



The Urgency of Customary Land Registration (Analysis of Minister of Agraria Regulation No.14 of 2024)

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Abstract. Customary Land is land owned collectively by indigenous peoples, whose control and utilisation are shared by the group of indigenous peoples. Ulayat land includes land, water and natural resources that exist on it. While the right to joint control and utilisation is called Hak Ulayat. Article 18B paragraph (2) of the 1945 Constitution states that the state recognises and respects the unity 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 Republic of Indonesia. However, there is no further legal regulation regarding customary land registration. Due to the absence of regulations on customary land registration, disputes and polemics over land ownership on customary land often occur. To anticipate this polemic, the Ministry of Agrarian Affairs and Spatial Planning issued a regulation on customary land, namely the Regulation of the Minister of Agrarian Affairs and Spatial Planning of the National Land Agency of the Republic of Indonesia (Permen ATR / BPN) number 14 of 2024 concerning the Implementation of Land Administration and Land Registration of Customary Land Rights of Indigenous Peoples. So the existence of the regulation of the customary land registration process is considered necessary to find out more about how the process of customary land registration and the urgency and effectiveness of customary land registration. This type of research is normative legal research, namely legal research conducted by examining library materials or secondary data. In this study, it examines Permen ATR / BPN number 14 of 2024 as well as journals and books related to customary land. The purpose of this research is to analyse the importance of customary land registration, where customary land registration is considered to protect the human rights of indigenous peoples, and to find out how the challenges faced in efforts to register customary land law and solutions that can be proposed. The results obtained are that customary land registration is urgent due to the increasing conflict of customary land and customary land registration is considered effective to protect the rights of indigenous peoples.

Keywords: Customary Land Registration, Minister of Agraria Regulation, No.14 of 2024

1 Introduction

Indonesia is a country with cultural diversity, it is not surprising that one of its legal systems is customary law. The nature of customary law which is local or communal and specific to the culture of the specific situation is a universal phenomenon. As elsewhere, customary law relates to a particular region or group of people, and is not a collection of rules agreed upon nationally. Traditional customary law, along with the development of Community law, develops from practice, where communities make laws, and change them with their changes by practicing without the help of lawmakers.[1] Indonesia recognizes the existence of customary law with all its regulations, this is regulated in article 18B paragraph (2) of the 1945 Constitution States that for as long as customary law communities continue to exist and are in line with societal advancement and Republic of Indonesian values, the state acknowledges and upholds their unity and traditional rights.[2] The local or communal and culturally specific nature of customary law is a universal phenomenon. As elsewhere, customary law relates to a particular territory or group of people, and is not a set of nationally agreed rules. Traditional customary law, as the law of the Community develops, develops from practice, where the community makes the law, and changes it with its changes by practicing without the help of the lawmaker. Then article 28 I paragraph (3) of the 1945 Constitution states that the cultural identity and rights of traditional communities are respected in line with the development of the times and civilisation. Article 3 of the Basic Agrarian Law (UUPA) states that 'The implementation of customary rights and similar rights of customary law communities, in so far as in reality they still exist, must be in such a way as to be in accordance with national and State interests, which are based on national unity and must not conflict with national interests'. Based on this legal basis, it is clear that the Indonesian State recognises the existence of customary law, both the identity, culture and regulations that apply in it.

As it is known that in customary law, there is a group entity called 'Masyarakat Hukum Adat'. Masyarakat Hukum Adat is a group of people who control customary land for generations in the form of a unity of common ancestral ties and or have a common residence in a certain geographical area, cultural identity, customary law that is still obeyed, a strong relationship with the land and the environment, and a value system that determines the institutions of economic, political, social, cultural and legal life.[3]

These communities are entitled to what are known as ulayat rights under customary law.

Article 3 of the UUPA acknowledges the existence of hak ulayat in national land law, despite the fact that its exact meaning is not explained. As far as customary law communities are concerned, ulayat rights are the highest authority they possess over their own property. The UUPA also establishes restrictions on the establishment of ulayat rights in communities governed by customary law. The restrictions must not contradict with higher laws and regulations, respect national and state interests, and remain in effect as long as reality permits. In order to guarantee the orderly use of land, a legal community's highest right is know

n as hak ulayat. Where the village head or tribe chief regulates the implementation, the community has the right to govern the land.[4] Article 1 of Agrarian Ministerial Regulation No. 5/1999 further explains that hak ulayat is the authority according to customary law owned by a certain customary law community which is the environment of its citizens to take advantage of natural resources, including land, in the area, for their survival and life.[5]

As previously mentioned, some indigenous groups have the right to hak ulayat over shared property.

