

## The Role of Notaries and PPAT in Protecting Gayo Customary Rights

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**Abstract.** *Ulayat rights are the rights of indigenous peoples over all agrarian resources that exist within the territory of the indigenous peoples concerned. Thus the object of customary rights includes all agrarian resources (earth, water and natural resources contained therein). This writing aims to analyze the legal position of the customary rights of the Gayo people in Gayo Lues Regency and the role of Notaries and PPAT in protecting the customary rights of the Gayo people in Gayo Lues Regency. This writing is analyzed qualitatively by using the analysis knife of Islamic justice theory, legal certainty theory, and inheritance division theory. The results of the study indicate that the position and position of the customary rights of the customary law community in the National Land Law is very important, the hierarchy is higher than the individual/individual rights to land. Customary law communities live and develop in accordance with the order of values and norms that they believe and obey as truth, including in this case customary norms in the concept of land tenure. Article 3 of the UUPA states that the acknowledgment of the existence of Ulayat rights of the customary law community as long as in reality it still exists, meaning that if in fact it does not exist, then the Ulayat rights can no longer be recognized, cannot be revived and new Ulayat rights cannot be created. The regulation of Ulayat rights is left to the Customary Law community. In providing services to the community, a Notary/PPAT has the duty to serve applications to make certain land deeds referred to in the regulations regarding land registration and the PPAT Position regulations.*

**Keywords:** *Gayo; Notary; Right.*

## 1. Introduction

Notary/PPAT is a legal profession as well as a noble profession. It is called a noble profession because the Notary/PPAT profession is very closely related to humanity. Notaries/PPATs are appointed by the highest authority of the State and given to them the trust and recognition in providing services for the benefit of the community. Notaries/PPATs as state officials, apart from being given the authority to make authentic deeds, are also assigned to register and ratify underhanded letters or deeds, as well as provide legal advice and explanations to the parties concerned to protect individual rights or rights. as indigenous peoples<sup>1</sup>.

Land is one of the main capitals for the Indonesian people and a major element in development towards the formation of a just and prosperous society based on Pancasila as the ideal foundation and the 1945 Constitution as the constitutional basis. Prior to the enactment of the LoGA, the Indonesian Land Law was dualistic in that it was recognized that the customary land law was based on customary law.<sup>2</sup>

The LoGA regulates the types of rights that can be granted to land, which is succinctly regulated in Article 3 which states that: With regard to the provisions in Articles 1 and 2, the implementation of customary rights and similar rights of customary law communities<sup>3</sup>, as long as according to the fact that it still exists, it must be in such a way that it is in accordance with the national and state interests, which is based on national unity and must not conflict with the law and other regulations. Procedures for Administration of Customary Land Community Units of Customary Law, give great responsibility to the Regional Government and the Regional House of Representatives in protecting the customary rights of the customary law community in their respective regions.<sup>4</sup>

The right to control/control of the state must be strictly limited for the future and it is time to think about alternatives to the right to control the state so that

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<sup>1</sup> E. Herguido Sevillano, J.F. Lavado Contador, S. Schnabel, M. Pulido, J. Ibáñez, Using spatial models of temporal tree dynamics to evaluate the implementation of EU afforestation policies in rangelands of SW Spain, *Journal of Public Transportation*, p. 166-175, <https://www.sciencedirect.com/journal/land-use-policy/vol/78/suppl/C>

<sup>2</sup> Adrian Sutedi, (2006), *Peralihan Hak Atas Tanah dan Pendaftarannya*, Jakarta: Sinar Grafika, p. 1.

<sup>3</sup> Eko Puji Hartono and Akhmad Khisni, "Peranan PPAT Dalam Pembuatan Akta Peralihan Hak Atas Tanah Dan/Atau Bangunan Bekas Hak Milik Adat Berkaitan Dengan Pembayaran Bea Perolehan Hak Atas Tanah Dan/Atau Bangunan", *Jurnal Akta*, Vol. 5 No. 1 March 2018.

