

The Importance of Local Wisdom Values of Customary Law in The Management of National Land Law

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Abstract. *Agrarian conflicts between customary law communities and the government have recently begun to flare up, this is due to the government's lack of attention to communities that have been guaranteed in communal rights, conflicts that occur in the form of disputes and even criminalisation of communities whose rights are deprived without legal certainty. This research uses the juridical analysis method by making secondary data as the main data in the form of literature studies and laws related to agrarian issues. The importance of customary law local wisdom values in the management of national land law can be concluded that the integration of these values has a significant positive impact in maintaining the sustainability of natural resources, strengthening environmental protection, and preserving cultural wisdom in Indonesia. Through the recognition and implementation of local wisdom values, we can create harmony between customary law and national law, improve the welfare of local communities, and ensure that land management is carried out in a sustainable manner.*

Keywords: *Customary; Land; Management; Wisdom.*

1. Introduction

Indonesia, as a country with diverse cultures and traditions, has a rich and diverse heritage of customary law. Customary law in Indonesia is the result of the accumulation of local wisdom values that have developed from generation to generation, regulating various aspects of community life, including land management. The values of local wisdom contained in customary law not only reflect the harmonious relationship between humans and nature, but also become the moral foundation underlying social life.

On the other hand, Indonesia also has a positive legal system regulated in laws and regulations that apply nationally. National land law, which is an integral part of Indonesia's positive legal system, has an important role in regulating the ownership, use and management of land throughout Indonesia. However, in its implementation, there is often tension between customary law and national land law, which can result in conflict and injustice in the management of natural resources, including land.

In this context, it is important to consider and appreciate the local wisdom values of customary law as an integral part of Indonesia's cultural and legal heritage. The integration between local wisdom values and national land law is expected to create harmony and harmony between the two legal systems, so as to provide maximum benefits for the community, the environment, and the sustainability of natural resources.

Agrarian conflicts that often occur between the government and indigenous peoples or the private sector and indigenous peoples are indicators that there is still a lot of legal uncertainty and a lack of integration of national law with customary law. The right of customary law communities to maintain their existence and original authority is often threatened due to government policies that do not pay attention to the development of land tenure by customary law communities. Although the position of customary law communities is recognised as long as it does not conflict with the public interest, the protection of the rights of customary law communities as local wisdom listed in the state constitution needs to be considered. Although the constitution provides protection, the reality on the ground shows that indigenous peoples are still vulnerable to conflict and pressure over their land rights. Concrete steps and a strong commitment from the government are needed to resolve these agrarian conflicts and protect the rights of customary law communities so that they can carry out their existence and authority safely and securely.¹ This fact raises various questions in the implementation of guaranteeing the constitutional rights of indigenous peoples in Indonesia. The agrarian conflicts that occur will always increase by 13 to 15 per cent every year. Meanwhile, the Indigenous Peoples Alliance of the Archipelago (AMAN) also recorded data related to the seizure of customary territories by the government and investors covering an area of 3.1 million hectares, which was legalised through various permits, including HTI, HA, mining and plantation permits. These activities tend to use repressive measures to create an attitude of submission towards indigenous peoples, so it is not surprising that the data provides a minimum criminalisation figure for farmers, indigenous peoples and agrarian activists of 2,964 people.²

This research aims to dig deeper into the values of local wisdom of customary law that can be integrated into national land law. The research was conducted to find out the values of local wisdom of customary law related to land management in Indonesia and whether the integration of local wisdom values of customary law with national law can improve social justice for landowners in the communal rights of indigenous peoples. Through this research, it is hoped that solutions can be found that can ease conflict, improve justice, and strengthen sustainability in land management in Indonesia. Thus, efforts to preserve local wisdom and environmental sustainability can be realised synergistically and sustainably in the context of national land law applicable in Indonesia.

¹ Nunuk. 2018, Keberadaan Hukum Tanah Adat Dalam Implementasi Hukum Agraria Sulisrudatin, *Jurnal Ilmiah Hukum Dirgantara*, p. 6.

² Agus Surono, 2006, Persetujuan Bebas Dan Didahulukan Dalam Konflik Pengelolaan Sumber Daya Hutan, *Jurnal Hukum Ekonomi Dan Teknologi Fakultas Hukum Universitas Al Azhar Indonesia*, p. 9.