Although the land in question is referred to by different names in different regions, the legislation uses the phrase "ulayat land." The term "ulayat land" refers to land that is shared by a number of indigenous peoples and whose use is meant to ensure their existence. This, in addition to governmental land and land rights, communal land is one of Indonesia's land entities. According to the 1945 Constitution and the UUPA, the State recognizes customary land, which is a component of customary law. However, there appears to be an injustice because customary land has no legal power, in contrast to state land and land rights that are officially registered. Customary land, which is not registered, differs from state land and land rights, which are clearly registered..[7]

The absence of further legal regulations on customary land registration. Due to the absence of regulations regarding the registration of communal land, disputes and polemics regarding land ownership on communal land clearly occur frequently. The debate and polemics over customary land have been going on for a long time, if calculated since the Agrarisch Wet 1870 was issued, it has been 148 years; and if calculated since Independence 1945, it has been 73 years; and if calculated since the birth of the UUPA 1960, it has been 58 years. The long continuity shows that there is a policy 'mistake' in the issue of customary land.[8]

Many parties use customary land for each group's benefit in the name of uncertainty. from both the public and private sectors. When particular organizations or parties take control of the government, they frequently defeat the existence of indigenous peoples' traditional rights. Utilizing natural resources for the benefit of the country is the frequently cited justification. This is obviously against the UUPA's regulations pertaining to legal certainty over land.

Article 19 of the UUPA states that in order to ensure legal certainty, the government must register land throughout the Republic of Indonesia's territory in compliance with the laws, as governed by government regulations.

Legal certainty of land is said to be the purpose of land registration, which is carried out by the government across Indonesia., but why did customary land escape registration?.

Article 2 paragraph 2 of the UUPA states that customary rights are considered to still exist if:

- (1) There is still a group of people who are still bound by their customary law order as a certain legal community, who recognise and apply the provisions of the community in their daily lives;
- (2) There is a certain customary land that becomes the living environment for the legal alliance and takes benefits for the survival of the community;

(3) There is a customary legal order related to the management of control and utilisation of the communal land.

However, the 3 (three) elements above are not easy to fulfil if we look at the current construction. Pressure, criminalisation, is often experienced if the relevant customary law communities insist on defending their rights, namely control over customary land. Thus, this does not guarantee the legal certainty of customary land tenure for indigenous peoples.[9] In response to this confusing situation, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) did not remain silent, and tried to provide a solution. The Ministry of ATR/BPN issued a regulation on customary land registration, namely

The National Land Agency of the Republic of Indonesia (Permen ATR/BPN) Regulation No. 14 of 2024 of the Minister of Agrarian Affairs and Spatial Planning on the Implementation of Land Administration and Land Registration of Customary Land Rights of Indigenous Peoples. This regulation regulates the administrative procedures of customary land, as well as the registration procedures for customary land. So, what is the urgency that makes customary land registration necessary? Can the birth of this regulation effectively provide a solution to the overlapping interests on customary land that have existed for years?

2 Method

This research is a normative research, which is a research by tracing various legal norms. This material is presented analytically descriptively, namely to describe and illustrate existing legal phenomena or problems. In this case, the legal problems in question are problems in the field of customary law, especially regarding customary land. The data sources used in this writing are secondary data with library research techniques, where the data presented with a literature review include existing legal regulations, namely Permen ATR / BPN) No. 14 of 2024 concerning the Implementation of Land Administration and Registration of Customary Land Rights of Customary Law Communities, as well as books and journals on customary law, existing literature. It can also be explained that secondary data is data obtained from existing literature studies in order to obtain theories and concepts that can be used in compiling research. It is possible that there are field situations that can support research needs[10].

3 Result And Discussion

3.1 Urgency of Customary Land Registration

Urgency is the root word of 'urgen' which gets the suffix 'i' which means something that is part of or plays a major role or is a very important element. The Big Indonesian Dictionary (KBBI) calls urgency an urgent necessity or a very important thing. So speaking of urgency, it means that there is an urgent situation. Then, what is the urgency that requires

customary land to be protected by legal regulations for customary land registration? customary land is territory that a particular group of communities governed by customary law jointly control.