<sup>4</sup> Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 18 of 2019 concerning Procedures for Administration of Customary Land Community Units of Customary Law

the right can be limited in nature in its conception and implementation. in order to realize the arrangement of utilization, land use so that the social function of land rights is realized. In the social function of land rights, it does not mean that the interests of individuals and indigenous peoples are totally pressured by the public interest.<sup>5</sup>

*Ulayat* rights are the rights of indigenous peoples over all agrarian resources that exist within the territory of the indigenous peoples concerned. Thus the object of customary rights includes all agrarian resources (earth, water and natural resources contained therein). Customary rights are not born because they were created by official decisions but grow and develop (and can also disappear) in accordance with the existence and development of the life of the customary law community concerned.<sup>6</sup>

In the life of indigenous peoples, land is understood as a geographical and social unit that has been inhabited, controlled and managed by indigenous peoples for generations, both as a support for livelihood sources and as a marker of social identity inherited from their ancestors, or obtained through gifts and agreements with other indigenous peoples, such as this in Gayo Lues Regency, Aceh Province where indigenous peoples jointly own land areas for common purposes such as upstream water (*ulu naih*) for daily needs in irrigating rice fields and drinking water. *Peruweren Land* (location of buffalo/cow farm). This cultural and territorial identity is the source of collective rights for indigenous peoples and these rights are constitutional rights stated in the *Qanun*.

The background is on the facts that there is still a lack of understanding of the community, state administrative apparatus, and law enforcement regarding the legal position and rights of indigenous peoples who must receive respect and protection. In particular regarding the recognition of the existence of the rights of the customary law community over their *Ulayat* land, which is a form of the territorial identity of the concerned custom (law) community, this research needs to be done to find out how legal certainty is to the *Ulayat* rights of the gayo custom law community in Gayo Lues Regency and how to protect it. law on customary land rights to ensure legal protection<sup>7</sup>.

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<sup>5</sup>H. Muchsin dan Imam Koeswahyono, (2008), *Aspek Kebijaksanaan Hukum Penatagunaan Tanah dan Penataan Ruang*, Jakarta: Sinar Grafika, p. 28

<sup>6</sup>Ilyas Ismail, "Kedudukan Dan Pengakuan Hak Ulayat Dalam Sistem Hukum Agraria Nasional", *Jurnal Kanun*, No. 50, April 2010, p. 50.

<sup>7</sup>Hunter, Susan & Bulirwa, Elizabeth & Kisseka, Edward. (1993). AIDS and agricultural production. *Land use policy*. 10. 241-58. 10.1016/0264-8377(93)90018-6.

Ilyas Ismail, "Kedudukan Dan Pengakuan Hak Ulayat Dalam Sistem Hukum Agraria Nasional", *Jurnal Kanun*, No. 50, April 2010, see to Laura Notess (WRI) , Peter Veit (WRI) , Iliana Monterroso

Based on the description and background of the problem, the writer wants to describe it in the subject of writing this thesis with the title: The Role of Notaries and Ppats in Protecting Gayo Custosmary Rights in Gayo Lues Regency.

## **2. Research Methods**

The researcher uses a legal research method with a normative juridical approach, the research specifications used are descriptive analysis, the data source comes from secondary data. Methods of data collection were conducted through interviews, library research, and document studies. This writing is analyzed qualitatively by using the analytical knife of legal certainty theory and legal protection theory.

## **3. Results and Discussion**

### **3.1. The Legal Position of the Customary Rights of the Gayo Indigenous Peoples in Gayo Lues Regency**

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) becomes the basis for Law Number 5 of 1960 concerning Agrarian Principles (UUPA) not to use the concept of the State domain over land as adopted by The Dutch East Indies government, the State is no longer the owner of the land.

Article 1 paragraph (1) of the UUPA states explicitly that the entire territory of Indonesia is the unity of the homeland of all and all Indonesian people who are united as the Indonesian Nation. The rights of the nation contain two elements, namely the element of ownership and the element of the task of authority to regulate and lead the control and use of the shared land it owns. The right of the nation to the shared land is not the right to own and use the shared land it owns. The rights of the nation to the common land are not ownership rights in the juridical sense. So in the context of individual ownership rights to land, the task of authority to regulate control and lead the use of land together with its implementation is delegated to the State.<sup>8</sup>The creation of the nation's rights at the time of the creation of a concrete legal relationship with the land as a gift of God Almighty.<sup>9</sup>

The delegation of authority to regulate control and lead the use of land does not include elements of ownership but is limited to elements that are public law. So

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<sup>8</sup>Harsono, p. 258

<sup>9</sup>ibid.

the land within the territory of the Republic of Indonesia is land belonging to the Indonesian nation and not to the state. The state is only considered as an officer of the Indonesian nation.<sup>10</sup>With such construction, the State as the guardian must regulate the use of agrarian resources, including land for the sake of creating the welfare of the nation<sup>11</sup>.