2. Research Methods

The issues raised in this research use normative legal research methods, which use secondary data types where the data is obtained indirectly including primary legal materials. The data obtained is then collected through documentary study data collection techniques or literature studies by collecting data based on legal materials that have been used in this study, and analysed using qualitative data analysis techniques. As the purpose of research is one of them as a prediction, in order to provide a description of the findings that are then obtained in this study and also to find the correct conclusions and can be scientifically accounted for.

3. Result and Discussion

3.1. Values of local wisdom of customary law related to land management in various regions in Indonesia

In the customary law environment, there are subjective rights to land of the members of the customary law community. These subjective rights vary in content and the extent to which they operate depends on the intensity of the relationship between the person and the land. The more intensive the relationship, the weaker the interference of hak ulayat with it, but the less intensive the relationship, the stronger the operation of hak ulayat over the land. Kusumadi Pudjosewojo defines customary law as "the entirety of unwritten legal rules".

The conception of customary law on land can be formulated as a "Religious Communalistic" concept, which allows individual land tenure with land rights that are private while containing elements of togetherness. The communalistic nature points to the existence of joint rights of members of the customary law community over land, which in legal literature is called *ulayat* rights. Customary land is land of common ownership, which is believed to be a gift of a supernatural force or ancestral legacy to a group that is a customary law community, as the main supporting element for the life and livelihood of the group for all time. This is where the religious nature or religious element of the legal relationship between members of the customary law community and their customary land appears. Customs have strong ties and influence in society. The binding force depends on the community that supports these customs, especially based on feelings of togetherness, idealism and justice. It is difficult to imagine that customs, although maintained continuously, will automatically realise legal certainty if there are binding rules governing present and future life.³ It can be concluded that customary law is interpreted in this writing as customary law that contains elements that form it, such as there are customs as values that have been institutionalised in society through community actions, contain norms that are agreed upon together in an unwritten manner, have institutions or organisations that enforce them, have sanctions and are influenced by religion adhered to in

³ Teddy Anggoro, 2017, *Kajian Hukum Masyarakat Hukum Adat dan HAM dalam Lingkup Negara Kesatuan Republik Indonesia*, *Jurnal Hukum dan Pembangunan*, Vol. 36 No. 4,

the community.⁴ The values and norms that have been agreed upon in the past are still referred to in modern life as local wisdom.⁵

The pattern of land tenure above is increasingly marginalised due to the politics of land law which does not firmly regulate and protect the rights of local indigenous peoples, and is internally influenced by the development of society which tends to leave Adat Se Atorang (behaviour according to custom). As a result, there have been land seizures by the government, businessmen and among communities. The government and entrepreneurs are considered to have taken community land without equal compensation.⁶

The values of local wisdom of customary law related to land management in various regions in Indonesia are very diverse, because each ethnic group or indigenous community has its own traditions and rules related to land and natural resources. Some examples of local wisdom values of customary law that are often found in Indonesia are:

- a. The Concept of Harmony with Nature: Many indigenous peoples in Indonesia believe that humans are part of nature, and therefore, land management should be done by maintaining the balance of nature. They honour the land as mother earth and observe traditions aimed at preserving nature.
- b. Shared Ownership System: Many indigenous communities have a collective or joint land ownership system. The land is considered a common property that must be safeguarded and managed collectively by all members of the indigenous community. Decisions related to land are usually made through deliberation to reach consensus.
- c. Customs and Traditions: The local wisdom values of customary law are often linked to hereditary customs and traditions. For example, in some indigenous communities, there are certain rules related to how to manage agricultural land, how to divide inherited land, or how to resolve land disputes.
- d. Spiritual and Land Linkages: Many indigenous communities in Indonesia view land as a sacred place that has spiritual value. They believe that the land is where the spirits of their ancestors live and should be honoured in certain ways. This often influences the way land and natural resources are managed as a whole.

The values of customary law local wisdom related to land management in Indonesia are diverse and unique to each indigenous community. It is important that we respect and understand this local wisdom in order to maintain environmental sustainability and cultural diversity in Indonesia.

⁴ Masyhud Asyhari, 2000 "Pemberdayaan Hak-Hak Rakyat atas Tanah", *Jurnal Hukum Ius Quia Iustum*, Vol. 13. p. 108-109.

⁵ Rachmad Syafa'at, 2008, Kearifan Lokal dalam Masyarakat Adat di Indonesia, *Jurnal Publica*, Vol. 4 No. 1, p. 8-15.