It is evident from the term "hak ulayat" that these lands belong to the community of customary law. The urgency of customary land registration will be discussed from various aspects, namely aspects of agrarian conflict, human rights of indigenous peoples, aspects of sustainable development in Indonesia, as well as from a legal aspect. Implementing Article 3 of the UUPA, which has a contradictory meaning when it comes to acknowledging customary rights, is not the issue that renders the customary rights of the community governed by customary law unprotected; rather, the phrase "must not conflict with national interests" in the UUPA's construction is the root of the issue. Based on this idea, a reconstruction of the legal policy of recognizing customary rights is needed, so that the customary rights of the customary law community can be protected like the rights of other Indonesian communities.[11]

However, because there is no inherent legal certainty, the interests of different parties could override the customary land.

When particular organizations or parties take control of the government, they frequently defeat the existence of indigenous peoples' traditional rights. Very many cases have occurred, from the data of the Consortium for Agrarian Reform, in 2021 alone there have been conflicts over customary land in various sectors. The plantation sector has 74 conflicts with an area of 276,162.052 hectares, affecting 23,531 families; The infrastructure development sector has 52 conflicts with an area of 8,604.697 hectares with 3,648 families affected; The mining sector has 30 conflicts with an area of 155,166.86 hectares and affecting 161. 136 households; 20 conflicts in the property sector on 8,558.59 hectares of land occupied by 1,200 households; 17 conflicts in the forestry sector with 4,601 households on 45,087.98 hectares of land;

7 conflicts involving 4,601 households on 45,087.98 hectares of land in the forestry sector ; seven conflicts involving 4,260 households on 3,709.9 hectares of land in the coastal and small island sector[12].

If the rights of a person or group are taken away, then what happens is injustice, anger at a party, feelings of oppression, deprived self-esteem and feelings of sadness over the helplessness of a situation. This certainly does not reflect the basic philosophy of the Indonesian state, Pancasila. This is what should happen to indigenous peoples, they do not have empowerment over their rights to customary land, because there is no legal force to protect them. This certainly does not reflect the basic philosophy of the Indonesian state, Pancasila, namely social justice for all Indonesian people. Human rights in indigenous peoples seem to be slowly taken away. Furthermore, why is customary land not regarded the same as other land entities with legal certainty, such as state land and land rights? In order to safeguard indigenous peoples' rights, including legal certainty about customary land tenure, customary land registration will be crucial. Similar to state land or land rights, which are uncontested because to the legal certainty that comes with land registration. There is no legal clarity in this situation, which naturally leads to conflicts and conflicting interests on customary land. Naturally, the

e rights of indigenous peoples over their customary land which they maintain and even transform into a source of life for future generations are safeguarded when there is legal certainty over such territory. This is considered urgent because of the increasing number of cases of overlapping interests in the management of customary land, between indigenous peoples and the government or private parties, where the existence of customary rights of indigenous peoples is often defeated by the interests of certain groups or parties by hijacking the government.

Disagreements between the government and communities governed by customary law are often the root cause of disputes over agricultural resources and how they should be used. In the name of progress that advances national interests, the state applies and upholds state law. In the meanwhile, communities governed by customary law make use of the agricultural resources that are already available to them in order to survive in accordance with their concept of customary rights. Therefore, a middle ground that offers the optimal course for all parties—both customary law communities and national interests—is required to resolve these perceptual discrepancies.[13]

The same applies to sustainable development. As is known, sustainable development is not only seen from the economic aspect, but has other dimensions, namely the environment and society. A good balance between these three dimensions must be achieved. Globalisation is something that affects all sides. However, how can sustainable development be achieved by the Indonesian state if indigenous peoples cannot be protected and their rights are neglected. Not a few works of indigenous peoples, which can be called local wisdom, become products that can be imported to foreign countries and become one of the sources of state income, which if the rights of these indigenous peoples can be protected in law with customary land registration, then sustainable development is not impossible to achieve by continuing between the three dimensions.