The Basic Agrarian Law is based on customary law as stated in the Preamble to the LoGA, on the grounds that customary law is the original law of the Indonesian nation. According to Urip Santoso, customary law as the basis for the formation of national agrarian law has two positions, namely as the main basis and as complementary law.<sup>12</sup>According to Urip Santoso, the hierarchy of land tenure rights in the LoGA and national land law is:

- The right of the Indonesian people to land is the highest right of control over land and includes all land within the territory of the State, which is a common land, is eternal and becomes the parent of other land tenure rights;
- The State's Right to Control over Land is an assignment to carry out the duties of the nation's authority over land management, where the State is the organization of power for all the people;
- The *Ulayat* rights of the customary law community are the authority possessed by certain customary law communities in certain areas to utilize their environmental areas for the survival of their members;
- Individual rights to land, such as land rights, waqf, mortgage rights and property rights over flat units.

The position and position of the customary law community's customary rights in the National Land Law is very important, the hierarchy is higher than the individual/individual rights to land. Customary law communities live and develop in accordance with the order of values and norms that they believe and obey as truth, including in this case customary norms in the concept of land tenure. The customary law community recognizes the land they occupy not only as an object of economic value so that it is a commodity that can be traded as usual in modern society, but land in the realm of thinking of indigenous peoples is also an object that has magical value (religio-magical).

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<sup>10</sup>Sodiki, p. 34

<sup>11</sup> Williams (WRI) - July 2018, The Scramble for Land Rights, Reducing Inequity between Communities and Companies, <https://wri-indonesia.org/en/publication/scramble-land-rights> see to Sri Ahyani, Land Registration As A Legal Construction Of Law In Order To Facing Asean Economic Communities, *International Journal of Nusantara Islam* Vol. 06 No. 02 2017: (198-207), DOI: 10.15575/ijni.v6i2.6227

<sup>12</sup>Urip Santoso, (2012), *Hukum Agraria Kajian Komperhensif*, Jakarta: Kencana, p. 67-70,

Land in the concept of customary law is self-respect, honor, where the ancestors of indigenous peoples are buried on the land, on the land they live and develop, the closeness between customary law communities and the land that lives them creates a very close emotional relationship. The culture, traditions, and values of indigenous peoples develop in accordance with the proximity of indigenous peoples to their natural environment which in this case also includes the land that has supported them.

Individual land tenure in customary law is obtained by clearing land, the right to control land originates and originates from one's work. John Locke in the Theory of Work says that in fact God has created this earth to be given to fellow humans, so that this earth is worked on and provides prosperity for everyone. No one has the privilege of natural products or animals created on this earth. Everything is our common heritage. To be able to create this welfare, then there must be a way so that these objects can be owned. In other words, the individual can draw concrete use if he has property rights to the object itself and his own work<sup>13</sup>.

The relationship between the customary law community and the land is very close, which is defined as a complete relationship in pairs (*particeperend denken*). The relationship between humans who are regularly structured and related to each other on the one hand and the land on the other hand is the land where they are buried and become the residence of their guardian spirits and their ancestral spirits. The land where the life-forces are absorbed, including the life of the people and therefore depend on it, then such a relationship which is felt and rooted in the nature of his mind and in pairs can and should be considered a legal relationship (*rechtsbetrekking*).<sup>14</sup>

In the concept of land tenure according to customary law, land tenure and land ownership coincide.<sup>15</sup>When people talk about their property rights, what they mean is goods that are fully controlled and which they can fully enjoy. In addition, there is no distinction between objects that are objects of property rights and the rights of those objects. The object that is controlled is the proof of ownership.