⁶ Lily Bauw dan Bambang Sugiono, 2009, Pengaturan Hak Masyarakat Hukum Adat di Papua Dalam Pemanfaatan Sumber Daya Alam, *Jurnal Konstitusi*, Vol. I No. 1, p. 116-117.

3.2. Integration of local wisdom values of customary law in national land law can improve social justice in land ownership and use

The underlying conception of the National Land Law is the conception of Customary Law, which is a religious communalistic conception, which allows individual land tenure, with land rights that are private, while containing elements of togetherness.⁷ The religious communalistic nature of the conception of National Land Law is indicated by Article 1 paragraph (2) of the Basic Agrarian Law, which states that: "all the earth, water, and airspace, including the natural resources contained therein within the territory of the Republic of Indonesia, as a gift of God Almighty, are the earth, water, and airspace of the Indonesian nation and constitute national wealth".

The existence of customary law communities is very important in maintaining cultural diversity and local wisdom. Customary law communities have traditions, norms and legal systems that have been going on for generations. They play an important role in maintaining the sustainability of the natural environment, maintaining social relations, and maintaining distinctive customary values. Indigenous peoples have unique knowledge and expertise in managing natural resources and maintaining ecosystems. They apply rules that have existed since ancient times to maintain the balance between humans and nature.⁸

Considering the number of customary law communities scattered in the territory of the unitary state of the Republic of Indonesia with its diverse cultures and traditions, it is certain that there are also many customary laws that apply in the archipelago.⁹ So that it raises an urgent question, of the many customary laws that exist in Indonesia, which customary laws are used as the basis for National Land Law? This question arises because the term Customary Law is not always used in the same sense. C. Van Vollenhoven, for example, mentions the existence of customary law of indigenous groups and customary law of foreign Eastern groups.

Kusumadi Pudjosewojo uses the term "customary law" as a whole of unwritten laws. Customary law in this sense is not a separate field of law in addition to other fields of law. However, the Basic Agrarian Law, in General Elucidation III point 1 above, relates "Customary Law", which is referred to as the basis of the National Land Law, to the majority of the Indonesian people.¹⁰ It is clear that the customary law that Basic Agrarian Law uses as the basis of the National Land Law is not the customary law of the foreign easterners in Van Vollenhoven's sense, nor is it customary law in Kusumadi Pudjosewojo's sense, but the original law of the indigenous people.

⁷ Adimihada Kusnaka, 2001, Kearifan Lokal Komunitas Dapat Mengelola Sumber Daya Agraria, *Jurnal Analisis Sosial*, Vol 6, Bandung: 2001.

⁸ Anastasia Regita Rintan Sahara, 2023, Eksistensi Hukum Adat Dalam Mempertahankan Kearifan Lokal di Era Modern, *MOTEKAR: Jurnal Multidisiplin Teknologi dan Arsitektur* E-ISSN: 3025-227X P-ISSN: 3025-2288 Vol. 1, p. 3.

⁹ Ridwan, R., Dimiyati, K., & Azhari, A. F, 2017, Perkembangan Dan Eksistensi Hukum Adat: Dari Sintesis, Transplantasi, Integrasi Hingga Konservasi. *Jurnal Jurisprudence*, 6(2), p. 106-115.

¹⁰ Ruchiyat, Eddy, 1986, *Politik Pertanahan Sebelum Dan Sesudah Berlakunya Undang- Undang Pokok Agraria*, Alumni, Bandung, p. 25.

The integration of local wisdom values of customary law in the national land law can bring great benefits in improving social justice in land ownership and use. The following are some discussions related to this:

- a. Empowerment of Indigenous Peoples: By integrating the local wisdom values of customary law in national land law, indigenous communities will be better recognised and supported in land ownership and management. This will provide legal certainty for indigenous peoples and empower them to manage natural resources sustainably in accordance with their traditions and local wisdom.
- b. Protection of Indigenous Peoples' Rights: The integration of local wisdom values of customary law in national land law can assist in the protection of indigenous peoples' rights in relation to land. By recognising custom-based land tenure systems, indigenous communities will be better protected from land tenure conflicts and unjust evictions.
- c. Enhancing Social Justice: By paying attention to and respecting the local wisdom values of customary law, national land laws will be able to create greater social justice in land ownership and use. This will strengthen the position of indigenous peoples in gaining access to land and natural resources, and reduce social inequalities related to land ownership.
- d. Creating Harmony between National Law and Customary Law: The integration of local wisdom values of customary law in national land law can also help create harmony between national law and customary law.

