

Legal Analysis of the Protection of Community Rights in Agrarian Conflicts with Companies Holding HGU in West Bangka

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Abstract. *This study aims to analyze legal protection for communities in agrarian conflicts with companies holding Land Use Rights (HGU) in West Bangka. Agrarian conflicts involving communities and corporations are complex issues that are not only related to legal aspects, but also concern social justice and the recognition of traditional rights. The research method used is normative legal research with a legislative approach and a case approach. The results of the study indicate that normatively, protection for communities has been accommodated in various laws and regulations, such as the 1945 Constitution and the Basic Agrarian Law. However, in practice, this protection has not been implemented effectively due to weak recognition of customary territories, overlapping permits, and unequal positions between communities and companies. In addition, the available dispute resolution mechanisms have not fully provided substantive justice for communities. Therefore, it is necessary to strengthen regulations and government commitment to ensure the protection of community rights more effectively and fairly.*

Keywords: *Agrarian Conflict; Legal Protection; Public.*

1. Introduction

The agrarian conflict between the community and companies holding Land Use Rights (HGU) in West Bangka Regency is a real and recurring legal problem in the practice of implementing agrarian law in Indonesia. (Sahlan et al., 2024) In some concrete cases, communities face situations where the state grants HGU permits to companies for the areas they have traditionally controlled and managed without adequate recognition of customary rights. This situation creates disputes that are not only administrative in nature but also result in the loss of community access to livelihoods, horizontal social conflict, and the marginalization of community groups within the national legal system. This issue demonstrates the tension between investment interests and the protection of community rights, which has yet to be fully and fairly resolved.

Normatively, the Indonesian state has given recognition to the existence of the Community and its traditional rights as stated in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. In addition, Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) also recognizes the existence of customary rights as long as they are still alive and in accordance with national interests. However, in its implementation, this recognition is often declarative and has not been followed by an effective operational mechanism to protect the Community from the seizure or takeover of its territory by corporations through the HGU scheme. This shows a gap between legal norms (*das sollen*) and practical reality (*das sein*).

The granting of HGU permits to companies is often done without comprehensive mapping of customary areas and without participatory community involvement. As a result, there is often overlap between company concession areas and customary areas. In the context of West Bangka, the agrarian conflicts that have occurred demonstrate that the land administration process has not fully considered the principles of justice and the protection of community rights. In some cases, communities are in a weak position both economically and politically, and lack access to justice, making it difficult to defend their rights in the face of companies that possess capital strength and formal legitimacy from the state. (Arrazi & Arifin, 2025)

Furthermore, the available agrarian dispute resolution mechanisms, both through litigation and non-litigation channels, have not fully provided effective legal protection for the community. The judicial process is often time-consuming, expensive, and requires formal proof that is difficult for the community to fulfill, especially related to proof of land ownership which is traditionally not administratively documented. On the other hand, resolution through non-litigation channels such as mediation often does not produce a just solution due to the unequal bargaining position between the parties.

This issue demonstrates that legal protection for communities in agrarian conflicts still faces various obstacles, both regulatory and institutional, and implementation. From a legal protection theory perspective, the state should be present to guarantee the rights of vulnerable groups, including communities, through effective and equitable legal instruments. However, the reality shows that the law often fails to provide optimal protection and, in some cases, even serves as a legitimacy for corporate land ownership. (As & Umar, 2025)

Furthermore, research on agrarian conflicts in West Bangka remains relatively limited, particularly those specifically examining legal protection for communities in the context of conflicts with companies holding HGU (right-to-use) rights. Most previous studies have focused on social, economic, or public policy aspects, resulting in limited in-depth analysis of this issue from both normative and implementative legal perspectives. This indicates a crucial research gap that needs to be filled to contribute to the development of agrarian law in Indonesia.