3.2 Effectiveness of Customary Land Registration

In Permen ATR/BPN No. 14 of 2024 concerning the Implementation of Land Administration and Land Registration of Customary Land Rights of Customary Law Communities, procedures related to the administration and registration of customary land are regulated. The procedure of customary land administration goes through 3 (three) stages, namely:

- (1) Inventory and Identification Stage, with a research process;
- (2) Measurement and Mapping with the installation of boundary marks;
- (3) Recording and issuance of a copy of the Land Register related to the results of inventory and identification.[14]

Then after the administrative process of communal land, the registration of communal land can be processed

with the application stage. Application by the MHA Unit, can be given legal certainty with HPL (Management Rights), then a land examination will be held, an application to the Minister, for further issuance of a Decree and registration of the Decree. Applications can

also be made by MHA Member Groups, can be given Property Rights, with a juridical research process, announcement, ratification of the Decree in 202, and issuance of Certificates.

So how is the effectiveness of customary land registration? If viewed from the regions where the government has issued regional regulations on customary land in the region, then legal certainty over customary land is very effective in preventing and overcoming disputes over customary land. If customary land can be registered in accordance with the objectives of the Permen ATR/BPN, then of course the intensity of conflicts and land disputes over customary land can be reduced because registration of customary land creates legal certainty over land as mentioned in Article 19 of the UUPA. Of course this is effective to protect the rights and unity of indigenous peoples. However, there are problems with the registration of customary land, including the unavailability of comprehensive data on the existence of customary land, the existence of horizontal conflicts, namely conflicts between customary law communities and customary law communities themselves in claiming customary land, as well as with the private sector or the government. The diversity of the characteristics of customary land in each region which makes the criteria for customary land a little blurred. As well as the rejection of indigenous peoples related to legal awareness of the importance of land registration, due to the unrest of the community who are worried that the communal land concerned can be easily transferred by certain individuals.

However, customary land registration does not necessarily run smoothly and properly. There are obstacles to applying for customary land registration, among others:

- (1) There is a lack of thorough information regarding the existence of customary land;
- (2) The existence of disputes, conflicts and cases, both between customary law communities, namely conflicts between different groups of customary law communities who claim each other over the control of customary land. Then conflicts between indigenous peoples and the government where there are several cases where the government provides rights such as business use rights on customary land, as well as conflicts between indigenous peoples and the private sector, where the private sector manages customary land under the pretext of having obtained business use rights);
- (3) the variety of features of customary land in every area;
- (4) Where customary land is located in protected areas, cultural reserves, coastal seas, and forests;
- (5) Customary law communities need to be established based on Regional Government Decrees, where not all customary law communities have been established;
- (6) The need for legal awareness of indigenous peoples about land registration, indigenous peoples are reluctant to register, due to concerns or fear of misuse/loss of land due to the formal system. Where indigenous peoples have not been well socialised that land registration with the issuance of certificates actually protects the rights of indigenous peoples and minimises the abuse of control over land.[14]

4 Conclusion

In addition to acknowledging customary rights, Article 3 UUPA's restrictions also promote the development of disputes over customary land. Consequently, legal pluralism ought to be put into effect. All laws in any territory are essentially plural, according to Menski's triangle theory of legal pluralism. Like a tree, the law is made up of three (three) parts: the enormous trunk that unifies everything (legal positivism), the branches and twigs that point upward to absorb light (natural law), and the roots that give the tree life (an analogy for society and deeply ingrained norms).

One way to address the conflicting laws pertaining to customary law is through legal pluralism.[1] Article 1 paragraph (3) of the 1945 Constitution states that Indonesia is a state of law. As a state of law, all the interests of its people should be regulated and protected by law. In a modern legal state, the government's duties and authorities are not only the classic duties of maintaining security and public order, but must also create general welfare, fair and equitable welfare for its citizens. In the goal of general welfare, the government is given the authority to make legal arrangements. From these arrangements, then a legal instrument emerges to deal with concrete events in the form of provisions. Then these provisions become the "weapon" of the government's legal instrument in implementing legal norms that bring welfare to all people.[15]

Social justice for all Indonesians is one of the core beliefs of the Indonesian government. As a result, everyone ought to get equal legal treatment. In this instance, Indonesian land law offers legal protection in the form of regulations pertaining to land registration, which establish legal certainty. However, this type of regulation does not apply to customary land. In order to establish one of Pancasila's tenets, namely social justice for all Indonesians, Permen ATR/BPN No. 14 of 2024 concerning the Implementation of Land Administration and Land Registration of Customary Land Rights of Customary Law Communities must be accelerated and supported in order to provide legal certainty over customary land.

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