By doing so, land law will be more inclusive and take into account the diversity of cultures and traditions in Indonesia, thereby enhancing social justice in land ownership and use. By integrating the local wisdom values of customary law in national land law, it is hoped that a more just and equitable legal system can be created for all levels of society, including indigenous peoples.¹¹ This will have a positive impact in maintaining environmental sustainability, reducing land conflicts, and improving the overall welfare of the community.¹²

Customary rights as an authority as well as an obligation have the power to apply inward and outward. Inwardly in relation to its citizens, while the power applies outwardly in relation to non-members of its customary law community called "foreigners" or "outsiders".¹³ Hak ulayat contains 2 (two) elements, namely the element of ownership which is included in the field of civil law and the element of authority to regulate the control and lead the use of common land which is included in the field of public law. The element of authority belonging to the field of public law is delegated to the customary head alone or together with the customary elders of

¹¹ Thontowi, J. 2015, Pengaturan masyarakat hukum adat dan implementasi perlindungan hak-hak tradisionalnya, *Pandecta Research Law Journal*, 10(1).

¹² Marco Manarisip, 2012, Eksistensi Pidana Adat Dalam Hukum Nasional. *Jurnal Lex Crimen* Vol.1/No.4, p. 6.

¹³ Boedi Harsono, 2003, *Hukum Agraria Indonesia, Sejarah Pembentukan UUPA, Isi dan Pelaksanaannya*, Jilid I, Cetakan Kesembilan, (Edisi Revisi), Djambatan, Jakarta, p. 74.

the customary law community concerned.¹⁴ The granting of customary rights has turned out to be quite beneficial for the Indonesian nation, because empirical facts in the field also show that the existence of customary law communities and their traditional rights actually participate in protecting and protecting forests. In general, we can see some principles of local wisdom that are still respected and practised by groups of customary law communities.

The conception of state control gains its legitimacy based on the theory of state power stated by Van Vollenhoven that the state is the highest organisation of the nation that is given the power to regulate everything and the state based on its position has the authority for legal regulations. In the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 9 of 2015 on Procedures for Determining Communal Rights to Land of Indigenous Peoples and Communities Located in Certain Areas, which revoked the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 5 of 1999 - and later amended by the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 10 of 2016 on Procedures for Determining Communal Rights to Land of Indigenous Peoples.¹⁵ The recognition and validity of indigenous peoples will remain if the entity of the Indigenous Peoples group still exists. Given the current downturn of indigenous peoples in the midst of modernization, it must be noted by the Indonesian people to maintain indigenous peoples and their tools as a great heritage of the Indonesian state that has gone through a long history and still survives against the flow of urbanization.¹⁶ Written law and customary law are both part of the legal order of a society, according to John Griffiths' theory of legal pluralism. State law and customary law must support each other to ensure that the interests of the people are protected.¹⁷

The form of recognition of customary law communities' rights to customary land is based on the determination of the recognition and preservation of customary law communities in accordance with applicable laws and regulations.¹⁸ The management of customary land of indigenous peoples includes surveying, mapping and documenting the land. Measurement is carried out on the boundaries of land parcels determined by the community unit governed by customary law. The land parcels of the community unit governed by customary law are then mapped on the land registration map for further measurement procedures.¹⁹ Land parcels are measured and mapped in accordance with the criteria for measuring and mapping land parcels, then given an

¹⁴ Marchel R. Maramis, 2013, "Kajian Atas Perlinungan Hukum Hak Ulayat Dalam Perspektif Hak Asasi Manusia", *Jurnal Hukum UNSRAT*, Vol. 21, No. 4, p. 100.

¹⁵ Wahyuni, E, 2019, Pelaksanaan Pengaturan Hak Menguasai Negara atas Tanah Menurut UUD 1945. *Jurnal Hukum*, 6(2).

¹⁶ Pellokila, J. R. Z. ,2021, Analisis Penyelesaian Konflik Hak Ulayat pada Masyarakat Hukum Adat di Kabupaten Jayapura Papua. *Jurnal Syntax Transformation*, 2 (8), p. 1111-1123.