Based on this description, this research is crucial to comprehensively analyze how legal protection for communities in agrarian conflicts with companies holding HGU in West Bangka, both in terms of legal regulations and their implementation in the field. This research is expected to not only provide theoretical contributions to the development of legal science, but also

provide practical recommendations for policymakers in formulating regulations and policies that are fairer and more pro-community. (Alauddin State Islamic University Makassar & Salim, 2017)

2. Research Methods

This research is normative legal research with a prescriptive-analytical nature that aims to examine and provide legal arguments for the protection of the community in agrarian conflicts with companies holding Land Use Rights (HGU) in West Bangka. The approaches used include the statute approach, the case approach, and the conceptual approach. The data sources used consist of primary legal materials in the form of the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1960 concerning Basic Agrarian Regulations, and relevant court decisions; secondary legal materials in the form of scientific literature, legal journals, and expert opinions; and tertiary legal materials in the form of legal dictionaries and encyclopedia. The data collection method is carried out through library research with systematic legal document search and review techniques. Furthermore, the data analysis method used is qualitative analysis with a deductive approach, namely examining applicable legal norms and then linking them to concrete problems in order to obtain argumentative and comprehensive conclusions.

Problem Discussion I

Legal protection for communities in agrarian conflicts with companies holding Land Use Rights (HGU) in West Bangka basically has a fairly strong normative basis in the Indonesian positive legal system, but in its implementation it still shows various significant weaknesses. Constitutionally, recognition of communities and their traditional rights is regulated in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which emphasizes that the state recognizes and respects customary law community units 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. This provision provides basic legitimacy that customary rights as part of community rights are rights protected by the constitution.

Furthermore, regulations regarding customary rights and the legal relationship between communities and land are regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA). Article 3 of the UUPA emphasizes that the implementation of customary rights and similar rights of indigenous legal communities is recognized as long as they still exist in reality and do not conflict with national interests and higher laws and regulations. In addition, the UUPA also positions the state as the holder of land control rights, which gives the state the authority to regulate the allocation, use, and utilization of land, including in granting business use rights to private parties. In this context, legal protection for communities is actually in a dilemma, because on the one hand the state recognizes customary rights, but on the other hand the state also has the authority to grant land rights to other parties through the HGU scheme. (Gibran et al., nd)

Further provisions regarding HGU are contained in laws and regulations that grant companies the right to cultivate land for a certain period of time for business purposes in the fields of

agriculture, plantations, or forestry. In practice, the granting of HGU is often not preceded by clear identification and recognition of customary areas, resulting in overlap between the company's concession area and the area actually controlled by the Community. This condition indicates that the legal protection provided by laws and regulations is still formal and does not fully guarantee substantive protection for the Community.

From the perspective of legal protection, as stated in the theory of legal protection, the state has an obligation to provide preventive and repressive protection to citizens, especially vulnerable groups such as the community.(Wibowo, 2019) Preventive protection should be implemented through a mechanism for recognizing and establishing customary territories prior to granting HGU permits, as well as through community participation in the decision-making process. However, in practice in West Bangka, these mechanisms have not been operating optimally. Many communities have not yet received formal recognition of their territories, leaving them legally vulnerable when confronted by companies that already hold HGU permits from the state.

Meanwhile, repressive protection that can be achieved through dispute resolution mechanisms, both through the courts and out-of-court, also faces various obstacles. In litigation, communities often experience difficulties in proving land rights because the positive legal system requires written evidence, while community land ownership is generally communal and not formally documented. This results in many lawsuits filed by communities being unable to be optimally granted by the courts. On the other hand, settlements through non-litigation channels such as mediation or government facilitation often do not produce fair solutions due to the imbalance of power between communities and companies.(Tanati et al., 2022)

Furthermore, the existence of various sectoral regulations governing land, forestry, and plantations also complicates legal protection for the community. Overlapping authority between institutions and a lack of synchronization of laws and regulations often create legal uncertainty. In the context of West Bangka, this is reflected in the protracted conflicts without a final resolution, indicating that the existing legal system is unable to provide certainty, justice, and benefits in a balanced manner.(Dina, 2025)

Thus, it can be concluded that the form of legal protection for communities in agrarian conflicts with companies holding HGU according to positive law in Indonesia has been normatively regulated through constitutional recognition, regulations in the UUPA, and dispute resolution mechanisms. However, this protection is still limited and ineffective in practice due to weak recognition of communities, minimal participation in the permit granting process, difficulties in proving in dispute resolution, and disharmony in regulations. Therefore, it is necessary to strengthen regulations and implementation that are more pro-community in order to realize fairer and more effective legal protection.(Ilham, 2024)