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<sup>13</sup> Sri Hartati, The Sustainable Cropland Protection In The Perspective Of Policy Implementation In Karawang Regency, *Journal of New Government Paradigm* Volume 2, 2<sup>nd</sup> Edition, 2015, p. 73  
Wood, David. (1993). Forests to fields. Restoring tropical lands to agriculture. *Land use policy*. 10. 91-107. 10.1016/0264-8377(93)90001-Q,  
[https://www.researchgate.net/publication/11109790\\_Forests\\_to\\_fields\\_Restoring\\_tropical\\_land\\_s\\_to\\_agriculture/citation/download](https://www.researchgate.net/publication/11109790_Forests_to_fields_Restoring_tropical_land_s_to_agriculture/citation/download)

<sup>14</sup>Ter Haar Bzn, p. 49

<sup>15</sup>Hartono, p.17

Article 3 of the UUPA states that the acknowledgment of the existence of *Ulayat* rights of the customary law community as long as in reality it still exists, meaning that if in fact it does not exist, then the *Ulayat* rights can no longer be recognized, cannot be revived and new *Ulayat* rights cannot be created. The regulation of *Ulayat* rights is left to the Customary Law community.<sup>16</sup>

According to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 5 of 1999, the *Ulayat* rights of customary law communities are considered to still exist if:

- There is a group of people who still feel bound by their customary law order as joint citizens of a certain legal alliance, who recognize and apply the provisions of the alliance in their daily lives;
- There is a certain *Ulayat* land which is the living environment of the members of the legal alliance and the place where they take their daily necessities of life, and
- There is a customary law order regarding the management, control and use of customary land that is valid and obeyed by the citizens of the legal alliance.

In general, the rights to customary land in Gayo are divided into 2, namely Hakullollah/God's Rights (land with no owner) and Hakuledem/Adam's Rights (land with no owner).<sup>17</sup> Land rights are given by the authorities (sarakopat) by paying a doubt, namely a certain amount of money to the Sarakopat treasurer for the village treasury. The objects of *Ulayat* rights that are still found in Gayo Lues Regency based on research are:<sup>18</sup>

- *Peruweren* (Grazing Fields) is located in the Mesidah District area, namely Benjadi Perumpakan Village);
- *Mersah, Berawang* serta *Doyah* (places of worship and baths).
- *Pekuburen* (Graveyard).
- *Tamak (Lake)/Nien (Kulam/pool)*.
- *Arul/Rerak/Tali Air* (Irrigation/Watering)
- *Belang Kampung/Penyemuren* (Village Field)
- *Tanoh Pengkaron* (Hunting Field).
- *Empus Kampung* (Village Garden).

The object of customary rights is still enforced by the Gayo customary law as the law governing the designation and utilization, as well as the sanctions imposed

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<sup>16</sup>Ibid, p. 83

<sup>17</sup>Mahmud Ibrahim and A.R. Hakim Aman Pinan, (2005), *Syariat dan Adat Istiadat*, Takengon: Yayasan Maqamam Mahmuda, p.139.

<sup>18</sup>Results of Observations in the Research Area



on members of the indigenous community who commit violations related to the customary object.

Gayo custom in Gayo Lues Regency does not yet have a Regional Regulation (*Qanun*) that regulates the protection of *Ulayat* rights in Bener Meriah Regency as mandated by the Minister of Agrarian Regulation/Head of National Land Agency Number 5 of 1999 as well as the determination of indigenous peoples as mandated by the Minister of Home Affairs Regulation Number 52 Year 2014.<sup>19</sup> So that there is no guarantee of full legal protection both preventively (preventive measures) and repressive measures (countermeasures) as long as regional regulations/*Qanuns* on customary rights have not been issued.

Boedi Harsono said that the LoGA deliberately did not make arrangements in the form of laws and regulations regarding customary rights, and allowed the regulation to continue according to local customary law because it was feared that it would hinder the natural development of customary rights.<sup>20</sup>

The regulation of *Ulayat* rights in regional regulations that are formed must be in accordance with customary law in force in the relevant customary law area, so that it is in accordance with the recognition theory (*Anerkennungstheorie*) put forward by Sudikno Mertokusumo which states that the law has sociological force if it is accepted and recognized by the community. , the community members here are the customary law community itself.

If you look at the statutory regulations, it is stated that customary rights, which in fact no longer exist, will not be revived.<sup>21</sup>

### **3.2. The Role of Noataris and PPAT in Protecting the *Ulayat* Rights of the Gayo Community in Gayo Lues Regency**

Notaries as public officials who make authentic deeds also have a role in relation to customary land rights, namely in issuing customary land registration certificates.

Land registration is something important as a proof of rights that is considered strong against land rights to prove legal ownership of land rights, besides that land registration which has been determined in article 19 of the UUPA (Law No. law. Land registration is something important as a proof of rights that is considered strong against land rights to prove legal ownership of land rights,

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<sup>19</sup>Ibid

<sup>20</sup>Boedi Harsono, (2005), *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Jakarta: Djambatan, p.193

<sup>21</sup>Budi Harsono, Op. Cit., p. 282



besides that land registration which has been determined in article 19 of the UUPA (Law No. law.