¹⁷ Lestari, R., & Sukisno, D, 2021, Kajian Hak Ulayat di Kabupaten Kam par dalam Perspektif Peraturan Perundang-Undangan dan Hukum Adat. *Jurnal Hukum Ius Quia Iustum*, 28 (1), p. 94-114.

¹⁸ Rahmadi, A. ,2022, Urgensi Penetapan Hak Ulayat Masyarakat Hukum Adat terkait Kebijakan Pelayanan Pertanahan Di Papua. *jurnal Tunas Agraria*, 5 (1), p. 17-32.

¹⁹ Aufa Afinnas, M. A, 2022, Perbandingan Hukum Penetapan Eksistensi Hak Ulayat dengan Penetapan Native Title di Australia. *Diversi: Jurnal Hukum*, 8 (1), 139-168.

identifying number with a district/city land unit in the field of the customary law community unit.²⁰

With proof of land ownership of indigenous peoples, indigenous peoples automatically receive administrative protection. However, this is not sufficient with the various conflicts of interest relating to the land of indigenous peoples. This means that protection must also provide repressive protection when the land is taken over by an opposing party, not merely preventive of the land, but the law and Government policy must be able to affirm the recognition of the overall rights of Indigenous Peoples.²¹ The recognition and protection of indigenous peoples over their land is an obligation for the Government in providing respect, protection and opportunities for the development of indigenous peoples and their traditional rights as long as they are within the framework of the Republic of Indonesia.²² Such recognition also indicates that the state has recognized, declared rights, or declared indigenous peoples to have rights over their natural resources and obliges the Government to match these rights against threats/disturbances from other parties.²³ This recognition is formulated in the form of state law on the rights of indigenous peoples to land and other natural resources.²⁴

Based on this explanation, the recognition of indigenous peoples' rights to customary land is implemented based on the stipulation of recognition and protection of indigenous peoples' unity. However, it is unable to provide legal protection of indigenous peoples as a whole as a public system in society. Therefore, laws and government policies must pay special attention to the rights of Indigenous Peoples, which are implemented.²⁵

4. Conclusion

From the above discussion, it can be concluded that from the importance of local wisdom values of customary law in the management of national land law, it can be concluded that the integration of these values has a significant positive impact in maintaining the sustainability of natural resources, strengthening environmental protection, and preserving cultural wisdom in Indonesia. Through the recognition and implementation of local wisdom values, we can create harmony between customary law and national law, improve the welfare of local communities, and ensure that land management is carried out in a sustainable manner. By respecting and

²⁰ Dirkareshza, R., Ibrahim, A. L., & Pradana, R, 2020, Urgensi Hak Ulayat terhadap Perlindungan Masyarakat Hukum Adat di Indonesia. *Jurnal Ilmiah Hukum De'jure: Kajian Ilmiah Hukum*, 5 (1), p. 94-109.

²¹ Bakung, D. A, 2019, Tertium Comparatum Pengaturan Hak Ulayat Masyarakat Adat Dalam Pelaksanaan Akad Nikah. *Jurnal Legalitas*, 12 (1), p. 48-56.

²² Kristiani, V, 2020, A Just Law for the Customary Rights of Indigenous Peoples (Study and Implementation). *ADIL: Journal of Law*, 11 (1).

²³ Sari, E. N., Yamin, M., & Ikhsan, E, 2022, Peran Dalihan Natolu dalam Penyelesaian Sengketa Tanah Hak Ulayat untuk Pengadaan Kepentingan Umum di Kabupaten Humbang Hasundutan. *Jurnal Hukum Al-Hikmah: Media Komunikasi dan Informasi Hukum dan Masyarakat*, 3 (2), p. 393-416

²⁴ Ibrahim, E, 2020, Peranan Penghulu terhadap Hak Ulayat di Minangkabau. *JCH (Jurnal Cendekia Hukum)*, 6 (1), p. 161-171.

²⁵ Hasan, U., Suhermi, S., & Sasmiar, S, 2020, Eksistensi Hak Ulayat dalam Masyarakat Hukum Adat. *Jurnal Sains Sosio Humaniora*, 4 (2), p. 649-660.

utilising the local wisdom of customary law, we can create harmony between humans and nature, maintain cultural diversity, and make a positive contribution to the sustainability of the environment and natural resources. Collaboration between various stakeholders, the application of sustainability principles, and the recognition of local values are key to protecting cultural and natural heritage for future generations.

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