Problem Discussion II

The effectiveness of the implementation of legal protection for communities in agrarian conflicts with companies holding Land Use Rights (HGU) in West Bangka has not shown optimal results, even though various legal instruments are normatively available that regulate the recognition and protection of community rights. This ineffectiveness can be seen from the continued prevalence of agrarian conflicts that occur repeatedly and tend to drag on without a complete and just resolution. From the perspective of legal effectiveness, a legal norm is said to be effective if it can be implemented and complied with by the community and is able to achieve the expected goals, namely the creation of justice, certainty, and benefits. However, in the context of agrarian conflicts in West Bangka, these three goals have not been fully realized.(Firdaus, 2023)

One of the main indicators of the low effectiveness of legal protection is the still weak recognition of the existence and territory of the Community. Although constitutionally and normatively recognized, in practice the process of Community recognition often requires lengthy and complex administrative procedures, and is dependent on local government policies. As a result, many indigenous communities in West Bangka have not received formal recognition, thus lacking sufficient legal power to defend their territories when confronted by companies holding HGU (Cultural Rights). This condition creates structural inequalities that hinder the achievement of effective legal protection.

Furthermore, overlapping permitting issues also pose a significant obstacle to resolving agrarian conflicts. The issuance of HGU permits without prior thorough verification of land status often results in overlap between company concession areas and areas actually controlled by communities. This is due in part to weak coordination between government agencies and a lack of integration in the land administration system. In practice, this situation creates conflicts of interest that are difficult to resolve because each party feels they have a legitimate legal basis for the disputed land.

Another factor influencing the effectiveness of legal protection is the unequal bargaining power between communities and companies. Companies, as HGU holders, generally possess greater resources, both in terms of economic resources, access to information, and the ability to utilize legal instruments. Conversely, communities are often in a weaker position, both in terms of legal knowledge and access to legal assistance. This imbalance causes dispute resolution processes, whether through litigation or non-litigation, to be unbalanced and tend to be detrimental to communities.

In litigation, the primary obstacle faced by communities is proving land rights. Indonesia's positive legal system still emphasizes formal evidence in the form of certificates or written documents, while community land rights are generally communal and not administratively documented. Consequently, many lawsuits filed by communities face difficulties in being granted by the courts. Furthermore, the lengthy and expensive legal process also presents a barrier to communities fighting for their rights.

Meanwhile, non-litigation dispute resolution mechanisms, such as mediation or government facilitation, have also not shown significant effectiveness. This is due to several factors, including the lack of equality between the parties, the lack of independence of the mediator, and the lack of binding force in the mediation results. In many cases, mediation is merely a formality without producing substantive and equitable solutions. (Raudhatul Jannah et al., 2025)

In addition to these factors, regulatory disharmony is also a crucial obstacle. Various laws and regulations governing agrarian, forestry, and plantation matters are often not synchronized with each other, creating legal uncertainty. This lack of synchronization also results in overlapping authority between government institutions, ultimately complicating the process of resolving agrarian conflicts. In the context of West Bangka, this condition is reflected in the numerous conflicts that have not been comprehensively resolved. (Firdaus, 2023)

Thus, it can be concluded that the effectiveness of legal protection for communities in agrarian conflicts in West Bangka is still relatively low. This is due to various factors, including weak recognition of communities, overlapping permits, unequal bargaining power, obstacles in legal evidence, ineffective dispute resolution mechanisms, and regulatory disharmony. Therefore, comprehensive improvement efforts are needed, both in regulatory, institutional, and implementation aspects, to increase the effectiveness of legal protection for communities and realize a just and sustainable resolution of agrarian conflicts. (Munte & Tua Sagala, 2021)

4. Conclusion

Based on the analysis described above, there are two important conclusions in this study, namely: First, legal protection for communities in agrarian conflicts with companies holding Land Use Rights (HGU) in West Bangka has been normatively regulated in Indonesian positive law through constitutional recognition in the 1945 Constitution of the Republic of Indonesia, regulations in the Basic Agrarian Law, and dispute resolution mechanisms, both litigation and non-litigation. However, this protection is still formal and does not fully guarantee substantive protection for communities due to weak territorial recognition, minimal community participation in the permit granting process, and regulatory disharmony. Second, the effectiveness of the implementation of legal protection in practice is still relatively low, as evidenced by the ongoing, protracted agrarian conflicts that have not been resolved fairly. This is influenced by various inhibiting factors, including weak community recognition, overlapping permits, unequal bargaining power between communities and companies, obstacles to evidence in litigation, suboptimal dispute resolution mechanisms, and a lack of synchronization of laws and regulations governing the agrarian sector.

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