatra, both regulations concern Nagari customary judicial institutions.

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