Basically the essence of land registration is to provide a certainty of rights for land owners, legal certainty is manifested in the form of certificate issuance as a sense of security to land owners of their rights, land certificates serve as strong evidence in legal certainty given to land rights holders. , the land certificate itself is valid evidence and its existence is recognized by the state as a strong evidence in proving the physical data and juridical data contained therein, as long as the data is in accordance with the data contained in the letter of measurement and the land book concerned.

The importance of registering customary property rights to land as proof of the existence of legal ownership of land rights in accordance with Article 23, Article 32, and Article 38 of the BAL, therefore registration of land rights is an obligation to guarantee legal certainty.

In providing services to the community, a Notary/PPAT has the duty to serve applications to make certain land deeds referred to in the regulations regarding land registration and the PPAT Position regulations. In dealing with these applications, the Notary/PPAT is obliged to make a decision to reject or grant the application in question.

Notary / PPAT as a public official, the deed he made is given the position as an authentic deed, namely a deed made to prove the existence of certain legal actions that resulted in the transfer of rights to land and buildings. The existence of officials in a constitutional order is very much needed, because officials are the embodiment of the personification of the State. The state in a constitutional concept in carrying out its functions is represented by the government. The government in carrying out its functions and duties in realizing the goals of the state is represented by officials. Therefore, the success or failure of a state institution is determined by the ability of its officials to run the wheels of government. One of the duties of an official, especially a Notary/PPAT, is that its existence is recognized by the applicable laws and regulations. namely Government Regulation Number 24 of 1997 concerning Land Registration in conjunction with Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Maker Officials. This is a consequence of the provisions of Article 1 paragraph 3 of the 1945 Constitution, the third amendment 3, which clearly stipulates that the State of Indonesia is a state of law.

The signing of the deed of transfer of rights to land and/or buildings of former customary property rights made by PPAT, has not carried out the obligation to pay BPHTB, in addition to causing legal consequences for the PPAT concerned, it

also affects the validity of the deed of transfer of rights to land and/or buildings of former customary property rights made by the PPAT concerned. As previously explained, to prove the existence of a legal act of transferring rights to land and/or buildings, an authentic deed must be made by the authorized official, namely PPAT.<sup>22</sup>

Legal actions carried out before a Notary/PPAT will produce an authentic deed which will be used as evidence for the parties that certain legal actions have been taken regarding land rights or property rights to flat units, which will be used as the basis for registering changes in land registration data. resulting from the said legal action.

In addition to being made before a public official, in order to obtain its authenticity, the deed in question must be made in the form determined by the laws and regulations and the public official before whom the deed was made must have the authority to make the deed, at the place where the deed was made.

Regarding the condition that the deed must be made by a public official who has the authority to make a deed, it is emphasized in Article 4 paragraph 1 of Government Regulation no. 37 of 1998 which states: "PPAT is only authorized to make a deed regarding land rights or ownership rights to flat units located within its working area".

#### 4. Conclusion

The position and position of the customary law community's customary rights in the National Land Law is very important, the hierarchy is higher than the individual/individual rights to land. Customary law communities live and develop in accordance with the order of values and norms that they believe and obey as truth, including in this case customary norms in the concept of land tenure. The customary law community recognizes the land they occupy not only as an object of economic value so that it is a commodity that can be traded as usual in modern society, but land in the realm of thinking of indigenous peoples is also an object that has magical value (religio-magical). Article 3 of the UUPA states that the recognition of the existence of the customary rights of the customary law community as long as in reality it still exists, it means that if in fact it does not exist, then the *Ulayat* rights can no longer be recognized, cannot be revived and new *Ulayat* rights cannot be created. The regulation of *Ulayat* rights is left to the Customary Law community. In providing services to the community, a

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<sup>22</sup>Eko Puji Hartono and Akhmad Khisni, "Peranan PPAT Dalam Pembuatan Akta Peralihan Hak Atas Tanah Dan/Atau Bangunan Bekas Hak Milik Adat Berkaitan Dengan Pembayaran Bea Perolehan Hak Atas Tanah Dan/Atau Bangunan", *Jurnal Akta*, Vol. 5 No. 1 March 2018, p. 161

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